

SUPREME COURT OF NIGERIA

18TH MARCH 2011, SC. 27/2010

CORAM:- A. I. KATSINA-ALU, W. S. N. ONNOGHEN, I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEKEYE, S. GALADIMA, B. RHODES-VIVOUR, JJSC

ATTORNEY- GENERAL PLAINTIFF
RIVERS STATE

AND

1. ATTORNEY- GENERAL,
AKWA IBOM STATE DEFENDANTS
2. ATTORNEY-GENERAL OF
THE FEDERATION

CONTRACTS - Agreement - Binding nature - The parties having earlier entered into an agreement - Which brought the dispute to an end - They are estopped from disclaiming the said agreement (H1)

ESTOPPEL - Evidence - Estoppel by conduct - Effect - It forbids a person who has led another to believe and act on a state of affairs - From turning round to disclaim that state of affairs (H2)

EVIDENCE - Estoppel - Status - It is equivalent to an admission - And the party whom it affects will not be allowed - To plead against it or adduce evidence to contradict it (H3)

JURISDICTION - Supreme Court - Original jurisdiction - Activation - It could be activated where a dispute is between States inter se - Or between a State and Federal Government - Even where the latter acted and is sued through an agency (H4)

FACTS

The plaintiff sued the defendants before the Supreme Court of Nigeria Claiming ownership of 86 oil wells located off the shore of the plaintiff State for the purpose of the monthly sharing of the 13% derivation funds to the littoral States. Plaintiff's case was that following the implementation of the Allocation of Revenue (Abolition of Dichotomy in the Application of the principles of Derivation) Act of

2004, the ownership of a total of 172 oil wells fell to be determined as between plaintiff and 1st defendant, which wells were located in the maritime area falling between the two States. On the instruction of 2nd defendant, the National Boundary Commission (“NBC”) produced a maritime boundaries map of the littoral States, which included the maritime boundary between plaintiff and 1st defendant. 1st defendant was not satisfied with the result produced by the map and lodged a complaint accordingly, requesting that the demarcation of its boundary with plaintiff should be mapped by application of the Historical titles method as against the strict technical equidistant lines method used by NBC in the production of its map. Plaintiff opposed 1st defendant’s request which it knew will only result in giving more wells to 1st defendant than was the case on the already produced NBC map.

In 2006, 2nd defendant intervened in the dispute between plaintiff and 1st defendant and brokered a political solution thereto which led to the equal distribution of the 172 oil wells between the parties. Both parties accepted the political solution and abided by same until the end of 2007 when 1st defendant attempted to rescind the agreement on the political solution. This suit was instituted to challenge the act of rescission by 1st defendant and to seek judicial backing to the political solution agreement.

ISSUE FOR DETERMINATION

Whether the Defendants can unilaterally jettison the Political Solution Agreement agreed between the 2 States and revert to the Historical Solution in demarcating the maritime map of the littoral states contrary to the decision laid down by this court in the case of *A.G. Federation v. A.G. Abia State & 35 Ors* (2002) FWLR (Pt 10)1 and provision of Article 15 of UNCLOS: 982.

HELD (Unanimously deciding in favour of the plaintiff per **KATSINA-ALU CJN**)

CONTRACTS - Agreement - Binding nature

1. The Plaintiff avers that it accepted the Political Solution Method Agreement. So did the Defendants. Each of them received 86 Oil wells and the revenue accruing therefrom with effect from November, 2006.

As I have already pointed out the parties faithfully implemented the

Agreement for sometime before Akwa Ibom opted out. The agreement, it can be seen above, brought the dispute to an end. The parties are bound by the agreement. The parties are estopped by their conduct from disclaiming their Acts. (p. 536 B)

Evidence - Estoppel by conduct - Effect

2. The doctrine of estoppel by conduct, though a common law principle has been enacted into our body of laws as section 151 of the Evidence Act.

Also called estoppel in pais, this common law principle, which as shown above, has gained statutory acceptance in Nigeria, forbids a person from leading his opponent from believing in and acting upon a state of affairs, only for the former to turn around and disclaim his act or omission. (p. 536 D)

Estoppel - Status - It is equivalent to an admission

3. In law, estoppel is an admission or something which the law views as equivalent to an admission. By its very nature, it is so Important and conclusive that the party whom it affects will not be allowed to plead against it or adduce evidence to contradict it.

In the present case, the defendants are estopped from resiling from the terms of the agreement they entered into with the plaintiff; they are strictly bound by them and this court will not allow them either to plead against them or to adduce evidence in their possession against them. I must stress here and this is also settled law that if parties enter into an agreement, they are bound by its terms. See also *Hilary Farms Ltd. V. M/V Mahtra* (2007) All FWLR (Pt.390)1417 at 1438. It does not matter that in the instant case the defendants have suddenly realised that the terms of the agreement they had entered into with the plaintiff are not favourable to them. (p.537 D)

Supreme Court - Original jurisdiction - Activation

4. Before I end this judgment, there is the issue of the preliminary objection raised and filed by the 2nd Defendant. It is to the effect that the Plaintiffs case does not disclose a dispute between a State and the Government of the Federation within the meaning of Section 232 of the Constitution. I think the objection is misplaced. It will be seen clearly from the Statement of Claim that the dispute in this action is

between the plaintiff and Akwa-Ibom State and the plaintiff and the Federal Government represented by the Attorney-General of the Federation. See paragraphs 12, 13, 17, 18, 21 and 22 of the Statement of Claim.

These paragraphs, in my view, show clearly that the Federal Government was directly concerned and the reliefs sought were all against the Federal Government. The National Boundary Commission and the Revenue Mobilisation Allocation and Fiscal Commission are undeniably the agencies of the Federal Government and the Attorney-General of the Federation as the Chief Law Officer has the capacity to represent them. It is clearly the undisputed right of the Plaintiff to choose the person or, persons he wishes to sue. The Plaintiff could have brought this action against the Federal Government. Simpliciter. But it is like this. The National Boundary Commission and the Revenue Mobilisation Allocation and Fiscal Commission are the hands and feet of the Federal Government as it relates to their functions in this respect. (pp. 539 D/540 H)

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. Jurisdiction - A party cannot change his position on the point on appeal

I hold the view that for the 2nd defendant to contend before this Court that the court has no jurisdiction to entertain the suit after it had contended the contrary at the Federal High Court is to speak from both sides of the mouth or to approbate and reprobate, a situation frowned upon by law. For a party to contend that the court which he had earlier submitted to having jurisdiction over a particular proceeding has no jurisdiction when the matter is duly filed before that court, is to encourage uncertainty, and, to put it mildly, irresponsibility. (p. 552 E)

2. International Law - "State" means countries

In the case of A-G of the Federation vs A-G of Abia State & ors (No. 2) (2002) 6 NWLR (pt. 764) 542 which is a case instituted by the plaintiff therein, inter alia, to determine the seaward boundary of the littoral states of the Federal Republic of Nigeria, this Court stated at pages 728 - 729, with regards to the connotation of "state" under

International Law as follows:-

“ *“Coastal State” under the United Nations Convention on the law of the Sea 1982 means Nation State and not internal states of a country like the littoral states in Nigeria. In a Federation, it applies not to the Federating States that comprise the Federation. This is necessarily 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 to the Federation.*”

The above remains the law as stated by this Court. (p.556 D)

3. Federating states as such are not parties to U.N. Convention on D Law of the Sea

The term “*States Parties*” is defined in Article 1.2(1) of the 1982 Convention as:

“ *States which have consented to be bound by this convention and for which this convention is in force.* ”

In the circumstance, I agree with learned Senior Counsel for the 1st defendant and to some extent the 2nd defendant that the Convention of 1982 and principles of International Law are not applicable to, nor relevant for the delineation of Nigerian internal maritime boundaries as earlier decided in the A-G of the Federation vs A-G of Abia State case, supra. It is therefore my view that the federating units of the Nigerian Nation State do not qualify as State Parties under the convention neither are they bound by its terms and conditions. (p. 557 G)

4. Plaintiff never rescinded from the political agreement

The fact that the plaintiff’s exhibit AMB3 is as a result of the 1st defendant’s exhibit AMB2 can be gleaned from the 2nd paragraph of exhibit AMB3 where the Governor of the plaintiff stated thus:

“*Please recall Your Excellency that what has given rise to the letter under reference was the letter written by my brother, His Excellency the Governor of Akwa-Ibom State on the subject matter which letter you referred to the boundary commission for comments.*”

It is the comment of the boundary Commission and your subsequent action on it Sir, that has ignited the fire on a matter that has hitherto been settled and forgotten."

Emphasis supplied by me.

From the above, it is very clear and I hereby find and hold that
 B it was not the plaintiff that rescinded from the political solution agreement between the parties but the 1st defendant who first did so. So whatever the plaintiff advocated in exhibit AMB3, it was as a reaction to the 1st defendant's exhibit AMB2. (p. 561 B)

C *5. Exh. AMB1 evidences the agreement by the parties herein*
 Exhibit AMB1 clearly contains the agreement reached by the parties in settlement of the issue of ownership of the 172 oil wells between the plaintiff and 1st defendant. There is evidence that the terms of
 D the agreement was regarded by the parties thereto and stakeholders as binding and was acted upon to the mutual benefit of the plaintiff and 1st defendant from 1st November, 2006 to sometime in 2009. It does not matter that exhibit AMB1 is a letter written by the President of the Federal Republic of Nigeria. What matters is that it contains the agreement reached by the relevant parties as regards the
 E final resolution of the disputed ownership of the 172 oil wells; the document conveys the terms of the consensus/agreement reached by the parties. An agreement can even be oral, as earlier stated, what matters is that there must be evidence of consensus between/amongst
 F the parties thereto, which in this case is not in doubt. (p. 562 H)

6. The political solution is the equitable solution

The only solution to fall back on, in the circumstance, is the political
 G solution agreement which is clearly based on equity. It should remain in our focus that we are talking of maritime boundary so as to determine the location of the 172 oil wells in dispute. In the circumstance and by nature of sea/maritime territory any oil leak from any of the oil wells will never be limited to the maritime 'territory' from which
 H the oil well is located but is going to affect all littoral states in the region. This will surely result in huge economic loss to the people inhabiting the states as the leakage will affect their livelihood one way or the other. We have to constantly bear the above stubborn fact in mind whenever the matter is being considered. (p. 563 G)

7. Boundary of Littoral States is limited to low water mark

When it is remembered that this Court had, in the case of A-G of Abia State vs A-G of the Federation supra held that the seaward boundary of the littoral states is the low water mark of the contiguous sea for the purpose of allocation of revenue under the principle of derivation under section 162 of the 1999 Constitution, which resulted in much agitation by the littoral states for abolition of the off-shore/on shore dichotomy to enable the said states benefit from revenue accruing to the Federation Account by way of off-shore oil exploration, coupled with the decision therein that the Nigerian littoral states are not nation states known to International Law so as to qualify to own maritime territory recognized by International Law, it becomes very clear that the extension of the seaward boundary of the littoral states as stated in the Act is specifically for the purpose of computing the revenue accruing to the Federation Account to the littoral states and nothing else. (p. 565 H)

8. International law - States can limit their maritime territory by agreement

In the circumstance, it is clear that parties can legally enter into an agreement to regulate how to share the revenue derivable from oil wells located within the boundary prescribed by the 2004 Abolition of Dichotomy Act, as was the case in exhibit AMB1. In fact even under International Law, Nation States can delimitate their maritime territory by way of agreement to that effect.

In the end, I hold the considered view that the political solution agreement binds the parties to this action and remains in force in respect of the sharing of the revenue derivable from the 172 oil wells under section 162 of the 1999 Constitution and consequently resolved issue 2 in favour of the plaintiff. (p. 566 D)

ADEKEYE JSC

9. In maritime boundaries achieving equitable solution is paramount

The broad general principle of every maritime boundary dispute settlement is the achievement of an equitable solution consistent with domestic laws and practices. Oil attribution has in several instances and over the years been acknowledged by the Nigerian State to be a

significant factor. This court can conclude that the paramount thing when dealing with maritime boundary dispute between States is to offer an equitable solution. This was the solution reached by President Obasanjo in his presidential directive to the parties on the 1st of November 2006 Exhibit AMB1. (p. 630 C)

B

RHODES-VIVOUR JSC

10. Jurisdiction can be raised informally

Jurisdiction can be raised informally, although it is desirable some process is filed so that the adverse party is not taken by surprise. In this suit a formal Notice of Preliminary Objection was filed and responded to by learned counsel for the plaintiff. (p. 658 F)

REPRESENTATION

D A. O. Okeaya-Inneh SAN with him K. Ibikunte-Awopetu (Mrs.)

O.I. Okeaya-Inneh for the Plaintiff.

Paul Usoro SAN with him Chief Duro Adeyele SAN, Augustine Odokwo DCL, M. Udoh, Fola Ojibara, Ayodele Babalola,

E Gloria Nwamu, J. Abiola, F. Fayokun (Miss) and Joseph Akpan for the 1st Defendant.

Audu Anuga with him I Gbashima and Luter Atagher for 2nd Defendant.

CASES REFERRED TO

F Osondu v. Boneh (2000) 3 SC 42 at 81

Uku v. Okumagba (1974) All NLR (Pt.1) 475

C.B.N. v. Igullo (2007) All FWLR (Pt. 379) 1385

Chief Nwoja & 5 Ors. (1992) 2 SCNJ (Pt.1) 76 at 115

G Buhari v. INEC (2009) All FWLR (Part 459) 419 at 517

Joe Iga & Ors. v. Ezekiel Amakiri & Ors. (1976) 11 SC 11

Sapo vs SUNMONU (2000) 3 - 5 S.C. (pt. 11) 130 at 151

Ude vs Nwara (1993) 2 NWLR (pt. 278) 63 & at 662-663

Osondu & Co Ltd v. Bonch (Nig) Ltd (2002) 3 SC 42 at 61

H Ifeanyi Chukwu Osondu V Solleh Boneh (2000) 3 SC 42 at 81

Peenok Investments Ltd v. Hotel Presidential Ltd (1982) 11-12 SC 1

Hilary Farms Ltd. V. M/V Mahtra (2007) All FWLR (Pt.390)1417 at 1438

A-G of Kano State vs A-G of the Federation (2006) 6 NWLR (pt.

1029)164

Adamawa State vs A-G of the Federation (2005) 18 NWLR (pt. 958)
581 at 637-639

STATUTES REFERRED TO

United Nations Convention on the Law of the Sea, 1982, Arts 7. 1 & B
15

Evidence Act, s. 151

Constitution of the Federal Republic of Nigeria, 1999, s. 162

LEAD JUDGMENT BY KATSINA-ALU CJN

The facts of this case are simple and straight forward. These can be gleaned from paras. 4 -12 of the Statement of Claim which state as follows:

4. The Plaintiff states that upon the Implementation of the Onshore/Offshore Dichotomy Abrogation Law 2004 pursuant to the decision of this Honourable Court in suit No. SC/28/2001 between A.G. Cross Rivers State Vs A.G. Federation a dichotomy separating onshore and offshore production and restricting oil producing states to drawing their 13% derivation funds from revenue produced on-shore only was introduced.

5. The Plaintiff avers that the 2nd Defendant thereafter directed its agency - the National Boundary Commission (NBC) to produce maps of littoral states to determine the attribution of oil wells based thereon with a view to demarcating the maritime boundaries of littoral states including the Plaintiff and 1st Defendant.

6. Further to the above, the Plaintiff states that the NBC was directed to submit the maritime maps produced to the Revenue Mobilization -Allocation and Fiscal Commission (RMAFC) for purposes of preparing indices for the sharing of the 13% derivation funds to the littoral states on a monthly basis.

7. The Plaintiff avers that upon the drawing up of the relevant maps by the NBC and submission of same to the RMAFC for necessary action, the RMAFC started to receive complaints from littoral states challenging the Boundary Demarcation and one of these complaints was lodged by the 1st Defendant.

8. The Plaintiff avers that the complaint of the 1st Defendant was that its boundary with the Plaintiff showed a disputed annex-

ation of a triangular portion of the sea from Akwa Ibom to Rivers State and requested for the application of the Historical Titles Method as against the use of the Strict Technical Equidistance lines method used by the NBC in drawing up the maritime maps on the ground that in accordance with Articles 15 and 7.1 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982, only the Historical Titles Method is applicable.

9. The Plaintiff avers that apart from the fact that Article 15 of UNCLOS 1982, recognizes the Strict Equidistance Technical Lines Method as the applicable method for use in drawing up maritime maps, this Honourable Court in the case of Attorney General of the Federation VS Attorney General of Abia State (2002) FWLR (pt 10). 1 specifically excluded the use of the Historical Titles Method for use in boundary demarcation between littoral states.

10. The Plaintiff avers that in the case of A.G. Federation Vs A.G. Abia State & 35 Ors (supra), the Strict Technical Equidistance Lilies Method for demarcating boundaries of littoral states in accordance with Article 15 of the UNCLOS & 1982 was given judicial approval as the acceptable method of drawing up maritime maps of littoral states in Nigeria.

10. The plaintiff avers that sometime in 2006, the 2nd Defendant intervened and the plaintiff and 1st Defendant represented by their respective executive Governors met and agreed to a Political Solution Method which led to the weighting of 50% of the disputed areas comprising 172 oil wells with each of the two littoral states receiving 86 oil wells and the revenue accruing therefrom with effect from November, 2006. This agreement which was reduced into writing and dated 31st October, 2006 will be relied upon at the trial.

11. The Plaintiff avers that it accepted the Political Solution Method Agreement in the interest of peace and stability of the Niger Delta Region and further states that the Agreement which was freely and willingly agreed to by the two states regulated the attribution of the 172 oil wells and 13% derivation funds payable therefrom until the tail end of 2007 when the 1st Defendant unilaterally sought to rescind the agreement and commenced his agitation for the application of the Historical Titles Method contrary to the Supreme Court decision and Article 15 of UNCLOS, 1982 aforesaid.

It is not in dispute that this agreement was reduced into writing

and dated 31st October 2006. It is exhibit AMB1. It is indeed embodied in the letter written by the then President of the Federal Republic of Nigeria, Olusegun Obasanjo. The letter reads:

"You will recall that I presided over a meeting on the above subject Friday, 27th October, 2006 at the Presidential Villa with Governors of Akwa Ibom and Rivers States present among other stakeholders.

You will recall that, in the course of the meeting which was to finding a lasting solution to the lingering problem over the oil wells between the three States concerned i.e. Akwa Ibom, Cross River and Rivers, three options were considered viz: Technical Solution, Historical Solution and Political Solution. After exhaustive deliberations, the meeting opted for and upheld the political solution in line with the earlier advice given by the Attorney-General of the Federation and Minister of Justice. Subsequently, a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November, 2006.

(i) Cross River/Akwa Ibom States

(a) Cross River - 70 wells

(b) Akwa Ibom - 14 Wells

(ii) Akwa Ibom/Rivers States

Akwa Ibom - 86 Wells Rivers - 86 Wells "

Total Cross River 70 Wells; Akwa Ibom 100 Wells and Rivers 86 Wells.

Accordingly, the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final end for implementation by all concerned with effect from the said date 1st November, 2006.

OLUSEGUN OBASANJO"

It can be seen clearly from this letter that the parties have voluntarily jettisoned Technical and Historical Solutions. This is so because these Solutions were considered at the meeting before opting for the Political Solution. The parties faithfully implemented the terms of the agreement till the tail end of 2007, when the 1st Defendant unilaterally sought to rescind the agreement and commenced his agitation for the application of the Historical Solution.

Having regard to the nature of the claim before this court, the only relevant issue for the determination by this court is simple. It is

whether the Defendants can unilaterally jettison the Political Solution Agreement agreed between the 2 States and revert to the Historical Solution in demarcating the maritime map of the littoral states contrary to the decision laid down by this court in the case of A.G. Federation v. A.G. Abia State & 35 Ors (2002) FWLR (Pt 10)1 and provision of Article 15 of UNCLOS: 982.

The Plaintiff avers that it accepted the Political Solution Method Agreement. So did the Defendants. Each of them received 86 Oil wells and the revenue accruing therefrom with effect from November, 2006. The President's letter ended in an emphatic term. It said:

"Accordingly, the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final close, for implementation by all concerned with effect from the said date - 1st November, 2006."

As I have already pointed out the parties faithfully implemented the Agreement for sometime before Akwa Ibom opted out. The agreement, it can be seen above, brought the dispute to an end. The parties are bound by the agreement. The parties are estopped by their conduct from disclaiming their Acts.

The doctrine of estoppel by conduct, though a common law principle has been enacted into our body of laws as section 151 of the Evidence Act. It is in these terms:

"When one person has, by his declaration, Act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief (a thing to be true and to act upon such belief), neither he nor his representative in interest shall be allowed in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing."

Also called estoppel in pais, this common law principle, which as shown above, has gained statutory acceptance in Nigeria, forbids a person from leading his opponent from believing in and acting upon a state of affairs, only for the former to turn around and disclaim his act or omission.

Both the common and statutory law do not permit this conduct; that is why section 151 of the Evidence Act has used the emphases phrase "neither he nor his representative in interest shall be allowed....." This principle was explained better in Ude v. Osuji (1998)10 SCNJ 75 at 22 thus:

"The principle of estoppel by conduct is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relation between them and to be acted upon accordingly, then once the other party had taken him at his word and acted on it, then the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous, legal relations as if no such promise or assurance has been made by him. He must accept their legal relation as modified by himself even though it is not supported in point of law by any consideration, but only by his word or conduct. See Combe v. Combe (1951)1 All ER &69 at 770."

See also Buhari v. INEC (2009) All FWLR (Part 459) 419 at 517.

In the present case, the defendant must accept the legal relations as modified by them in the agreement they voluntarily entered into with the plaintiff. Surely it will be inequitable to permit the defendants to walk out of the agreement which on the evidence before me was not obtained by fraud, misrepresentation or deception.

In law, estoppel is an admission or something which the law views as equivalent to an admission. By its very nature, it is so Important and conclusive that the party whom it affects will not be allowed to plead against it or adduce evidence to contradict it. See Yoye v. Olubode (1974) All NLR v 657; Ukaegbu v. Ugoji (1991)6 NWLR (Pt.196) 127 and Koiki v. Magnusson (2001) FWLR (Pt. 63)167.

In the present case, the defendants are estopped from resiling from the terms of the agreement they entered into with the plaintiff; they are strictly bound by them and this court will not allow them either to plead against them or to adduce evidence in their possession against them. I must stress here and this is also settled law that if parties enter into an agreement, they are bound by its terms. See also Hilary Farms Ltd. V. M/V Mahtra (2007) All FWLR (Pt.390)1417 at 1438. It does not matter that in the instant case the defendants have suddenly realised that the terms of the agreement they had entered into with the plaintiff are not favourable to them. Thus, in Arjay Ltd. V. Airline Mangement Support Ltd (2003) FWLR (Pt. 156) 943 at 990, this court held as follows:

"It is elementary law that where parties have entered into a

contract or an agreement, they are bound by the provision of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement.”

The defendants in the instant case have, by amassing further evidence, evinced an intention to, after setting aside the terms of agreement they voluntarily entered into, pursue the substantive matter to a logical determination on the merits. This smart move is not sanctioned by the law. Thus, in the owners of the M.V. Lupex v. Nigerian Overseas Chatering & Shipping Ltd. (2003) FWLR (Pt. 170) 14-28 at 1445, this Court held thus:

“The law is also settled that the mere fact that a dispute is of a nature eminently suitable for trial in a court is not a sufficient ground for refusing to give effect to what the parties have, by contract, expressly agreed to. See an Application by the Phoenix Timber Company Ltd. (Appeal of V/O Sovfracht (1958)1 Lloyd’s Rep. 305 at 308.”

Akin to this is the law of contract which I shall now explore to see whether both parties had entered into a binding contractual relation by virtue of the terms of the agreement in question. In the case of a simple contract, the parties, in order to be bound by the agreement, must be ad idem on its terms at the time of execution; in which case they cannot be allowed to escape from its terms thereafter. In Sparkling, Breweries Ltd V. Union Bank of Nigeria Ltd (2001) FWLR (Pt.71)1682 at 1702 this court described how parties to a contract are said to be ad idem thus:

“Whether or not there is a semblance of a legally binding agreement between the parties, that is, a situation where the parties to the contract confer rights and impose liabilities on themselves - will largely depend on whether there exists a mutual assent between them The mutual assent must be outwardly manifested. The test of the existence of such mutuality is objective. See Norwich Union Fire Insurance Society v. Price (1943)A. C. 455, p. 463. When there is mutual consent the parties are said to be ad idem.”

In the present case, the terms of agreement which I hold to be a valid contract, were reduced into writing; they can only be varied

by another agreement 'also in writing: C.B.N. v. Iguillo (2007) All FWLR (Pt. 379) 1385 and John Holt Co. Ltd. Lafe (1938)15 NWLR 14. The Defendants have armed themselves with extraneous documentary evidence, not to form the basis of a new or a variation contract, but to form the basis for a judicial determination. The law forbids that and I so hold.

No court, a fortiori the Supreme Court, will allow itself to be used as an instrument of bad faith and breach of contractual obligations voluntarily entered into by parties before it. This court will be shirking in its judicial responsibility as the last court of the land if it refuses to intervene to stop a party before it from foisting bad faith and subterfuge on the other party or even the court itself. This is a proper case calling for this court's intervention; because this is a court of justice, where justice is not only to be done but also to be seen to be done to the hilt.

Before I end this judgment, there is the issue of the preliminary objection raised and filed by the 2nd Defendant. It is to the effect that the Plaintiffs case does not disclose a dispute between a State and the Government of the Federation within the meaning of Section 232 of the Constitution. I think the objection is misplaced. It will be seen clearly from the Statement of Claim that the dispute in this action is between the plaintiff and Akwa-Ibom State and the plaintiff and the Federal Government represented by the Attorney-General of the Federation. See paragraphs 12, 13, 17, 18, 21 and 22 of the Statement of Claim which read as follows:

12. The Plaintiff avers that it accepted the Political Solution Method Agreement in the interest of peace and stability of the Niger Delta Region and further states that the Agreement which was freely and willingly agreed to by the two states regulated the attribution of the 172 oil wells and 13% derivation funds payable therefrom until the tail end of 2007 when the 1st Defendant unilaterally sought to rescind the agreement and commenced his agitation for the application of the Historical Titles Method contrary to the Supreme Court decision and Article 15 of UNCLOS, 1982 aforesaid.

13. The Plaintiff avers that in response to this fresh agitation by the 1st Defendant, it has supplied cogent reasons why the Historical Titles Method (which has never been applicable) was not feasible

and requested for the reversal to the acceptable Strict Technical Equidistance Lines Method judicially approved by this Honourable Court in the case of A.G. Federation Vs A.G. Abia State & 35 Ors (supra) and UNCLOS, 1982. The Plaintiff will rely on both the 1st Defendant's complaint and his response at the hearing.

B 17. The Plaintiff avers that the Defendants particularly the 2nd Defendant acting in concert with the Revenue Mobilization Allocation and fiscal Commission and the Accountant General of the Federation have since jettisoned the Political Solution Agreement and recommended that the President of the Federal Republic of Nigeria approves the report pursuant to which a 2009 Revised 13% Derivation Indices has since been produced by the RMAFC to the detriment of the Plaintiff and in favour of the 1st Defendant. The Revised Indices and the RMAFC letter forwarding it to the Accountant General of the Federation dated 12th March, 2009 will be relied on at the hearing.

E 18. The Plaintiff avers that as a result of the above facts, the 2nd Defendant through its aforesaid agencies and parastatals have ceded the entire 172 oil wells and have since April, 2009 been paying huge revenue accruing therefrom to the 1st Defendant unlawfully despite the pendency and subsistence of the Political Solution Agreement freely entered into by the 1st Defendant and Plaintiff in 2006.

F 21. The Plaintiff avers that the Defendants have since jettisoned the Political Solution Agreement unilaterally and reverted to the use of the Historical Titles Method in ceding the entire 172 oil wells to the 1st Defendant thus introducing a new revenue formula without complying with Section 162(2) of the 1999 Constitution.

G 22. The Plaintiff shall contend that the 2009 Revised Derivation Indices made pursuant to the RMAFC Report 2008 and based on the Historical Titles Method was approved by the 2nd Defendant without the approval of the National Assembly first being sought and obtained pursuant to section 162 (2) of the 1999 Constitution.

H ***These paragraphs, in my view, show clearly that the Federal Government was directly concerned and the reliefs sought were all against the Federal Government. The National Boundary Commission and the Revenue Mobilisation Allocation and Fiscal Commission are undeniably the agencies of the Federal***

Government and the Attorney-General of the Federation as the Chief Law Officer has the capacity to represent them. It is clearly the undisputed right of the Plaintiff to choose the person or, persons he wishes to sue. The Plaintiff could have brought this action against the Federal Government. Simpli-
ter. But it is like this. The National Boundary Commission and
the Revenue Mobilisation Allocation and Fiscal Commission
are the hands and feet of the Federal Government as it relates
to their functions in this respect. I think one does not need a
 magnifying glass to see that they have taken these actions as agents
 of the 2nd Defendant. (Federal Government) In the result the Pre-
 liminary objection fails and is overruled. In the light of the foregoing,
 I hold that the Defendants are bound by the agreement between
 them and the Plaintiff. Consequently I enter judgment in favour of
 the Plaintiff in the following terms:

1. The plaintiff is the owner of the 86 oil wells by virtue of the
 political solution agreement between the plaintiff and the 1st defend-
 ant, the terms of which are contained in exhibit AMB1 and there-
 fore entitled to be paid revenue derivable therefrom under the pro-
 visions of section 162 of the 1999 Constitution from April, 2009 till
 date and subsequently.

2. The defendants are hereby directed by themselves and/or
 their appropriate agencies to forthwith compute and calculate all such
 sums of money accruing from 86 oil wells belonging to the plaintiff
 by virtue of the subsisting and binding Political Solution Agreement
 which sums has since been unlawfully paid to the 1st defendant with
 effect from April, 2009 till date of this judgment and payment of all
 such sums to the plaintiff by the 1st defendant forthwith.

3. There shall be interest at the prevailing commercial rate per
 annum on the total sums calculated as due to the plaintiff from April,
 2009 till date of this judgment and thereafter at 8 percent interest per
 annum on the judgment debt until full liquidation of the judgment
 sum and interest.

4. I make no order as to costs.

ONNOGHEN JSC

By a statement of claim filed in this action, the plaintiff claims,
 in paragraph 29, the following reliefs:

“(i) A *DECLARATION* that it is unlawful and unconstitutional for the Defendants by themselves and through any other statutory bodies including:- the National Boundaries Commission and Revenue Mobilisation Allocation and Fiscal Commission to revert to use of the Historical Titles Method for the delimitation of the maritime boundaries between the plaintiff and 1st Defendant without the subsisting judgment of the Supreme Court in the case of Attorney General of Abia State & 35 ors (supra) first being set aside and or vacated.

(ii) A *DECLARATION* that in accordance with the judgment of the Supreme Court of Nigeria in the case of Attorney General of the Federation vs Attorney General of Abia State & 35 ors (supra) and Article 15 of the United Nations Convention on the Laws of the Sea 1982 (UNCLOS) the Strict Equidistance Technical Lines Method is the applicable method judicially approved for use in demarcating the maritime boundaries of littoral states in Nigeria.

(iii) A *DECLARATION* that it is unlawful and unconstitutional for the Defendants by themselves or through any statutory body of the Federal Government of Nigeria to alter the quantum of revenue accruing to both the plaintiff and 1st Defendant from the Federation Account in favour of the 1st Defendant by reliance on a Report produced by the Revenue Mobilisation Allocation and Fiscal Commission which is yet to be tabled before the National Assembly for its approved and sanction in accordance with section 162(2) of the 1999 Constitution of the Federal Republic of Nigeria and on the historical titles method which has never been applicable.

(iv) A *DECLARATION* that the 172 oil wells ceded to the 1st Defendant based on the use of the Historical Titles Method, belong to the plaintiff if the applicable strict equidistance lines method is resorted to.

(v) A *DECLARATION* that the act of the Defendants with the aid of statutory bodies of the 2nd Defendant, in ceding 172 oil wells belonging to the plaintiff to the 1st Defendant and paying the revenue accruing therefrom to the 1st Defendant since April, 2009 is unlawful wrongful and unconstitutional.

(vi) *CONSEQUENTIAL ORDER* setting aside the 2009 Revised Indices for the payment of 13% derivation to littoral states produced pursuant to the Report produced by the Revenue Mobilisation

Allocation and Fiscal Commission for being unlawful, unconstitutional, null, void and of no legal effect whatsoever.

(vii) **CONSEQUENTIAL ORDER** directing the Defendants to forthwith compute and calculate all such sums of money accruing from the 172 oil well paid to the 1st Defendant with effect from April, 2009 until the determination of this suit and for the payment of all such sums to the plaintiff by the 1st Defendant. ^B

(viii) **ALTERNATIVE TO RELIEF**

(vii) an order directing the Defendant to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the subsisting and binding political solution agreement which sums has since been unlawfully paid to the 1st Defendant with effect from April, 2009 until determination of this suit and for the payment of all such sums to the plaintiff by the 1st Defendant. ^C

(ix) **INTEREST** at the prevailing commercial rate on the total sums calculated as due to the plaintiff from the date of judgment until full liquidation of the judgment sum. ^D

(x) **AN ORDER** of perpetual injunction restraining the Federal Government of Nigeria and the 1st Defendant, their functionaries, statutory bodies or agencies whosoever including the Revenue Mobilisation Allocation and Fiscal Commission, National Boundaries Commission and Accountant General of the Federation from acting on the report produced by the Revenue mobilisation Allocation and Fiscal Commission and the 2009 Revised Indices for the payment of 13% derivation to littoral states and from altering the maritime boundary maps between the plaintiff and the 1st Defendant through the use of the Historical Titles Method in favour of the 1st Defendant and ceding any of the disputed 172 or 50% oil wells thereof or any other well belonging to the plaintiff to the 1st Defendant without legal justification or approval. ^E ^F ^G

The statement of claim was filed pursuant to Order 3 Rule 7 of the Supreme Court Rules and the order of this Court made on the 23rd day of February, 2010 converting the Originating Summons process filed in the action to a writ of summons. In addition to the Statement of Claim, the plaintiff filed an affidavit evidence sworn to on 5/3/2010 by Aisha Mohammed Bello; Witness Statement of Gaius Assor, the Rivers State Surveyor General; Further Affidavit Sworn to ^H

on 23/9/2010 by Adekunbi Ibikunle - Awopetu of Counsel; 2nd Further Affidavit Sworn to on 19/10/2010 by Ibikunle-Awopetu.

On the other hand, the 1st defendant filed an Amended Statement of Defence dated 9/11/2010 in addition to two witness Statements sworn to by Okokon Essien, the Akwa Ibom State Surveyor-General, and Augustine Dominic Odokwo, the Director of Civil Litigation in the Akwa Ibom State Ministry of Justice. By leave of court granted on 2/11/2010, Essien and Odokwo filed their first further witness statements.

In addition to the Witness Statements of the parties, the parties also filed various documents as exhibits in support of their contending positions.

The facts of the case include the following:-

Sometime in 2001, the Attorney-General of the Federation instituted suit No. SC./28/2001 against the Attorney-General of Abia State and 35 others which suit was mischievously christened 'Resource Control suit' in the media, aimed at, inter alia, determining the Southern or Seaward boundary of each of the eight littoral states of Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers for the purpose of calculating the amount of revenue accruing to the Federation Account directly from natural resources derived from the states pursuant to the proviso to section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999. In short, the court was to determine whether the resources derived from the littoral states include oil drilled off shore. In determining the issue, this Court held that the southern boundaries of the littoral states of Nigeria is the sea i.e. the low water mark or the seaward limit of their territorial waters.

Following the above decision, which is reported in (2002) 6 NWLR (pt. 764) 542, there was general dissatisfaction in the Niger Delta particularly the littoral states whose bulk of revenue under the 13% derivation formula came from off shore oil exploration. By way of solution to the on shore/off shore dichotomy, the Federal Government presented a Bill to the National Assembly known as the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) BILL, which was eventually passed and came into force in 2004.

The Act provides inter alia, as follows:-

“(1) As from the commencement of this Act, the 200 metre water depth 180 bath contiguous to a state of the Federation shall be deemed to be a part of that state for the purposes of computing the revenue accruing to the Federation Account from that state pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999, or any other enactment.”

“(2) Accordingly for the purpose of application of the principle of derivation it shall be immaterial whether the revenue accruing to the Federation Account from the state is derived from the natural resources located on-shore or offshore.”

Following the passage of the Act, the Federal Government directed the National Boundary Commission to produce maps of the littoral states to determine the location of oil wells with a view to demarcating the maritime boundaries of the littoral states which were duly carried out and upon which the plaintiff was paid revenue derivable from the 172 oil wells presently in dispute until 2006 which, following the complaints of the 1st defendant that there was an annexation of a triangular portion of the sea from Akwa Ibom to Rivers State - the plaintiff, the 1st defendant requested for the application of the Historical Titles Method of demarcation of maritime boundaries to resolve the dispute rather than the Strict Equidistance Technical Lines Method, which was the method employed in the 2004 demarcation. The dispute continued until sometime in 2006 when the Federal Government represented herein by the 2nd defendant, intervened and held a meeting with the plaintiff and 1st defendant and agreed on a political solution method of resolving the dispute. This agreement led to weighting of 50% of the disputed areas comprising 172 oil wells resulting in each of the two states of Rivers and Akwa Ibom receiving 86 oil wells and the revenue accruing therefrom with effect from November, 2006.

The above arrangement remained in force until 2008 when the National Boundary Commission produced a new maritime boundary map using the Strict Technical Equidistance Lines Method together with other variables which resulted in the plaintiff losing the 86 oil wells to the 1st defendant hence the present action, the reliefs of which had earlier been reproduced in this judgment.

It is the case of the plaintiff that, the 2008 demarcation used the Historical Title Method being what was preferred by the 1st de-

fendant as against the Strict Technical Equidistance Lines Method which is what the plaintiff preferred.

On the other hand, the 1st and 2nd defendants insist that the method of demarcation employed by the National Boundary Commission was the Strict Technical Equidistance Lines Method, not Historical Titles and that the 172 oil wells rightly belong to the 1st defendant.

The issues calling for determination, as formulated by learned Senior Counsel for the plaintiffs, ADE OKEAYA - INNEH ESQ, SAN in the plaintiff's brief of argument filed on 30/8/2010 are as follows:-

C “(i) *Whether the plaintiff is entitled to a declaration that in accordance with Article 15 of the United Nations Convention on the Law of the Sea 1982, and International State Practice regarding maritime boundary delimitation between it and the 1st defendant.*

D (ii) *Whether the 1st and 2nd defendants are by virtue of the Political Solution Agreement entered into in October, 2006 given effect to by the presidential directive of November, 2006 estopped by agreement, conduct and representation from acting contrary to the terms contained therein.*

E (iii) *Whether the 1st defendant having not in any manner or form proved authority and sovereignty over the islands situated in and around the area which is subject matter of this action entitled to a declaration that the Historical Titles should be taken into consideration in the delimitation of the boundary between it and the plaintiff.*

F (iv) *Whether the plaintiff is entitled to the proprietary and economic rights arising from and pertaining to the maritime boundary delimitation which is subject matter of this action. “*

G On his part, learned Senior Counsel for the 1st defendant has formulated a single issue for determination in the 1st defendant's final written address deemed filed and served on 11/1/2011. The issue is as follows:-

H *Does the disputed maritime territory within which lies the 172 oil wells (“Disputed Maritime Territory”) belong howsoever to Rivers State, represented by the plaintiff hereof? By extension, is Rivers State entitled howsoever to the attribution of the 172 oil wells or any part thereof? “*

The following facts are not disputed and I hereby find them as proved:

(1) The maritime demarcation of the boundary between the plaintiff and the 1st defendant by the National Boundary Commission in 2004 placed the 172 oil wells within the maritime territory of the plaintiff.

(2) That the above demarcation, which both parties agreed was carried out by the Strict Equidistance Line Method, was unacceptable to the first defendant. B

(3) The 1st defendant consequently agitated for the use of the Historical Title Method in the demarcation of the said maritime boundary. C

(4) That the Federal Government of Nigeria opted, in the circumstance for a political solution to achieve equity which resulted in an agreement between the parties in which the 172 oil wells were shared between the plaintiff and 1st defendant equally i.e 86 oil wells to each- see exhibit AMB1. D

(5) That the above solution though distasteful to the plaintiff was, however, accepted by it and the situation remained like that until 2008 when, following much agitation by the 1st defendant, the National Boundary Commission recommended to Mr. President the adoption of the Historical Titles Method of maritime demarcation, which was the method the 1st defendant had been pressing for as being the favourable method. E

(6) There is no evidence that Mr. President did approve the use of the Historical Titles Method as recommended. F

(7) However, the National Boundary Commission carried out another demarcation using what is claimed by the defendants to be the Strict Equidistance Lines Method with some variations designed to correct some errors noticed in the 2004 demarcation which allegedly resulted in the placing of the 172 oil wells within the maritime boundary of the plaintiff. The new method swung the pendulum to the other extreme, this time placing all the 172 oil wells within the maritime boundary of the 1st defendant!! G

(8) Following the new boundary, the 1st defendant has been receiving derivation revenue accruing to the 172 oil wells alone, hence the action. H

(9) Both the plaintiff and the 1st defendant are not nation states but states within the nation state of the Federal Republic of Nigeria.

(10) It should be noted that even the political solution adopted by the President of the Federal Republic of Nigeria and accepted by the plaintiff and 1st defendant was recommended by the National Boundary Commission as evidenced in exhibit AMB3, a letter dated 14th March, 2008 in which the Commission recommended

B inter alia thus:

“ Experience from the beginning of the implementation of the off shore on shore dichotomy abrogation Act, 2004 to date especially as it relates to the three states, Akwa Ibom, Cross River and Rivers indicate the difficulties in the application of the technical as well as the historical title solutions. The court cases instituted by Cross River State at the Supreme Court and that of Akwa Ibom State at the Federal High Court were against the indices derived from purely technical delimitation undertaken by National Boundary Commission.

D *In view of this and without prejudice to the technical delimitation, a political solution based on weighting of 25% of the areas disputed between Cross River and Akwa Ibom State on the one hand and 50% between Akwa-Ibom and Rivers State on the other hand may be considered after due consultation with the state parties. This would entail some gains and losses of certain, number of oil wells from each of the three states relevant maps and oil wells distribution are attached herewith”*

E Emphasis supplied by me.

F At this stage, it is necessary to point out the fact that the 2nd defendant raised a preliminary objection to the jurisdiction of this Court to entertain this action in its original jurisdiction. The objection was filed on the 24th day of December, 2010, the grounds of which are stated therein as follows:-

G *“1. The plaintiff’s case does not disclose a dispute between state and the Government of the Federation within the meaning of section 232(1) of the Constitution of the Federal Republic of Nigeria.*

H *2. The plaintiff’s case is against the exercise of the functions of the Revenue Mobilisation Allocation and Fiscal Commission and the National Boundary Commission.*

3. The Revenue Mobilisation Allocation and Fiscal Commission and the National Boundary Commission are statutory bodies corporate with capacity to sue and be sued in their respective names.

4. The Necessary and proper parties for the effective and effectual determination of the issues in controversy are not before this Honourable Court. “

Since an issue of jurisdiction hits at the foundation of adjudication by a court of law, it is usually considered expedient to resolve same first before proceeding further to consider the matter on the merit. It has been settled by a long line of cases that a determination by a court of a matter is null and void if done without jurisdiction and that it does not matter how well the proceeding was/is conducted. An issue of jurisdiction is therefore considered a periphery matter.

In arguing the objection, learned Senior Counsel for the 2nd defendant, D.D. DODO ESQ. SAN in the 2nd Defendant brief of argument filed on 22/12/2010 referred to section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 (Hereinafter referred to as the 1999 Constitution) and submitted that the facts pleaded in the statement of claim and the reliefs sought therein do not disclosed a dispute between the plaintiff and the Government of the Federation; that what is disclosed is a dispute between the plaintiff and the Revenue Mobilization Allocation and Fiscal Commission as well as a dispute between the plaintiff and the National Boundary Commission both of who should have been made the defendants in the action, that many of the reliefs sought are against the Revenue Mobilization Allocation and Fiscal Commission which is not an agency of the Federal Government but an independent authority established under section 153 of the 1999 Constitution with authority to sue and be sued; that paragraph 32 of part 1 of the Third Schedule to the 1999 Constitution spelt out the powers and functions of the said Commission; that the main reliefs seek to set aside the 2009 revised indices for the implementation of the principle of derivation in the allocation of revenue from the Federation Account as recognized under section 162 of the 1999 Constitution; that the functions of the body is separate and different from those of the Federal Government of Nigeria and relied on the case of A-G of Anambra State vs A-G of the Federation (2007) 12 NWLR (pt. 1047) 47; A-G of Kano State vs A-G of the Federation (2006) 6 NWLR (pt. 1029)164.

With regards to the National Boundary Commission, which is also a statutory body with Constitutional functions, learned Senior Counsel submitted that some of the reliefs challenged the decisions

of the National Boundary Commission in respect of the boundary between the plaintiff and 1st defendant and that the plaintiff ought to institute an action directly against the Commission, relying on *A-G Abia State vs A-G of the Federation* (2007) 6 NWLR (pt. 1029) 200 at 214 - 216; that only a state or states either in a dispute between
 B each other and/or against the Federal Government of Nigeria can invoke the original jurisdiction of the Supreme Court under section 232(1) of the 1999 Constitution.

On his part, learned Senior Counsel for the plaintiff in the plain-
 C tiffs Reply Brief filed on 5/1/2011 stated that the action was originally instituted at the Federal High Court in which both the Revenue Mobilization Allocation and Fiscal Commission and National Boundary Commission as well as the 2nd defendant herein and the Accountant General of the Federation were made defendants but that the said
 D action was struck out by that court upon an objection raised by the defendants therein, including the present 2nd defendant, to the jurisdiction of the court; that the 2nd defendant contended that it is only the Supreme Court that has jurisdiction over the matter, which contention was sustained by the trial court, hence the institution of
 E the present action in the original jurisdiction of this Court; that the jurisdiction of a court is determined by the claim of the plaintiff which in this case are stated in paragraphs and 12 and 13 of the Statement of Claim; that it is clear that it is the breach of the political solution method and the agitation of the 1st defendant that culminated in the
 F action being instituted; that paragraphs 17, 18, 21 and 22 of Statement of Claim contain the claim of the plaintiff against the defendants; that it is settled law that a proceeding is not to be defeated by either a misjoinder or non-joinder of a party, relying on Order 9 Rule
 G 14(A) of the Federal High Court (Civil Procedure) Rules 2009; Sasegbon's Laws of Nigeria, 1st ed. Page 1206 vol. 17 (pt. 11); *Sapo vs SUNMONU* (2000) 3 - 5 S.C (pt. 11) 130 at 151; that the Attorney-General of the Federation is the Chief Law Officer of the Federal Government of Nigeria and acts in that manner by virtue of the pro-
 H visions of section 150(1) of the 1999 Constitution.

It is also the contention of learned Senior Counsel for the plaintiff that the 2nd defendant is estopped from raising the present objection in view of the position it took at the Federal High Court; that the substantive matter before the court is between the plaintiff and 1st

and 2nd defendants and that the facts speak for themselves.

In his reaction to the reply brief, learned Senior Counsel for the 2nd defendant filed a reply on points of law on the 10th day of January, 2011 in which he contended that the objection of the 2nd defendant is not an abuse of process neither is the 2nd defendant estopped from raising the said objection in this Court. Learned Senior Counsel submitted that it is not an abuse of process if the defendant adopts a dimetrically different line of defence in two suits with similar facts and parties for which submission learned Senior Counsel, however, cited no authority on the point; that in deciding the present objection the decision and proceedings in the Federal High Court on the preliminary objection therein cannot be relied upon to constitute estoppel, relying on *Adesola vs Abidoye* (1999) 14 NWLR (pt. 657) 28. B
C

On his part, learned Senior Counsel for the 1st defendant who led the team that appeared on the 11th day of January, 2011 when the case was heard, PAUL USORO ESQ, SAN submitted that the court has jurisdiction to entertain the matter as the dispute centers on the ownership of the disputed maritime territory between the plaintiff and 1st defendant; secondly that it was the President of Nigeria that directed the National Boundary Commission and the Revenue Mobilization Allocation and Fiscal Commission to go into the matter and report to him thereby making the two bodies agents of Mr. President - a disclosed principal and that anyone aggrieved by the actions of the agents can proceed against the disclosed principal and urged the court to dismiss the preliminary objection. D
E
F

Section 232(1) of the 1999 Constitution provides as follows:-

“(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.” G

From the facts on record, the following are not disputed:-

(a) That the substance of the action before this Court is a dispute as to the ownership of 172 oil wells within the maritime territory of the two states - plaintiff and 1st defendant. H

(b) Both the National Boundary Commission and Revenue Mobilization Allocation and Fiscal Commission acted as agents of the

Federal Government of Nigeria in relation to the determination of the maritime boundary between the plaintiff and 1st defendant and in preparing the indices for the sharing/allocation of revenue derivable from the disputed 172 oil wells as both have to report their recommendations to the Federal Government which has to take the necessary decision on the matters.

(c) That the Government of the Federation is a disclosed principal of the National Boundary Commission and Revenue Mobilization Allocation and Fiscal Commission for the purpose of this action and can therefore be sued directly by any aggrieved party.

(d) That the 2nd defendant had earlier raised an objection in a similar suit pending before the Federal High Court on the same subject matter in which it contended that that court had no jurisdiction over the matter but the Supreme Court since the dispute is basically between states.

Looking at the undisputed facts of this case, it is very clear, and, I hereby find and hold, that this Court has jurisdiction to entertain the action as constituted, the same being primarily for the determination of the ownership of the maritime territory on which the disputed 172 oil wells are located between the plaintiff and the 1st defendant upon the recommendations of the agents of the Federal Government of Nigeria herein represented by the 2nd defendant.

Secondly, I hold the view that for the 2nd defendant to contend before this Court that the court has no jurisdiction to entertain the suit after it had contended the contrary at the Federal High Court is to speak from both sides of the month or to approbate and reprobate, a situation frowned upon by law. For a party to contend that the court which he had earlier submitted to having jurisdiction over a particular proceeding has no jurisdiction when the matter is duly filed before that court, is to encourage uncertainty, and, to put it mildly, irresponsibility. One foresees a situation in which the 2nd defendant, if its contention before this Court is upheld, going back to the Federal High Court to contend as earlier, that the court has no jurisdiction, it will be a merry go round process; a vicious cycle. Perhaps it may be the customary court or sharia court or magistrate court that would have jurisdiction over the matter particularly as both the Federal High Court and the Supreme Court are said by the 2nd defendant to be without jurisdiction over the matter. Or, it may be it is the Court of

Appeal that would have the original jurisdiction to hear and determine the matter!! Or does the 2nd defendant not want the dispute between the parties settled? As long as there exists a dispute between the parties, there must be a court of law to which the parties can seek redress and I hold the view that that court, as disclosed by the facts of this case, is the Supreme Court of Nigeria. B

In conclusion, I find no merit whatsoever in the objection which is accordingly dismissed.

Turning now to the issues formulated for determination of the suit, particularly the plaintiff's issue one, it is the submission of the learned Senior Counsel for the plaintiff that the maritime boundary between the plaintiff and 1st defendant prior to 2006 was delimited by the National Boundary Commission using the equidistance principle arising from the application of Article 15 of UNCLOS 1982 which puts the disputed 172 oil wells within the maritime territory of the plaintiff and for which the plaintiff received the revenue derivable therefrom from the Federation Account under section 162(2) of the 1999 Constitution until the Political Solution Agreement of October, 2006, which came about as a result of the agitation of the 1st defendant; that the 1st defendant was in-breach of the agreement as evidenced in its letter of 24th October, 2007, exhibit AMB2 and calls on this court to apply the provisions of Article 15 of UNCLOS 1982 by reverting to the equidistance line delimitation of the maritime boundaries between the plaintiff and 1st defendant as shown in the maps exhibited to the affidavit evidence before the court; that by the principles of International Law and pursuant to Article 15 of UNCLOS 1982 and the decision of International Court of Justice in the Nigeria and Cameroun case of 2002, the plaintiff is entitled to its pre - 2006 maritime delimitation line between the plaintiff and 1st defendant; that the geodata survey shown by the exhibits (maps) attached to the affidavit evidence of the plaintiff do not show or display relevant circumstances or geographical configurations that would necessitate any modification of the equidistance method; that the court should hold that the equidistance/medium line that had been determined by the National Boundary Commission in 2004 is the legal maritime delimitation boundary between the plaintiff and 1st defendant. For the above, learned Senior Counsel cited and relied on many decisions of the International Court of Justice such as the Tunisia/Libya C D E F G H

Continental Shelf case 1982; Gulf of Man case 1984; Guinea/Guinea Bissau case 1985 (14th February, 1985) the Qatar/Bahrain 2001 and the Eritrea/Yemen Award, all on the use of the equidistance principle in the determination of maritime boundaries between nation states; that this same principle/method is recognized in bilateral treaties and state practices. Finally learned Senior Counsel submitted that an application of the said equidistance principle method will show clearly that the plaintiff is entitled to maintain the pre - 2006 boundary line between it and the 1st defendant and urged the court to so hold.

It is the submission of learned Senior Counsel for the 1st defendant that exhibit AMB4 merely recommended the use of the Historical Titles Method to Mr. President which recommendation was never approved for use in the determination of the maritime boundary between the plaintiff and the 1st defendant in the 2008 delimitation; that the plaintiff has failed to prove the main assertion in its claim that the Historical Titles Method was what was used in the 2008 delimitation resulting in the 172 oil wells being awarded to the 1st defendant.

It is the further submission of learned Senior Counsel that the principle/method of delimitation employed by the National Boundary Commission in the exercise of 2008 was the equidistance method but moderated by the perpendicular/bisector principle which led to the preparation of the 2008 maritime boundaries map, the location of the disputed maritime territory in Akwa Ibom State and, the consequential attribution of the 172 oil wells to the 1st defendant; that the National Boundary Commission has the statutory power to carry out the 2008 delineation exercise as evidenced in sections 7(b) 7(c); 7(g) of the National Boundary Commission Act, cap N10, Laws of the Federation of Nigeria, 2004.

Turning to the issue of the applicability of the provisions of United Nations Convention on the Laws of the sea 1982, learned Senior Counsel submitted that the contention that the said convention applies to the resolution of maritime boundaries within the Nigerian Federation is misconceived and erroneous; that the real Article 2 of UNCLOS is different from the Article 2(ii) quoted in paragraph 4.8 of the plaintiffs Final Written Address (Plaintiff Brief).

Secondly, that the provisions of UNCLOS 1982 do not apply

to the resolution of internal Nigerian maritime boundaries relying on the decision of this Court in *A-G Federation vs A-G Abia State & ors supra*, which is very much in accord with the definition of “*states parties*” in Article 1.2(1) of UNCLOS.

On his part, learned Senior Counsel for the 2nd defendant, D.D. DODO ESQ, SAN in the 2nd defendant’s brief of argument filed on 23/12/2010 dealt with the matter under his issue NO. 2 which reads thus:

“*Whether the National Boundary Commission properly exercised its functions in delimiting the Boundary between the plaintiff and the 1st Defendant.*”

Submitted that the National Boundary Commission properly exercised its functions in delimiting the maritime boundary between the plaintiff and 1st defendant; that in “*delimiting maritime boundaries for the purpose of implementing the principle of derivation enshrined in section 162 of the 1999 Constitution, the National Boundary Commission, in the absence of a local legislation on principles and methods of maritime boundary delimitation was guided but not bound by the principles of International Law and State Practice relating to maritime boundary delimitation, including but that limited to the United Nations Convention on the Law of the Sea, decisions of the International Court of Justice on maritime boundary delimitation and opinions of International Law Jurists on maritime boundary delimitation, as the said principles of International Law only applies with binding force to Nation States and not Constituent States of a federating unit*”; relying on *A-G of the Federation vs A-G of Abia State & ors supra* at 729.

It is the further submission of learned Senior Counsel that in delimiting the maritime boundary between the plaintiff and 1st defendant, the National Boundary Commission “*was guided by the need to achieve an equitable result in view of the geographical feature present at the baseline of the maritime boundary between the plaintiff and the 1st Defendant. The need to achieve equity is a cardinal requirement recognized under International Law in the delimitation of maritime boundaries;*” that the strict equidistance method resulted in inequitable result to the disadvantage of the 1st defendant; that Article 15 of UNCLOS 1982 which provides for the application of the strict equidistance method also recognizes exceptions/methods

such as historical titles or other special circumstances or agreement between the relevant states in delimitation of maritime boundary between two coastal states.

The real question to be determined in this issue is whether the principles of International Law and State Practice used in delimitation of maritime boundaries of nation states, such as the United Nations Convention on the Law of the Sea, 1982, the Strict Equidistance principles/method, the Historical Titles Method, etc, etc are applicable to the facts of this case. It is important to determine that issue before proceeding to determine the principle actually used by the National Boundary Commission to delimitate the maritime territorial boundary between the plaintiff and 1st defendant and the location of the 172 disputed oil wells between the said plaintiff and 1st defendant, if need be.

It is not disputed that the plaintiff and 1st defendant are littoral states within the nation state of the Federal Republic of Nigeria which means in effect that they are not nation states known to International Law and State Practice.

In the case of A-G of the Federation vs A-G of Abia State & ors (No. 2) (2002) 6 NWLR (pt. 764) 542 which is a case instituted by the plaintiff therein, inter alia, to determine the seaward boundary of the littoral states of the Federal Republic of Nigeria, this Court stated at pages 728 - 729, with regards to the connotation of "state" under International Law as follows:-

"*Coastal State*" under the United Nations Convention on the law of the Sea 1982 means Nation State and not internal states of a country like the littoral states in Nigeria. In a Federation, it applies not to the Federating States that comprise the Federation. This is necessarily 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 to the Federation."

The above remains the law as stated by this Court.

However, learned Senior Counsel for the plaintiff has referred this Court to what he describes as Article 2 of the United Nations

Convention on the Law of the Sea 1982 in which “State” is allegedly defined thus:-

“For the purpose of the present articles “State” means:

- (i) The State and its various organs of government;
- (ii) Constituent units of a Federal State;
- (iii) Political subdivisions of the state which are entitled to perform acts in the exercise of the Sovereign Authority of the state;
- (iv) Agencies or instrumentalities of the state and other entities, to the extent that they are entitled to perform acts in the exercise of the sovereign authority of the state;
- (v) Representatives of the State acting in that capacity.”

If one looks at (ii) supra, it becomes obvious that by application of the above definition to the Nigerian situation, a littoral State such as the plaintiff and 1st defendant is qualified to be regarded as a nation state for the purpose of the United Nations Convention on the Law of the Sea, 1982.

However, looking at the actual provisions of Article 2 of the United Nations Convention on the Law of the Sea 1982 which comes under the general provisions in section 1 thereof entitled “*Legal Status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil*”, it is very clear that the said article does not contain what learned Senior Counsel for the plaintiff attributes to it. The Article provides thus:

“2.1 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, to an adjacent-belt of sea described as the territorial sea.

3. The sovereignty over the territorial sea is exercised subject to this convention and to other rules of International Law.”

The term “States Parties” is defined in Article 1.2(1) of the 1982 Convention as:

“States which have consented to be bound by this convention and for which this convention is in force.”

In the circumstance, I agree with learned Senior Counsel for the 1st defendant and to some extent the 2nd defendant that the Convention of 1982 and principles of International Law are not applicable to, nor relevant for the delineation of Nigerian internal maritime boundaries as earlier decided in the A-G of the Federation vs A-

G of Abia State case, *supra*. It is therefore my view that the federating units of the Nigerian Nation State do not qualify as State Parties under the convention neither are they bound by its terms and conditions.

The above being the legal position it follows that all the beautiful submissions of both counsel on the principles/methods of International Law including the United Nations Convention on the Law of the Sea, 1982 applicable to the delimitation of maritime territorial boundaries of nation states do not apply to the delimitation of the internal maritime boundaries of the littoral states within the Federal Republic of Nigeria, as in this case; be it the Strict Equidistance Line Method, Historical Title Method, or any modification of them. It is therefore clear that the issue under consideration should be and is hereby resolved against the plaintiff.

On issue 2, learned Senior Counsel for the plaintiff submitted that the parties agree that there was a political solution agreement between the plaintiff and the 1st defendant which was given effect to in the meeting of 27th October, 2006 presided over by His Excellency the president of the Federal Republic of Nigeria and in which the Governors of Rivers State and Akwa Ibom State, herein represented by the plaintiff and 1st defendant were present; that the agreement was adhered to by all the parties thereto between 2006 and 2009; the document showing the existence of that agreement is exhibit AMB1; that the parties haven acted in accordance with exhibit AMB1 for the period in question cannot be allowed to subsequently act contrary to the same, relying on section 151 of the Evidence Act Cap E4, Laws of the Federation of Nigeria, 2004; *Menakaya vs Menakaya* (1996) 9 NWLR (pt. 474) 256; *Odua Investment Ltd vs. Falabi* (1991) 1 NWLR (pt. 170) 761; *Estoppel by Olisa Awogu*, 1990 ed. Page 22.

It is the further submission of learned Senior Counsel that the plaintiff and 1st defendant are bound by the October, 2006 political solution agreement and estopped by conduct, representation and agreement from going back on the terms of the said agreement. Learned Senior Counsel finally urged the court to resolve the issue in favour of the plaintiff as an alternative to issue *supra*.

On his part, learned Senior Counsel for the 1st defendant submitted that since the main claim of the plaintiff is a misconception as

it is the equidistance line method of delimitation that was used in the 2008 delimitation of the maritime boundary between the plaintiff and 1st defendant, the relief has, in effect, been granted thereby making the alternative relief of political solution agreement irrelevant as the plaintiff cannot have both reliefs, relying on the concurring decision of OGBUAGU, J.S.C. in the case of Xtoudus Services Nigeria Ltd vs Taisei (WA) Ltd (2006) 15 NWLR (pt. 1003) 533 at 550 and 55 - 556. B

By way of an alternative argument, learned Senior Counsel stated that exhibit AMB1 is actually a letter by the President of the Federal Republic of Nigeria and that it is rather the plaintiff that is estopped from denying what it's Governor stated in the letter to the President of the Federal Republic of Nigeria dated 14th March, 2008 - Exhibit AMB3, in reaction to the letter from the Governor of 1st defendant dated 24th October, 2007, also to the President of the Federal Republic of Nigeria exhibit AMB2, that the Governor of the plaintiff clearly rejected the political solution agreement; that the law does not allow the plaintiff to resile, relying on Ude vs Nwara (1993) 2 NWLR (pt. 278) 63 & at 662 -663. C D

By way of a further alternative argument, learned Senior Counsel submitted that exhibit AMB1 does not amount to an agreement properly so called between the plaintiff and 1st defendant particularly as both parties did not sign same neither did they consider the proposal by Mr. President binding; that the political solution proposition of Mr. President did not resolve the delineation problems in respect of the disputed maritime territory between the two states and urged the court to so hold and resolve the issue against the plaintiff. E F

On his part, learned Senior Counsel for the 2nd defendant submitted thus: G

"It is not in doubt that the political agreement brokered by the President of the Federal Republic of Nigeria on 31st October, 2010 (sic) governed the implementation of the principle of 13% derivation with respect to the 1st Defendant and the plaintiff as regards the disputed oil wells. H

The said agreement was however later rescinded and rejected by both the plaintiff and the 1st defendant."

It is the further submission of learned Senior Counsel that due to the rejection of the political solution agreement, the 2nd defen-

dant was left with no other option than to find an equitable solution to the dispute.

In the alternative, learned Senior Counsel for the 2nd defendant submitted that if the agreement is held to be subsisting, it cannot apply to the implementation of the principle of 13% derivation under section 162 of the 1999 Constitution and under the Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act, 2004 for the purpose of paying revenue derivable from the disputed oil wells to the plaintiff and 1st defendant, because section 1(1) of the Act provides a clear basis for the allocation of revenue arising from natural resources within the two hundred metre (200m) water depth isobaths contiguous to a littoral state, which makes it impossible to implement the principle of derivation without a proper delimitation of the boundaries; that exhibit AMB1 does not delimit the boundary between the parties in order to determine the natural resources that are within the 200m isobaths of either state since it merely shared oil wells between the states and urged the court to resolve the issue against the plaintiff.

All parties to this case agree that exhibit AMB1, the political solution agreement governed the implementation of the principle of 13% derivation of revenue under section 162 of the 1999 Constitution between the plaintiff and 1st defendant in relation to the disputed 172 oil wells between 2006 and 2009; that prior to 2006 particularly in 2004 the delimitation of the maritime boundary between the plaintiff and 1st defendant carried out by the National Boundary Commission placed the 172 oil wells within the maritime boundary of the plaintiff and for which the plaintiff alone received the 13% revenue derivable therefrom until October, 2006 when the political agreement was reached and adhered to by the parties, that the 1st defendant enjoyed the proceeds of the 13% revenue derivable from the 86 oil wells allocated by exhibit AMB1 to it between 2006 and 2009 without let or hindrance from the plaintiff. It should also be noted that the plaintiff was not all that happy with the political solution agreement but did accept it in the interest of peace and good neighbourliness and did nothing to upset the agreement until its reaction to the action of the 1st defendant vide its letter of 24th October, 2007 which elicited the plaintiff's reaction in the letter of 14th March, 2008. It is clear from the contents of exhibit AMB2, the 1st

defendant's letter of 24th October, 2007, that the 1st defendant rescinded from exhibit AMB1, the political solution agreement, being the first to react contrary to the said exhibit AMB1. In fact the 1st defendant labeled exhibit AMB1 *"arbitrary and has no basis in law"* and prayed Mr. President to return the 86 oil wells *"now allocated to Rivers State be returned to us under the concept of Historic titles already accepted by the Presidency...."* B

The fact that the plaintiff's exhibit AMB3 is as a result of the 1st defendant's exhibit AMB2 can be gleaned from the 2nd paragraph of exhibit AMB3 where the Governor of the plaintiff stated thus: C

"Please recall Your Excellency that what has given rise to the letter under reference was the letter written by my brother, His Excellency the Governor of Akwa-Ibom State on the subject matter which letter you referred to the boundary commission for comments. It is the comment of the boundary Commission and your subsequent action on it Sir, that has ignited the fire on a matter that has hitherto been settled and forgotte." D

Emphasis supplied by me.

From the above, it is very clear and I hereby find and hold that it was not the plaintiff that rescinded from the political solution agreement between the parties but the 1st defendant who first did so. So whatever the plaintiff advocated in exhibit AMB3, it was as a reaction to the 1st defendant's exhibit AMB2. E

There is the argument of counsel for the 1st defendant that there was no agreement properly so called between the plaintiff and 1st defendant. To me, that submission is not borne out of the record as exhibit AMB1 clearly conveys the agreement between the plaintiff and 1st defendant in the presence of others including the President of the Federal Republic of Nigeria. It is true that exhibit AMB1 was signed by Mr. President and not by representatives of the plaintiff and 1st defendant but that does not invalidate the agreement reached between the parties particularly as there is no doubt that what was agreed was acted upon by the parties thereto. It should be noted that agreement need not be in writing signed by the parties as a valid agreement can be oral or inferred from the conduct of the parties concerned. It is therefore immaterial that the exhibit AMB1 was not signed by the plaintiff and 1st defendant. It is enough that the terms contained in exhibit AMB1 was accepted by the parties and acted F G H

upon between 2006 and 2009.

What does exhibit AMB1 say?

It is headed:

“Meeting on implementation of the on-shore/off shore Dichotomy Abrogation Law as it relates to the maritime boundaries between Cross River/Akwa Ibom/Rivers States vis-a-vis the judgment of the Supreme Court of June 24, 2005”, and below are its contents:

“ You will recall that I presided over a meeting on the above subject on Friday, 27th October, 2006 at the Presidential Villa with Governors of Akwa Ibom and Rivers States present among other stakeholders.

You will also recall that, in the course of the meeting which was aimed at finding a lasting solution to the lingering problems over the oil wells between the three states concerned, i.e Akwa Ibom, Cross River and Rivers, three options were considered viz: Technical Solution, Historical Solution and Political Solution. After exhaustive deliberations, the meeting opted for and upheld the political solution in line with the earlier advice given by the Attorney-General of the Federation and Minister of Justice. Subsequently, a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November, 2006.

(i) “Cross River/Akwa Ibom States

a. “Cross River 76 wells

b. “Akwa Ibom - 14 wells.

(ii) “Akwa Ibom/Rivers States

a. Akwa Ibom - 86 wells

b. Rivers - 86 wells

(iii) Total: Cross River - 76 wells;

Akwa Ibom - 100 wells and; Rivers - 86 wells.

Accordingly the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final close, for implementation by all concerned with effect from the said date of 1st November, 2006.

Above is therefore, for your information and further necessary action, please”.

Emphasis supplied by me.

Exhibit AMB1 clearly contains the agreement reached by the parties in settlement of the issue of ownership of the 172 oil wells

between the plaintiff and 1st defendant. There is evidence that the terms of the agreement was regarded by the parties thereto and stakeholders as binding and was acted upon to the mutual benefit of the plaintiff and 1st defendant from 1st November, 2006 to sometime in 2009. It does not matter that exhibit AMB1 is a letter written by the President of the Federal Republic of Nigeria. What matters is that it contains the agreement reached by the relevant parties as regards the final resolution of the disputed ownership of the 172 oil wells; the document conveys the terms of the consensus/agreement reached by the parties. An agreement can even be oral, as earlier stated, what matters is that there must be evidence of consensus between/amongst the parties thereto, which in this case is not in doubt. B C

It is therefore my considered view that the political solution agreement between the plaintiff and 1st defendant is binding on them and therefore enforceable. It is also my view that the political solution agreement is a fair deal between the plaintiff and the 1st defendant as, the same shared the disputed 172 oil wells equally between the plaintiff and 1st defendant contrary to the 2004 technical delimitation of the maritime boundary between the plaintiff and 1st defendant which placed all the 172 oil wells in the territory of the plaintiff as a result of which the plaintiff alone received the revenue attributable to the oil wells by way of the derivation principle contained in section 162 of the 1999 Constitution. D E

It should be remembered that I had earlier agreed with the submission of learned Senior Counsel for the defendants that the principles of International Law including the United Nations Convention on the Law of the Sea, 1982 do not apply to the delimitation of internal maritime boundaries between the littoral states within the Federal Republic of Nigeria as a result of which none of the principles adopted by the National Boundary Commission in the exercise of 2008 can validly confer on either of the parties the oil wells in dispute. The only solution to fall back on, in the circumstance, is the political solution agreement which is clearly based on equity. It should remain in our focus that we are talking of maritime boundary so as to determine the location of the 172 oil wells in dispute. In the circumstance and by nature of sea/maritime territory any oil leak from any of the oil wells will never be limited to the maritime 'territory' from which the oil well is located but is going to affect all littoral states in the F G H

region. This will surely result in huge economic loss to the people inhabiting the states as the leakage will affect their livelihood one way or the other. We have to constantly bear the above stubborn fact in mind whenever the matter is being considered.

The argument of learned Senior Counsel for the 2nd defendant to the effect that the political solution agreement cannot be applicable in the implementation of the principle of 13% derivation under section 162 of the Constitution and under the Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act, 2004 for the purpose of paying revenue derivable from the disputed oil wells to the plaintiff and the 1st defendant is very much misconceived as the same is not supported by the decision of this Court in the case of A-G of Adamawa State vs A-G of the Federation (2005) 18 NWLR (pt. 958) 581 which learned Senior Counsel for the 2nd defendant cited and relied upon for the above submission. It is also erroneous of Counsel to submit that the principle of derivation cannot be properly implemented without a proper delimitation of maritime boundaries.

In the case of A-G of Adamawa State vs A-G of the Federation (2005) 18 NWLR (pt. 958) 581 at 637-639 in considering the provisions of section (1) and (2) of Allocation of Revenue (Abolition of Dichotomy) Act, 2004, this Court had this to say:

“A careful reading of section 1 subsection (1) of the Act shows that the extension deemed to have been given to the seaward boundary of the littoral states is specifically for the “purposes of computing the revenue accruing to the Federation Account from the littoral states and nothing else”. The boundary is to be “deemed” to be “to two hundred metre water depth isobaths contiguous” to the littoral states. It is clear, therefore that the extension given to the littoral states, seaward boundary is neither real since it is to be “deemed” nor is it for any other purpose than for calculating the revenue which accrues to the littoral states from the Federation Account

Subsection (2) of the section further provides that in the application of the principle of derivation of revenue it is immaterial whether the revenue accruing to the Federation Account from a littoral state is derived from natural resources located either on-shore or off-shore the littoral state. The plaintiffs have argued that the effect of the 2004 Act is that it has extended the boundaries of the littoral states (2nd -

4th defendants) contrary to section 8 of the 1999 Constitution. This, with respect is not a correct interpretation of the provisions of the Act, because the Act specifically states that the extension is only to be deemed in other words it is not real but notional, and it is specifically intended for the purpose of computing the revenue which accrues to the Federation Account from the littoral states. This Court had had the opportunity in the case of A-G, Federation vs A-G, Abia State & 35 ors (No. 2) (supra) to determine the actual boundary of the littoral states by virtue of section 3 of the 1999 Constitution and to explain the implication of the 200 metre water depth isobaths contiguous to Nigeria with reference to the United States Convention on the Law of the Sea on pp. 728H- 729C thereof I observed as follows:-

Perhaps I need to explain here that coastal state in the Convention means nation state and not internal state of a country like the littoral states in the present case. In a 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 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.....

It follows that the argument by the plaintiffs that the effect of the 2004 Act is to extend the seaward boundaries of the littoral states in contravention of section 8 of the 1999 Constitution cannot, with respect, be correct.”

The above remains the true statement of the law and it reflects the reality of the Nigerian situation vis-a-vis application of the principles of International Law and Conventions applicable to the delimitation of maritime boundaries or territories between nation states, which the littoral states of Nigeria are not. Secondly, exhibit AMB1 clearly shows that you do not need to delimit the maritime boundaries of the two states to calculate the revenue derivable from the oil wells in question.

When it is remembered that this Court had, in the case of A-G of Abia State vs A-G of the Federation supra held that the seaward boundary of the littoral states is the low water mark of the contiguous sea for the purpose of allocation of revenue under the principle of

derivation under section 162 of the 1999 Constitution, which resulted in much agitation by the littoral states for abolition of the off-shore/on shore dichotomy to enable the said states benefit from revenue accruing to the Federation Account by way of off-shore oil exploration, coupled with the decision therein that the Nigerian littoral states are not nation states known to International Law so as to qualify to own maritime territory recognized by International Law, it becomes very clear that the extension of the seaward boundary of the littoral states as stated in the Act is specifically for the purpose of computing the revenue accruing to the Federation Account to the littoral states and nothing else. The extended boundary of the littoral states cannot be recognized under International Law as the littoral states are not players on that stage and that is why the principles of International Law applicable to delimitation of maritime boundaries/territories between nation states are inapplicable to our purely domestic arrangement.

In the circumstance, it is clear that parties can legally enter into an agreement to regulate how to share the revenue derivable from oil wells located within the boundary prescribed by the 2004 Abolition of Dichotomy Act, as was the case in exhibit AMB1. In fact even under International Law, Nation States can delimitate their maritime territory by way of agreement to that effect.

It is my considered view that the submission of learned Counsel for the 1st defendant in respect of the alternative issue of political solution agreement though sound in law, is not applicable to the facts of this case as I had already held that the main issue does not arise for consideration as the principles involved therein apply only to nation states not littoral states within a federation such as in this case.

In the end, I hold the considered view that the political solution agreement binds the parties to this action and remains in force in respect of the sharing of the revenue derivable from the 172 oil wells under section 162 of the 1999 Constitution and consequently resolved issue 2 in favour of the plaintiff.

Looking closely at the facts of this case, the above two issues are the only relevant issues for determination in this action. I therefore have no intention of considering the other issues formulated for determination as that exercise would serve no useful purpose.

It is for the above reasons that I agree with the reasoning and

conclusion of my learned brother KATSINA-ALU, Hon. Chief Justice of Nigeria that judgment be entered in favour of the plaintiff in terms appearing below.

In conclusion, I find merit in the case of the plaintiff and consequently enter judgment for the plaintiff in the following terms:-

1. The plaintiff is the owner of the 86 oil wells by virtue of the political solution agreement between the plaintiff and the 1st defendant, the terms of which are contained in exhibit AMB1 and therefore entitled to be paid revenue derivable therefrom under the provisions of section 162 of the 1999 Constitution from April, 2009 till date and subsequently. B
C

2. The defendants are hereby directed by themselves and/or their appropriate agencies to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the subsisting and binding Political Solution Agreement which sums has since been unlawfully paid to the 1st defendant with effect from April, 2009 till date of this judgment and payment of all such sums to the plaintiff by the 1st defendant forthwith. D

3. There shall be interest at the prevailing commercial rate per annum on the total sums calculated as due to the plaintiff from April, 2009 till date of this judgment and thereafter at 8 percent interest per annum on the judgment debt until full liquidation of the judgment sum and interest. E

4. I make no order as to costs.

Judgment for the plaintiff in terms stated supra. F

MUHAMMAD JSC

My learned brother, A. I. Katsina-Alu, the Hon. the Chief Justice of Nigeria, afforded me an opportunity to read before now, the leading judgment just delivered by him. G

This is one of the rare cases that come to this court pursuant to the court's original jurisdiction as conferred by section 232 of the Constitution of the Federal Republic of Nigeria, 1999.

The plaintiff initiated this suit in this court by an originating summons dated the 29th day of January, 2010. However, pursuant to Order 3 Rule 7 of the Supreme Court Rules, this court on 23 February, 2010 ordered the conversion of the originating summons processes to a writ of summons process and parties were directed to H

file their respective processes. Pursuant to that the plaintiff filed on the 5th day of March, 2010, a statement of claim, some witnesses' statements and other relevant documents were subsequently filed. The 1st defendant filed his initial statement of defence which was later supplanted after obtaining leave of this court by 1st defendant's
 B First Amended Statement of Defence of 9th November, 2010. The 1st defendant also filed witnesses' Statements of various dates. The 2nd defendant as well, filed his originating processes including his Amended Statement of Defence.

C It is clear from the pleaded facts by the parties that what is essentially in dispute between the plaintiff and the 1st defendant is a maritime boundary dispute. It is to be noted that the 2nd defendant is sued in a representative capacity as the Attorney General of the Federation representing the Federal Government of Nigeria and its
 D Agencies or parastatals such as the National Boundary Commission (NBC); Revenue Mobilization Allocation and Fiscal Commission (RMAFC) and the Accountant General of the Federation (AGF) against whom a complaint is made or in connection with which an allegation of fact is leveled. It is the contention of the plaintiff that
 E upon the implementation of the Onshore/Offshore Dichotomy separating onshore and offshore production and restricting oil producing states to drawing their 13% derivation funds from revenue produced onshore only was introduced. The 2nd defendant, as averred by the
 F plaintiff, thereafter, directed its agency i.e. the National Boundary Commission to produce maps of littoral states to determine the attribution of oil wells based thereon with a view to demarcating the maritime boundaries of littoral states including the plaintiff and the 1st defendant. The NBC was further directed to submit the maritime
 G maps produced to the RMAFC for purposes of preparing indices for the sharing of the 13% derivation funds to the littoral states on a monthly basis. Upon the drawing of the relevant maps by the NBC and submission of same to the RMAFC for necessary action, the latter started to receive complaints from littoral states challenging the
 H boundary demarcation and one of these complaints was lodged by the 1st defendant that its boundary with the plaintiff showed a disputed annexation of a triangular portion of the sea from Akwa Ibom to Rivers State. 1st defendant requested for the application of the Historical Titles Method as against the use of the strict Technical

Equidistance lines method used by the NBC in drawing up the maritime maps on the ground that in accordance with Articles 15 and 7.1 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982, only the Historical Titles Method is applicable. That, apart from the fact that Article 15 of UNCLOS 1982, recognizes the Strict Equidistance Technical Lines Method as the applicable method for use in drawing up maritime maps, this Hon. Court in the case of A - G of the Federation v. A - G of Abia State (2002) FWLR (Pt.10) I specifically excluded the use of the Historical Titles Method for use in boundary demarcation between littoral states. In the case just cited above, the plaintiff herein, contends that the strict Technical Equidistance Lines Method for Demarcating boundaries of littoral states in accordance with Article 15 of the UNCLOS 1982 was given judicial approval as the accepted method for drawing up maritime maps of littoral states in Nigeria.

The plaintiff further averred that sometime in 2006, the 2nd defendant intervened and the plaintiff and 1st defendant represented by their respective Executive Governors met and agreed to a Political Solution Method which led to the weighting of 50% of the plaintiff and disputed areas comprising 172 oil wells with each of the two littoral states receiving 86 oil wells and the revenue accruing therefrom with effect from November, 2006.

The plaintiff avers that it accepted the Political Solution Method Agreement in the interest of peace and stability of the Niger Delta Region and further states that the Agreement which was freely and willingly entered by the two states regulated the attribution of the 172 oil wells and 13% derivation funds payable therefrom until the tail end of 2007 when the 1st defendant unilaterally sought to rescind the agreement and commenced his agitation for the application of the Historical Title Method contrary to this court's decision (cited above) and Article 15 of UNCLOS 1982. The plaintiff further avers that rather than insist that the parties abide by the Political Solution Agreement, the NBC in defiance of the subsisting decision of this court and the Political Solution Agreement, has since caved into the pressure and influence of the 1st defendant to recommend the use of the Historical Title Method without any legal justification whatsoever vide its letter dated 13th February, 2008 to the President of the Federal Republic of Nigeria. As a follow-up to the letter of NBC

referred to above, the RMAFC set up a Crude Oil Monitoring Committee which at its retreat held in Kano between August 19 - 21, 2008, recommended the attribution of 988 oil wells (including the 172 oil wells in dispute) to the 1st defendant through the use of coordinates produced by the Department of Petroleum Resources and the Historical Titles Method. The plaintiff avers further that the defendants, particularly the 2nd defendant, acting in concert with the Revenue Mobilization Allocation and Fiscal Commission and the AGF have since jettisoned the Political Solution Agreement and recommended that the President of the Federal Republic of Nigeria, approves the report pursuant to which a 2009 Revised 13% Derivation Indices has since been produced by the RMAFC to the detriment of the plaintiff and in favour of the 1st defendant. It is averred further by the plaintiff that as a result of the above facts, the 2nd defendant through its aforesaid agencies and parastatals have ceded the entire 172 oil wells and have since April, 2009, been paying huge revenue accruing therefrom to the 1st defendant unlawfully despite the pendency and subsistence of the Political Solution Agreement. In spite of all the above events and the subsisting decision of this court in *A - G Federation v. A - G Abia & 35 Ors* (supra) the 2nd defendant through its agencies have since reverted to the use of the Historical Titles Method to cede the entire 172 oil wells (including the 86 oil wells belonging to the plaintiff pursuant to the subsisting political Solution Agreement), to the 1st defendant.

In a bid to redress the unlawful actions of the defendants and agencies to the 2nd defendant, suit No. FHC/ABJ/CS/501/508 was earlier instituted in September, 2008 at the Federal High Court, Abuja against the defendants. The Federal High Court, however, declined jurisdiction on grounds that disputes of this nature between states can only be resolved by this court pursuant to section 232(1) of the Constitution. That the 2nd defendant and its agencies including the Revenue Mobilization Allocation and Fiscal Commission and Attorney General of the Federation have been implementing the 2009 Revised Derivation Indices and have been paying billions of Naira belonging to the plaintiff unlawfully on a monthly basis to the 1st defendant. Plaintiff avers that by virtue of the subsisting Political Solution Agreement which is still binding on the 1st defendant and the plaintiff, the 86 oil wells belong to the plaintiff and cannot be com-

pletely ceded to the 1st defendant through the use of either the Historical Titles Method or the 2009 Revised Derivation Indices by the defendants acting unilaterally and without the input of the National Assembly first sought and obtained in line with the provisions of section 162(2) of the Constitution.

Finally, the plaintiff claims against the defendants jointly and severally as follows:

i. *“A declaration that it is unlawful and unconstitutional for the defendants by themselves and through any other statutory bodies including the National Boundaries Commission and Revenue Mobilization Allocation and Fiscal Commission to revert to the use of the Historical Titles Method for the delimitation of the maritime boundaries between the plaintiff and 1st defendant without the subsisting judgment of the Supreme Court in the case of Attorney General of the Federation v. Attorney General of Abia State & 35 Ors (supra) first being set aside and or vacated.*

ii. *A declaration that in accordance with the judgment of the Supreme Court of Nigeria in the case of Attorney General of the Federation v. Attorney General of Abia State & 35 Ors (supra) and Article 15 of the United Nations Convention on the Laws of the Sea 1982 (UNCLOS) the Strict Equidistance Technical Lines method is the applicable method judicially approved for use in demarcating the maritime boundaries of littoral states in Nigeria.*

iii. *A declaration that it is unlawful and unconstitutional for the defendants by themselves or through any statutory body of the Federal Government of Nigeria to alter the quantum of revenue accruing to both the plaintiff and 1st defendant from the Federation Account in favour of the 1st defendant by reliance on a Report produced by the Revenue Mobilization Allocation and Fiscal Commission which is yet to be tabled before the National Assembly for its approval and sanction in accordance with Section 162[2] of the 1999 Constitution of the Federal Republic of Nigeria and on the historical titles method which has never been applicable.*

iv. *A declaration that the 172 oil wells ceded to the 1st defendant by statutory bodies of the 2nd defendant based on the use of the Historical Titles Method, belong to the plaintiff if the applicable strict equidistance lines method is resorted to.*

v. *A declaration that the act of the defendants with the aid of*

statutory bodies of the 2nd defendant, in ceding 172 oil wells belonging to the plaintiff to the 1st defendant and paying the revenue accruing therefrom to the 1st defendant since April, 2009 is unlawful, wrongful and unconstitutional.

B vi. Consequential Order setting aside the 2009 Revised Indices for the payment of 13% derivation to littoral states produced pursuant to the Report produced by the Revenue Mobilization Allocation and Fiscal Commission for being unlawful, unconstitutional, null, void and of no legal effect whatsoever.

C vii. Consequential Order directing the defendant to forthwith compute and calculate all such sums of money accruing from the 172 oils wells paid to the 1st defendant with effect from April 2009 until the determination of this suit and for the payment of all such sums to the plaintiff by the 1st defendant.

D viii. Alternative to Relief (vii), an order directing the defendants to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the subsisting and binding Political Solution agreement which sums has since been unlawfully paid to the 1st defendant with effect from April, E 2009 until the determination of this suit and for the payment of all such sums to the plaintiff by the 1st defendant.

F ix. Interest at the prevailing commercial rate on the total sums calculated as due to the plaintiff from the date of judgment until full liquidation of the judgment sum.

G x. An Order of perpetual injunction restraining the Federal Government of Nigeria and the 1st defendant, their functionaries, statutory bodies or agencies whosoever including the Revenue Mobilization Allocation and Fiscal Commission, National Boundaries Commission and Accountant General of the Federation from acting on the report produced by the Revenue Mobilization Allocation and Fiscal Commission and the 2009 Revised Indices for the payment of 13% derivation to littoral states and from altering the maritime boundary maps between the plaintiff and the 1st defendant through the use of the Historical Titles Method in favour of the 1st H defendant and ceding any of the disputed 172 or 50% oil wells thereof or any other oil well belonging to the plaintiff to the 1st defendant without legal justification or approval.

xi. Any further reliefs in the interest of justice."

In his First Defendant's First Amended Statement of Defence of 9/11/2010, the 1st defendant made some general admissions and some categoric denials of the facts contained in the plaintiff's statement of claim.

The 2nd defendant, in his Amended Statement of Defence, admitted plaintiff's averment in paragraphs 1 to 7 of the Statement of Claim but denied (except where expressly admitted), all other facts as contained in the plaintiff's statement of claim. In addition, 2nd defendant filed a Notice of Preliminary Objection accompanied by a written address in its support.

On the hearing date of this action i.e. on the 11th day of January, 2011, each of the respective parties made some oral elaborations in addition to the written addresses and the documentary evidence and exhibits laid before this court.

Permit me, My lords, to deal with the Notice of Preliminary Objection raised by the learned counsel for the 2nd respondent, Mr. Anuga. It reads as follows:

"TAKE NOTICE that at the hearing of this matter, the 2nd Defendant/Applicant shall be heard urging this Honourable Court to strike out the plaintiff's suit on the following preliminary points of law.

1) The subject matter of this suit is not one capable of invoking the original jurisdiction of this Honourable Court.

2) Consequent on the above, this Honourable Court lacks the jurisdiction to entertain this matter."

The learned counsel went ahead to premise his objection on the following grounds:

1) "The plaintiff's case does not disclose a dispute between a state and the Government of the Federation within the meaning of section 232(1) of the Constitution of the Federal Republic of Nigeria.

2) The plaintiff's case is against the exercise of the functions of the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission

3) The Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are statutory bodies corporate with capacity to sue and be sued in their respective names.

4) The necessary and proper parties for the effective and effectual determination of the issues in controversy are not before this

Honourable Court.”

Learned counsel, Mr. Anuga, argued in the sole issue he formulated on the preliminary objection: whether this court has original jurisdiction to entertain this suit, that the plaintiff's case fails to disclose a dispute within the meaning of section 232(1) of the 1999 Constitution, pursuant to which the original jurisdiction of this court can be invoked. He submitted further that the statement of claim of the plaintiff as well as the relief sought do not disclose a dispute between the plaintiff and the Government of the Federation but rather, disclosed a dispute between the plaintiff and the Revenue Mobilization Allocation and Fiscal Commission and the Boundary Commission. The latter two bodies, he contended, should be the proper defendants in this suit. Learned counsel argued further that the two bodies, the RMAFC and NBC are not agencies of the Federal Government but Independent Authorities, each established by the Constitution and as statutory bodies and Corporate, they may sue and be sued as such, they cannot therefore, be represented by the 2nd defendant. The cases of *A - G Anambra State v. A - G Federation* (2007) 12 NWLR (Pt.1047) 47 para C - D; *A-G of Kano State v. A - G of the Federation* (2006) 6 NWLR (Pt.1029) 164 at p.192 were cited in support.

Learned senior counsel for the plaintiff, A. Okeaya-Inneh, (SAN), filed a reply brief in respect of some points raised by the 2nd defendant, including the preliminary objection. And, in order to make his assurance, double sure, he also filed a written address in response to the preliminary objection filed by the 2nd defendant. He adopted both at the hearing. Some points are raised by the learned SAN in both documents pertaining to the 2nd defendant's preliminary objection. The learned SAN, observed from the outset that the same 2nd defendant raised an issue in his brief of argument filed 22/12/2010 of similar import with the issue raised in the preliminary objection i.e. on the jurisdiction of this court to entertain this suit. Learned SAN submitted that such a practice is clearly an abuse of the process of court.

The learned SAN for the plaintiff made his submission on the preliminary objection as follows: that the dispute in this action is between the plaintiff and Akwa Ibom State; and the plaintiff and the Federal Government represented by the Attorney General of the Federation. Reference was made to paragraphs 12, 13, 17, 18, 21

and 22 of the Statement of Claim and all the reliefs claimed therein by the plaintiff. That the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are agencies of the Federal Government of Nigeria and as such, the 2nd defendant has capacity to represent them being the Chief Law Officer of the Federation. He referred to the case of A-G Kano v. A-G Federa-
tion (supra). B

Permit me to observe from the outset, My Lords, that it is a well settled principle of law that what primarily confers jurisdiction on a court of law is the statute that creates the court and other enabling laws to that effect. The subject matter of the cause of action may as well, be of relevance in determining the jurisdiction of a court. The court whose competence is being challenged in the objection, is the Supreme Court of Nigeria. It is primarily an appellate court and has final say on almost all matters that are brought to it. It is a creature of the Constitution of the Federal Republic of Nigeria, 1999 (S230[1]). Section 233 of the Constitution confers appellate jurisdiction on the Supreme Court. However, our main focal point of reference is section 232 which confers original jurisdiction on the Supreme Court. The section provides: D

“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.” E

(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. F

PROVIDED that no original jurisdiction shall be conferred upon the Supreme Court with respect to any CRIMINAL MATTER.” G

(All emphasis supplied by me).

In Attorney General of Bendel State v. Attorney General of the Federation (1981) 12 NSCC 314, this court construed and defined the proper ambit of section 212 of the 1979 Constitution (which is in PARI MATERIA with section 232 of the current Constitution). The Court, per Kayode Eso, JSC stated as follows: H

“The more substantial objection is that against the Jurisdiction

on the ground that the plaintiff cannot bring itself within the conditions in section 212 of the Constitution. 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."

(underlining supplied)

This means that section 232 of the Constitution limits the original jurisdiction of the Supreme Court in respect of parties and the type of dispute that can be entertained. It is clear from the wording of the provision of section 232 of the Constitution that the original jurisdiction conferred on the Supreme Court is limited to where there is real dispute between the Federation and a State or between States inter se. It follows therefore, that the Supreme Court cannot exercise its original jurisdiction to determine the following, among others:

- i. dispute on any criminal matter pursuant to its original jurisdiction.
- ii. any dispute arising between individuals
- iii. any dispute between persons and Federal Government
- iv. any dispute between persons and a State Government;
- v. Corporate or statutory body cannot invoke the original jurisdiction of the Supreme Court
- vi. that a corporate body/institution/organisation cannot be made a party to a suit which is initiated in the Supreme Court.
- vii. any dispute between Local Government and another or between a Local Government and a state and or between a Local Government and Federal Government.

In the case of *A - G Ondo State v. A - G Federation & Ors* (1983) 2 SCNLR 26, the plaintiff sued the Federal Government, the Attorneys General of the then 19 states and the Federal Electoral Commission (FEDECO) as defendants in the Supreme Court. As the pith and substance of the plaintiff's claim was directed against FEDECO, preliminary objection was taken against the action on the ground that the Supreme Court has no jurisdiction to entertain the action and that the 20th defendant is not a state. In upholding the objection and striking out the suit this court held that FEDECO is not a state and section 212 of the 1979 Constitution (now section 232(1) of the 1999 Constitution) does not cover dispute between a state and a

body which is not a state, or between the Federation and a non-state. Further, in A - G Abia v. A - G Federation (2002) 6 NWLR (Pt.763) 264 at 367 - 377. This is where the 37 Chairmen of Local Governments representing all the Chairmen of Local Governments in Nigeria sought to be joined as defendants to the action commenced by the plaintiff against the defendants in the Supreme Court in its original jurisdiction. The court, in refusing the application for joinder held, inter alia:

“The Supreme Court has no jurisdiction under section 232(1) of the 1999 Constitution to determine any dispute at first instance, between the Local Governments and their respective State Governments. In this case the application filed by the 37 Chairmen representing all the Chairmen of Local Governments in Nigeria to be joined as co-defendants is incompetent.”

Who are the parties in the matter on hand? In all the originating processes, the names that appear as parties are as follows:

Attorney General, Rivers State Plaintiff

And

1. Attorney General, Akwa Ibom State

2. Attorney General of the Federation Defendants

This presupposes that there is a dispute between the Rivers State as plaintiff on the one hand and Akwa Ibom State and the Federal Government as defendants on the other hand. Thus, by the provision of section 232(1) of the Constitution, I think this court is competently and adequately clothed with jurisdiction to entertain the matter placed before it as a first instance court.

Offices of the Attorneys General of the Federation and of a State Government are created by the Constitution (section 150 and 195 of the 1999 Constitution, respectively). The officer occupying the office whether at the federal or state level, is appointed and or removed at the pleasure of the President of the Federation or a State Governor (section 147(2) and 192(2) of the 1999 Constitution). Such officers are designated by the Constitution to be Chief Law Officers of either the Federation or of a State as the case may be. (sections 150(1) and 195(1) of the 1999 Constitution). Their main function is advising the Federal/State Government including their parastatals on legal matters and prosecuting or defending court cases for or against their respective Governments. Therefore, refer-

ence in this matter to the Attorney-General of Rivers or Akwa Ibom States means, without mincing words, reference to Rivers State Government or Akwa Ibom State Government as the case may be. Equally, reference to the Attorney General of the Federation means reference to the Federal Government of Nigeria. It is crystal clear
B therefore, that the dispute in this suit is between a state Government (Rivers State) and Akwa Ibom State Government and the Federal Government. This qualifies and entitles this court to determine the suit.

C The import of the 2nd, 3rd and 4th grounds of the preliminary objection is that plaintiffs case is against the exercise of the functions of the Revenue Mobilization, Allocation and Fiscal Commission and the National Boundary Commission which, according to the 2nd
D defendant, are statutory bodies corporate with capacity to sue and be sued in their respective names. They were joined as parties to this suit. It is argued that the necessary and proper parties for the effective and effectual determination of the issues in controversy are not before this court. It is argued further that they are not agencies of the Federal Government but rather, independent bodies/authorities established pursuant to the 1999 Constitution. They cannot, as such
E be represented by the 2nd defendant in this suit. Learned counsel for the 2nd defendant cited and relied on the cases of A - G of Anambra State v. A - G of the Federation (2007) 12 NWLR (Pt.1047) 47 para C - D; A-G of Kano State v. A - G of the Federation (2006)
F 6 NWLR (Pt.1029) 164 at p. 192; among others.

Learned Senior Counsel for the plaintiff responded to the submissions made by learned counsel for the 2nd defendant and submitted that the action is between the plaintiff and the Akwa Ibom
G State and also against the Federal Government represented by the Attorney General of the Federation. He referred to paragraphs 12, 13, 17, 18, 21 and 22 of the plaintiff's Statement of Claim. He further stated that the RMAFC and the NBC are agencies of the Federal Government of Nigeria as a result of which the 2nd defendant has
H capacity to represent them being the Chief Law Officer of the Federation. He cited and relied on the case of A - G Kano State v. A - G Federation (supra). He submitted that whilst the enable statutes setting up these bodies entitle them to sue or be sued, they do not in part or by any other law provide that they must be sued in a matter

where the infractions and breaches committed provide only evidential value, especially in a matter which the A - G Federation is competent to represent the Federal Government and any of its agencies. The Attorney General, he stated further, has the locus standi to commence and defend the actions on behalf of the Federal Government, particularly when he has sufficient interest in this matter. Several authorities were cited which include *Quo Vadis Hotels & Restaurant Ltd. v. Commissioner of Lands Mid-Western State & Other* (1973) 6 SC 71 at 82; *Chief Adewunmi v. Ogunbowale* (1983) 4 NCLR 662; *The A - G Federation v. The A - G Imo State & Ors* (1991) 4 NWLR (Pt.188) 773 at 788. The learned SAN added further that the objection to this suit on the ground that the necessary and proper parties are not before this court is untenable in view of Order 9, Rule 14(1) of the Federal High Court Civil Procedure Rules, 2009. He also relied on the case of *Sapo v. Sumonu* (2010) 3 - 5 SC (Pt.11) 130 at 151; *Osondu v. Boneh* (2000) 3 SC 42 at 81. The learned SAN submitted very strongly, that it is extra ordinary for 2nd defendant to seek to join parties that raised objections to their participation and jurisdiction at the Federal High Court, Abuja.

Yes! It is true that the names of Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are not listed among the parties to this suit before this court. It is also true that these bodies are independent, separate bodies and corporate with power to sue and be sued. These bodies and others which are of corporate entities are agencies of the Federal Government where the Federal Government covers the field in which they operate.

In the affidavit in support of the Originating Summons (in compliance with this court's Order) which was converted to support plaintiff's Statement of Claim, it was averred to as follows:

"[q] That in a bid to redress the unlawful ceding of the entire 172 oil wells to the 1st defendant, the plaintiff had earlier in September, 2008 filed suit No. FHC/ABJ/CS/501/2008 before the Federal High Court, Abuja against the defendants herein as well as the National Boundary Commission, Revenue Mobilization Allocation and Fiscal Commission and Accountant General of the Federation as defendants but in its ruling delivered on the 26th January, 2010, the lower court declined jurisdiction over the dispute between the two

littoral states pursuant to section 232[1] of the 1999 Constitution and struck out the case.”

It is also in evidence that the 2nd defendant at the Federal High Court Abuja, joined these two bodies and others as co-defendants. Paragraph 7 of the plaintiff’s Further Affidavit in support of the plaintiff’s action states:

“The Defendant joined the National Boundary Commission, Revenue Mobilization Allocation and Fiscal Commission, Department of Petroleum Resources and the Office of the Accountant General of the Federation objecting to the jurisdiction of the Federal High Court.”

In Exhibit ‘A’ annexed to the 3rd Further Affidavit in support of the plaintiff’s action, the heading of that Exhibit reads as follows:

“IN THE FEDERAL HIGH COURT OF NIGERIA IN THE
ABUJA JUDICIAL DIVISION HOLDEN AT ABUJA
SUIT NO. FHC/ABJ/CS/501/08

BETWEEN:

ATTORNEY GENERAL, RIVERS STATE) PLAINTIFF
AND

1. ATTORNEY GENERAL AKWA IBOM STATE
2. ATTORNEY GENERAL OF THE FEDERATION
3. NATIONAL BOUNDARY COMMISSION) DEFENDANTS
4. REVENUE MOBILIZATION ALLOCATION

AND FISCAL COMMISSION

5. ACCOUNTANT GENERAL OF THE FEDERATION

Thus, the RMAFC and NBC were parties before the Federal High Court. This is beyond any dispute. See also Exh. ‘K’ annexed to 4th Further Affidavit of the plaintiff’s action. Further, see para 4 (m) of 2nd defendant’s Affidavit of Evidence where it states:

“(m) That paragraph 3(q) of the plaintiff Affidavit is hereby admitted.”

The 2nd defendant, it was averred further, objected to the jurisdiction of the Federal High Court and argued before that court that it was the Supreme Court that had jurisdiction over the matter. (see paragraph 8 of 3rd Further Affidavit in support of the plaintiff’s action). In its ruling of 26th January, 2010, the Federal High Court was said to have declined jurisdiction on the grounds that only this court can exercise jurisdiction over the dispute between the two littoral states

pursuant to section 232(1) of the 1999 Constitution and struck out the case. (I was unable to trace where the said Ruling of the Federal High Court was exhibited in the whole documents laid before me). But as this was never disputed by the 2nd defendant as he clearly admitted this averment in his affidavit evidence earlier mentioned, I have no cause to doubt the ruling. Thus, 2nd defendant, whilly nilly, is bound by that ruling whether it favoured him or not and is stopped from raising the same objection. However, when the matter came before this court, the 2nd respondent raised an objection. All the grounds of objection are couched in a language different from what happened at the Federal High Court. At the risk of repetition, these are the grounds:

1. *“The plaintiff’s case does not disclose a dispute between a state and the Government of the Federation within the meaning of section 232[1] of the Constitution of the Federal Republic of Nigeria.* D

2. *The plaintiff’s case is against the exercise of the functions of the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission.*

3. *The Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are statutory bodies corporate with capacity to sue and be sued in their respective names.* E

4. *The necessary and proper parties for the effective and effectual determination of the issues in controversy are not before this Honourable court.”*

In his written address accompanying the Notice of Preliminary Objection before this court, learned counsel for the 2nd defendant contended that a perusal of the statement of claim of the plaintiff and the reliefs sought do not disclose a dispute between the plaintiff and the Government of the Federation but rather between the plaintiff and the RMAFC and the NBC who should be the proper defendants in this suit before this court. The RMAFC and the NBC, it is submitted, are not agencies of the Federal Government but independent Authorities established by the Constitution and they cannot be represented by the 2nd defendant. This is a complete round about (360°) or a complete summersault and reversal of the position learned counsel maintained at the Federal High Court. But the reason for doing that, to me, is not far-fetched. It is an orchestrated plan to obliterate, neigh; to kill the hearing of the case. Yesterday you said ‘X’ was white. To

day you change gear to say the same 'X' is black! So, tomorrow the same 'X' may be 'black-a-white' or another colour! What a panorama!!

Looking at the arguments of learned counsel for 2nd defendant from the angle of misjoinder or non-joinder of a party, I believe that this, in a proceeding before a court, can hardly vitiate such a proceeding. As a matter of procedure, Order 9 Rule 14[1] of the Federal High Court (Civil Procedure Rules) 2009, clearly stated that no proceeding shall be defeated by reason of misjoinder or non-joinder of parties, and a judge may deal with the matter in controversy so far as regards the interest of the parties actually before him. The courts have held it for quite long that no cause or matter shall be defeated by reason of misjoinder or non-joinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. See: *Osondu & Co Ltd v. Bonch (Nig) Ltd* (2002) 3 SC 42 at 61; *Peenok Investments Ltd v. Hotel Presidential Ltd* (1982) 11 - 12 SC 1; *Uku v. Okumagba* (1974) All NLR (Pt.1) 475; *Okoye v. Nig. Construction Furniture Co. Ltd* (1991) 6 NWLR (Pt.302) 692; *Laibru Ltd. v. Building & Civil Engr. Contractors* (1962) 2 SCNLR 118; *Ekpere v. Aforije* (1972) 1 All NLR (Pt.1) 220; *Sapo & Anor v. Sunmonu* (2010) 3-5 SC Pt.II, 130 at p.151. Thus, it is my humble view that the non-joinder of the two bodies: Revenue Mobilization Allocation and Fiscal Commission and National Boundary Commission is not fatal to the suit before this court and I so hold.

On the question of whether the two bodies, Revenue Mobilization Allocation and Fiscal Commission and National Boundary Commission are agencies of the Federal Government, learned counsel for the 2nd defendant submitted that these bodies RMAFC and NBC are not agencies of the Federal Government but are, rather, independent authorities established by the 1999 Constitution. They are statutorily body corporate and can sue and be sued. (see page 3 para 3.03 and page 8 para 3.16 of the 2nd defendant's written address in support of the Preliminary Objection). The learned SAN for the plaintiff on the other hand, stated that these two bodies are agencies of the Federal Government and that it is extraordinary that the Attorney General of the Federation will seek to argue that a matter in which Federal Government agencies were indirectly involved should

be struck out or dismissed in limine because the said agencies were not joined.

Now, section 153(1)(n) of the Constitution (1999) establishes the Revenue Mobilization Allocation and Fiscal Commission. Its functions are stated in section 153(2) and its powers spelt out in paragraph 32 of Part 1 of the Third Schedule to the Constitution. Amongst its powers is advising the Federal and State Governments on Fiscal efficiency and method by which their revenue can be increased. It also makes recommendations and submits its findings by a report thereto to the Government of the Federation or of a State, as the case may be, regarding the formula for distribution of the Federation Accounts and the Local Government Accounts. See also the Revenue Mobilization Allocation and Fiscal Commission Act, Cap R7, LFN 2004. There is therefore, a very close and strong relationship between the Federal Government and the Revenue Mobilization Allocation and Fiscal Commission. Equally, the National Boundary Commission (Establishment) Act 2006 establishes that Commission as a statutory body with power to sue and be sued. But from the facts made available to this court, the Federal Government of Nigeria in 2004 directed the National Boundary Commission to produce maps of the littoral states to determine the location of oil wells with a view to demarcating the maritime boundaries of the littoral states. Further, the NBC was directed to submit the maritime maps produced to the RMAFC for purposes of the 13% derivation funds to the littoral states on a monthly basis. Sequel to this, the RMAFC started to receive complaints from littoral states challenging the Boundary Demarcation. The NBC then wrote a letter to the President of the Federal Republic of Nigeria. And as a follow up to that letter, the RMAFC set up a Crude Oil Monitoring Committee which at a retreat in Kano made some far reaching recommendations.

The then President of the Federation, O. Obasanjo, convened a meeting in October, 2006 to resolve the imbroglio generated by the various recommendations of NBC and the actions taken by the RMAFC as a result of which there was an agreement to implement the Political Solution adopted at the meeting.

I dwelt on all these in order to enable me make a finding that there is a strong relation, particularly, agency relationship between the Federal Government and RMAFC and NBC and I hold that in all

the activities/transactions between the parties to this suit, the RMAFC and NBC acted as agencies to the Federal Government. And, as the Chief Law Officer of the Federation, the 2nd defendant is clothed with competence to represent the Federal Government, the RMAFC and the NBC.

B I find this preliminary objection very unmeritorious. It is hereby overruled and dismissed accordingly.

Now, turning to the substantive suit, learned senior counsel for the plaintiff formulated the following issues in his brief of argument which he filed on 30/08/2010:

C a) “whether the plaintiff is entitled to a declaration that in accordance with Article 15 of the United Nations Convention on the Law of the Sea 1982 and the International State Practice regarding maritime boundary delimitation to maintain the pre-2006 equidistance D boundary between it and the 1st defendant.

b) Whether the 1st and 2nd defendants are by virtue of the Political Solution Agreement entered into in October 2006 given effect to by the presidential directive of November 2006 estopped by agreement, conduct and representation from acting contrary to the E Terms contained therein.

c) Whether the 1st defendant having not in any manner or from proved authority and sovereignty over the Islands situated in and around the area which is subject matter of this action entitled to a declaration that the Historical Titles should be taken into consideration in the delimitation of the boundary between it and the plaintiff. F

d) Whether the plaintiff is entitled to the proprietary and economic rights arising from and pertaining to the maritime boundary delimitation which is a subject matter of this action.

G The issue formulated by the 1st defendant in his Final Written Address reads as follows:

“Does the disputed maritime territory within which has the 172 oil wells (Disputed Maritime Territory) belong howsoever to Rivers State represented by the plaintiff hereof. By extension is Rivers State H entitled howsoever to the attribution of the 172 oil I wells or any part thereof?”

The 2nd defendant formulated three issues:

1) *“whether in view of the reliefs sought by the plaintiff, this Honourable court has original jurisdiction to entertain this suit.*

2) *Whether the National Boundary Commission properly exercised its powers in delimiting the boundary between the plaintiff and the 1st defendant.*

3) *Whether the Political Solution Agreement brokered by the President of the Federal Republic of Nigeria between the plaintiff and the 1st defendant is applicable in the allocation of 13% revenue derivable from oil wells to the plaintiff and the 1st defendant.”* B

Of all the issues formulated by the parties in this suit, I am in agreement with the Hon. Chief Justice of Nigeria in his judgment that the only one relevant is that which relates to the unilateral jettisoning of the Political Solution Agreement agreed between the two states. All others are either incompetent such as issue No.(1) by the 2nd defendant as this was taken care of by the preliminary objection raised by him. Other issues will only lead to academic rigmarole which time warns me not to venture into. C

In his statement of claim, the plaintiff made the following averments in relation to the Political Solution Agreement: D

“11. *The plaintiff avers that sometime in 2006, the 2nd defendant intervened and the plaintiff and 1st defendant represented by their respective executive Governors met and agreed to a Political Solution Method which led to the weighting of 50% of the disputed areas comprising 172 oil wells with each of the two littoral states receiving 86 oil wells and the revenue accruing therefrom with effect from November, 2006. This agreement which was reduced into writing and dated 31st October, 2006 will be relied upon at the trial.* E F

12. *The plaintiff avers that it accepted the Political Solution Method Agreement in the interest of peace and stability of the Niger Delta Region and further states that the Agreement which was freely and willingly agreed to by the two states regulated the attribution of the 172 oil wells and 13% derivation funds payable therefrom until the tail end of 2007 when the 1st defendant unilaterally sought to rescind the agreement and I commenced his agitation for the application of the Historical Titles Method contrary to the Supreme Court decision and Article 15 of UNCLOS, 1982 aforesaid.* G H

15. *The plaintiff avers that rather than insist that the parties abide by the Political Solution Agreement referred to above, the NBC in defiance of the subsisting decision of this Honourable Court and the Political Solution Agreement aforesaid has since caved in to the*

pressure and influence of the 1st defendant to recommend the use of the Historical Title Method without any legal justification whatsoever vide its letter dated 13th February, 2008 to the President of the Federal Republic of Nigeria (2nd defendant).

17. The plaintiff avers that the defendants particularly the 2nd defendant acting in concert with the Revenue Mobilization Allocation and Fiscal Commission and the Accountant General of the Federation have since jettisoned the Political Solution Agreement and recommended that the president of the Federal Republic of Nigeria approves the report pursuant to which a 2009 Revised 13% Derivation Indices has since been produced by the RMAFC to the detriment of the plaintiff and in favour of the 1st defendant. The Revised Indices and the RMAFC letter forwarding it to the Accountant General of the Federation dated 12th March, 2009 will be relied on at the hearing.

18. The plaintiff avers that as a result of the above facts, the 2nd defendant through its aforesaid agencies and parastatals have ceded the entire 172 oil wells and have since April, 2009 been paying huge revenue accruing therefrom to the 1st defendant unlawfully despite the pendency and subsistence of the Political Solution Agreement freely entered into by the 1st defendant and plaintiff in 2006.

21. The plaintiff avers that the defendants have since jettisoned the Political Solution Agreement unilaterally and reverted to the use of the Historical Titles Method in ceding the entire 172 oil wells to the 1st defendant thus introducing a new revenue formula without complying with section 162(2) of the 1999 Constitution.

24. The plaintiff avers and will contend that by virtue of the subsisting Political Solution Agreement which is still binding on the 1st defendant and plaintiff, the 86 oil wells belongs to the plaintiff and cannot be competently ceded to the 1st defendant through the use either the Historical Titles Method or the 2009 Revised Derivation Indices by the defendants acting unilaterally and without the input of the National Assembly first sought and obtained in line with the provisions of section 162(2) of the 1999 Constitution.”

The plaintiff prayed at the end, and in the alternative as follows:

“(viii) *ALTERNATIVE TO RELIEF* (vii), an order directing the defendants to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the

subsisting and binding Political Solution agreement which sums has since been unlawfully paid to the 1st defendant with effect from April, 2009 until the determination of this suit and for the payment of all such sums to the plaintiff by the 1st defendant. ”

(underlining supplied by me)

In his 1st defendant’s Statement of Defence, the 1st defendant B averred, in relation to the Political Solution Agreement as follows:

“11. In specific reply to paragraphs 11, 12, 15, 17, 18, 19, 21, 24, 27 of the Statement of Claim, the 1st defendant states that Political Solution:

i. *was an imposition by the then President Olusegun Obasanjo C and was without legal support or foundation and therefore was consistently rejected by Akwa Ibom State Government.*

ii. *Violated the Historic Title Method that had always applied in the attribution of all the maritime resource in the Maritime Triangle D (e.g. the Oil Wells thereat) to Akwa Ibom State prior to the misapplication of the Strict Technical Equidistant Method by NBC; and PARTICULARS*

a) *The 1st defendant hereby adopts the particulars in paragraphs 6, 7 and 9 of this Statement of Defence in support of the E averments hereof.*

b) *On the so-called Political Solution, the RMAFC Inter- Agency Meeting Report states “that the National Boundary Commission in another proposal to resolve the boundary crisis between Akwa Ibom and Rivers States advised the use of ‘Historic Titles’ in the distribution F of oil wells. In the year 2006, the Presidency in 2006 accepted the application of ‘Historic Titles’ between Akwa Ibom and Cross River States but opted for ‘Political Solution’ between Akwa Ibom and Rivers which compelled Rivers State to return only 50% of the Oil Wells G which was transferred from Akwa Ibom to Rivers State. (Emphasis ours).*

c) *Other than the document dated 31 October, 2006 that was prepared and signed solely by President Olusegun Obasanjo purporting to specify the details of the Political Solution, there was and is H no document on the so-called Political Solution that was signed by Akwa Ibom State Government or any of its officials in signification of*

i. *Participation in the formulation and concretising of the so-called Political Solution; or*

ii. Assent by the Akwa Ibom State Government to the imposition or application howsoever of the Political Solution.

d) Contrary to the averments in paragraph 24 of the Statement of Claim, there was no agreement on the so-called Political Solution and the said solution was and is invalid and does not subsist howsoever and was never binding on Akwa Ibom State."

In his 2nd defendant's Amended Statement of Defence, the 2nd defendant averred:

"5. The 2nd defendant admits paragraph 11 of the Statement of Claim and states further that the 2nd defendant facilitated a Political Solution of the maritime boundary dispute between the plaintiff and the first defendant in 2006, with a view that the said political solution would permanently resolve all the contending issues between plaintiff and the 1st defendant.

6. The 2nd defendant states that the Political Solution option referred to in paragraph 12 of the Statement of Claim resulted from the intervention of the President in 2006 due to protests from some littoral states including the 1st defendant, arising from the implementation of the 2004 maritime boundary map in the production of indices for the implementation of the 13% derivation principle.

7. In addition, the 2nd defendant states that the plaintiff and the 1st defendant later rescinded from the political solution agreement and the said political agreement, is no longer subsisting, having been rejected by the plaintiff in its letter of 14th March, 2008, and by the 1st defendant in its letter of 24th October, 2007, respectively. The Said letters are hereby pleaded and shall be relied upon at the hearing of the substantive suit.

8. The 2nd defendant further states that the said Political Solution Agreement did not in any way delimitate any maritime boundary between the plaintiff and the 1st defendant for the purpose of ascertaining oil wells within their respective territories for the application of the principle of derivation.

9. In further reply to paragraph 12 of the Statement of Claim, the 2nd defendant avers that the said Political Solution was made to foster peace and stability in the Niger Delta Region and the Nation as a whole."

(underlining supplied by me)

Through his affidavit evidence, the plaintiff informed this court,

through one Aisha Mohammed Bello a counsel in the Chambers of Messrs M. A. Bello & Co., solicitors to the plaintiff, who swore to an oath that:

“3(h) That sometime in 2006, the Federal Government of Nigeria (2nd defendant) intervened and the plaintiff and 1st defendant represented by the Executive Governors agreed and opted for a POLITICAL SOLUTION METHOD which led to the weighing of 50% of the disputed area comprising 172 oil wells with each of the two states receiving 86 oil wells and revenue accruing therefrom with effect from November, 2006. A copy of the letter containing this agreement is hereto attached and marked as Exhibit AMB1. B C

(i) That this political solution agreement was accepted by the plaintiff in the interest of peace and stability in the region and was freely and willingly agreed to by the plaintiff and 1st defendant and has regulated the attribution of the 172 oil wells and 13% derivation funds revenue payable to each of the states on a 50-50 ratio basis until the tail end of 2007 when the 1st defendant commenced its agitation for the application of the Historical Titles Method in place of the Political Solution Method and the Strict Technical Lines Method. The 1st defendant’s letter of complaint to the 2nd defendant and the response by the plaintiff are hereto attached and marked as Exhibits AMB2 and AMB3 respectively. D E

(i) That instead of insisting that the 1st defendant abides by the political solution agreed between the two states in November, 2006, the National Boundary Commission in defiance of the subsisting judgment of this court and the subsisting political agreement aforesaid by its letter dated 13 February, 2008 caved in to the pressure mounted by the 1st defendant to recommend the use of Historical Titles Method. A copy of this letter is herewith attached and marked as Exhibit AMB4. F G

4(c) That the Political Solution method that conferred ownership of 86 oil wells each on plaintiff and 1st defendant is still a valid and subsisting agreement which is binding on all the parties to this dispute and same cannot be unilaterally rescinded by the defendants.” (underlining supplied by me) H

In a sworn witness statement of Mr. Okokon Essien Surveyor General of Akwa Ibom State for and on behalf of the 1st defendant, it is stated in relation to the Political Solution Agreement:

“12. In specific reply to paragraphs 3(h), 3(i), 3(1), 3(n), 3(o),

3(p), 4(c), 4(d), 4(e), 4(f), 4(g) and 4(h) of the plaintiff's Witness Statement (equivalent to paragraphs 11, 12, 15, 17, 18, 19, 21, 24, 27 of the Statement of Claim), I know and state that:

a. The Political Solution was an imposition by the then President Olusegun Obasanjo and was without legal support or foundation and therefore was consistently rejected by Akwa Ibom State Government and I adopt all my depositions in paragraphs 8, 9 and 11 hereto in support hereto.

b. The Political Solution also violated the historic Title Method that had always applied in the attribution of all the maritime resources in the Maritime Triangle (e.g. the Oil Wells thereat) to Akwa Ibom State prior to the misapplication of the Strict Technical Equidistant Method by NBC. The RMAFC Inter-Agency Meeting Report - Exhibit AMB5 to the plaintiff's Witness Statement - indeed states "that the National Boundary Commission in another proposal to resolve the boundary crisis between Akwa Ibom and Rivers States advised the use of 'Historic Titles' in the distribution of oil wells. In the year 2006, the Presidency in 2006 accepted the application of 'Historic Titles' between Akwa Ibom and Cross River States but opted for 'Political Solution' between Akwa Ibom and Rivers which compelled Rivers State to return only 50% of the oil wells which was transferred from Akwa Ibom to River State."

(emphasis mine).

c. Other than the document dated 31 October, 2006 that was prepared and signed solely by President Olusegun Obasanjo - Exhibit AMB1 to the plaintiff's Witness Statement - purporting to specify the details of the Political Solution, there was and is, to the best of my knowledge and belief, no document on the so-called Political Solution that was signed by Akwa Ibom State Government or any of its officials in signification of:

i. Participation in the formulation and concretising of the so-called Political Solution; or

ii. Assent by the Akwa Ibom State Government to the imposition or application howsoever of the Political Solution."

The 2nd defendant, in his 2nd defendant's Witness Statement on oath filed on 2/11/2010 sworn to by Mohammed Sani Isah, Director Inter-State Boundaries Department of the NBC, it is stated as follows:

"26. That the Political Solution Agreement referred to in para-

graph 3(a) and 4(c) of the plaintiff's Affidavit in support of its statement of claim and in paragraph 12 of the Statement of claim was a solution resulting from the intervention of the President of the Federal Republic of Nigeria in 2006, protests from some littoral states including the 1st defendant as a result of the implementation of the 2004 maritime boundary map in the production of indices for the implementation of the 13% derivation principle. B

27. That the said Political Solution agreement is not subsisting as same was subsequently rescinded by both the plaintiff in its letter of 14th March, 2008 and the 1st defendant in its letter of 24th October, 2007, wherein they rejected the application of the said Political Solution Agreement and opted for other methods of maritime boundary delineation. Attached hereto as Exhibit AGF4 is the letter from the Governor Rivers State, represented by the plaintiff in this suit, dated 14th March, 2010; and the letter from the Governor of Akwa Ibom State, represented by the 1st defendant dated 24th October, 2007 marked as Exhibit AGF5. C

28. That the plaintiff in particular, in its letter of 14th March, 2008 at page 8, under the head "Prayer", opted for the application of a technical method of maritime boundary delineation, namely, the strict equidistance method as against the political solution agreement, emphasizing inter alia on page 8 of Exhibit AGF4 that 'a political solution to a scientific problem cannot stand the test of time'. E

29. That furthermore, the said Political Solution Agreement did not in any way delimitate any maritime boundary between the plaintiff and the 1st defendant for the purpose of ascertaining oil wells within their respective territories for the application of the principle of derivation. " F

(underlining supplied by me) G

Now, what is all this Political Solution Agreement and how did it come about? From the Affidavit evidence of the plaintiff paragraph 3(h) and copy of the letter containing what is termed as the "Political Solution Method" or Agreement is annexed as Exh. 'AMB1'. Below is the contents of Exh. AMB1: H

"PRESIDENT

FEDERAL REPUBLIC OF NIGERIA

PRES/44/87/194/55

DISTRIBUTION:

MEETING ON IMPLEMENTATION OF THE ON SHORE/OFF-SHORE DICHOTOMY ABROGATION LAW AS IT RELATES TO THE MARITIME BOUNDARIES BETWEEN CROSS RIVER/AKWA IBOM/RIVERS STATES VIS-A-VIS THE JUDGMENT OF THE SUPREME COURT OF JUNE 24, 2005

B You will recall that I presided over a meeting on the above subject Friday 27th October, 2006 at the Presidential Villa with Governors of Akwa Ibom and Rivers States present among other stakeholders.

C You will also recall that, in the course of the meeting which was led at finding a lasting solution to the lingering problems over the oil wells between the three states concerned i.e. Akwa Ibom, Cross River and Rivers, three options were considered viz: Technical Solution, Historical Solution and Political Solution. After exhaustive deliberations, the meeting opted for and upheld the political solution in line with earlier advice given by the Attorney General of the Federation and Minister of Justice. Subsequently, a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November, 2006.

E I. Cross River/Akwa Ibom States

a. Cross River - 76 wells

b. Akwa Ibom - 14 wells

II. Akwa Ibom/Rivers States

a. Akwa Ibom - 86 wells

F b. Rivers - 86 wells

c. Total: Cross River - 76 wells; Akwa Ibom - 100 wells and Rivers 86 wells

G Accordingly, the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final end for implementation by all concerned with effect from the said date 1st November, 2006.

Above is, therefore, for your information and further necessary action, please.

H Signed.

OLUSEGUN OBASANJO.

Distribution:

Internal Action;

H. E. The Governor of Akwa Ibom State

H. E. The Governor of Cross River State

H. E. The Governor of Rivers State

Hon. Minister of Finance

Chairman, Revenue Mobilization Allocation and Fiscal Commission (RMAFC)

Director General, National Boundary Commission

Accountant General of the Federation.

External Information

Secretary to the Government of the Federation Attorney General of the Federation & Hon. Minister of Justice

Governor of Central Bank of Nigeria.

Internal Information

COS

PS.”

On the genesis of the Political Solution Agreement, Exhibit D AMB2 and AMB3 give us an insight. The exhibits are annexed to the plaintiff’s affidavit in support of the statement of claim.

Exhibit AMB3 was a letter written to the then President of the Federal Republic of Nigeria, His Excellency Alhaji Umaru Musa Yar’Adua, GCFR (may his soul rest in peace), by the Governor of Rivers State, Rt. Hon. Chibuike Rotimi Amaechi. The letter was dated March 14th, 2008. It states in parts:

“Your Excellency,

RE: ALLOCATION OF OIL WELLS BETWEEN AKWA IBOM, CROSS RIVERS AND RIVERS STATES

My attention has been drawn, Your Excellency to the letter dated March 3rd, 2008 on the above subject matter which was addressed to the Chairman Revenue Mobilization, Allocation and Fiscal Commission from your office.

Please recall Your Excellency that what has given rise to the letter under reference was the letter written by my brother His Excellency the Governor of Akwa Ibom State on the subject matter, which letter you referred to the boundary commission for comments.

It is the comment of the boundary commission and Your subsequent action on it Sir, that has ignited the fire on the matter that has hitherto been settled and forgotten.

BACKGROUND.....

The implementation of the offshore/onshore dichotomy abro-

gation Act, 2004, generated the “STRICT TECHNICAL” (equidistance) line that formed the “Maritime Zones” for the littoral states.

The said method is the most acceptable method which is supported by the UNITED NATIONS CONVENTION ON THE LAW OF SEA (UNCLOS) II, 1982. It is the most acceptable method internationally.

The National Boundary Commission admits that this method is the preferable method in the circumstance - see page 6 of the document on presentation on the implementation of Allocation of Revenue (Abolition of dichotomy in the application of the principle of derivation) Act, 2004, dated 19th February, 2008 by the national boundary commission. Same is attached and marked ANNEXURE NBC 1. Akwa Ibom State rejected this method on account that it did not favour them. It is however necessary to mention Your Excellency that this acceptable and Conventional Principle was accepted by Rivers State. By this principle however, Cross Rivers State was to get nothing as it is now a non littoral state by virtue of the June 24 2005, Supreme Court Judgment following the International Court of Justice judgment on Bakassi.

Following this lingering crisis, the then President, Chief Olusegun Obasanjo addressed a letter dated 17th May, 2005, with reference No. VRES/87/55 to the Boundary Commission for a solution on this matter.

The National Boundary Commission in response addressed a letter dated 8th of August, 2005 with reference No. NBC.SEC/32/IV/97 to Mr. President (Chief Obasanjo) proffering solution to the lingering crises. The said letter is attached and marked ANNEXURE NBC II wherein the National Boundary Commission proffered 3 solutions namely:

1. TECHNICAL OPTION - (EQUIDISTANT PRINCIPLE).
2. HISTORICAL OPTION
3. POLITICAL OPTION

May I crave indulgence of Mr. President to reproduce the advice of the National Boundary Commission to the former President, Chief Olusegun Obasanjo under the Political Solution verbatim. The National Boundary Commission had this to say:

‘Experience from the beginning of the implementation of the offshore/onshore dichotomy abrogation Act, 2004, to date especially

as it relates to the three states Akwa Ibom, Cross River and Rivers States indicate the difficulties in the application of the technical as well as the historical title solutions. The court cases instituted by Cross Rivers State at the Supreme Court and that of Akwa Ibom State at the Federal High Court were against the indices derived from purely technical delimitation, undertaken by National Boundary Commission. B

In view of this and without prejudice to the technical delimitation, a political solution based on weighing of 25% of the areas disputed between Cross River and Akwa Ibom state on the one hand and 50% between Akwa Ibom state and Rivers State on the other hand may be considered after due consultation with the state parties. This would entail some gains and loses of certain number of oil wells from each of the three states. Relevant maps and oil wells distribution are attached herewith. C

All these relevant information and facts informed the former President's decision to call the Stake Holders Meeting wherein the Political Solution option was adopted and agreed upon, in the presence of the then Governors of Akwa Ibom, Cross River and Rivers States and the oil wells shared accordingly. This gave rise to the then President's letter referenced PRES/44/87/194/55 to all the stakeholders distributing the oil wells aforementioned. D

(underlining supplied by me)

There is another letter written to the President, Federal Republic of Nigeria on 24th October, 2007 by the Governor of Akwa Ibom State, Chief Godswill Akpabio. It is titled: "Allocation of oil wells Between Akwa Ibom, Cross River and Rivers States. It states, inter alia: F

"It would be recalled that after the promulgation of the offshore/onshore dichotomy abrogation law in 2004, the NBC embarked upon the delimitation of maritime boundaries of littoral states with a view to ascertaining the total number of oil wells for each state. Hitherto, there was no boundary dispute whatsoever between Cross River, Akwa Ibom and Rivers States as could be seen in the names of the offshore oil fields. G

The maps and lines produced by the NBC turned out to be technically questionable and highly controversial as they tended to divert resources from one state to the other even when none of the states had asked for adjustment in the boundaries and oil fields/wells H

distribution at that time. This action of the NBC, rather than maintain the peace and status quo that existed, became a catalyst for litigation and protests.

The NBC, in one of its briefings came up with options to resolve the continued boundary disputes between Akwa Ibom and Rivers State on one hand and Akwa Ibom and Cross River State on the other... The NBC quoted Article 7.1 of the UNCLOS 82 which canvasses respect for the preservation of historic titles to support the return to status quo, that is each state should keep the oil well it had before the promulgation of the offshore/onshore Dichotomy Law, 2004. The Presidency accepted this recommendation and actually directed its implementation as it affected Cross River State, but implementation of the same application in the case of Akwa Ibom/Rivers State(s), boundary has been pending. Instead, the Presidency opted for a Political Solution which compelled Rivers State to return only 50% of the oil wells which were transferred from Akwa Ibom to Rivers State based on the disputed boundary lines. The outcome was the arbitrariness currently observed in the allocation of oil wells among the affected states. In other words, part of our revenue accruing from 13% derivation is being paid monthly to Rivers State.

Also, the NBC had in pages 5-7 of another memo dated 3rd August, 2005 (and attached as Appendix III) recommended the use of Historical Title Option for the implementation of the onshore/offshore Dichotomy Abrogation Law 2004 in relation to Cross River. This is the option that underscores the principle of the rule of law. The option of Political Solution currently used is arbitrary and has no basis in law."

(underlining supplied)

My Lords, it is my findings from the pleaded facts and the affidavit evidence by the respective parties that:

1. There was indeed a meeting convened by the then President, Chief Olusegun Obasanjo on the 27th October, 2006 at the Presidential Villa, Abuja with Governors of Akwa Ibom and Rivers States and some other Stake Holders.

2. The cardinal aim or objective of the meeting was to find a lasting solution to the lingering problems over the oil wells between the three states concerned i.e. Akwa Ibom, Cross River and Rivers States.

3. It was on the Advice of the NBC and the Attorney General of the Federation that the meeting preferred to adopt the Political Solution Method.

4. Consequent upon that there was consensus and the meeting agreed on the accepted formula of sharing the oil wells as follows:

III. Cross River/Akwa Ibom States

a. Cross River - 76 wells

b. Akwa Ibom - 14 wells

Akwa Ibom/Rivers States

a. Akwa Ibom - 86 wells

b. Rivers - 86 wells

Total: Cross River - 76 wells; Akwa Ibom - 100 wells and Rivers 86 wells

5. That the effective date of the agreement was from 1st November, 2006.

6. That there is nothing from the Exhibits AMB 2 and 3 to show that the Governors of the affected states did not take part in the Political Solution Agreement.

7. There is nothing from the evidence as well to show that the said Governors objected or rejected the Political Solution Method adopted at the said meeting with the then President Obasanjo.

8. There is nothing also to show that there is a subsequent meeting of the same members as held between the parties to the meeting of 27th October, 2006, which jettisoned the Agreement reached on the Political Solution Method adopted.

I think it is uncharitable of Mr. Essien, Surveyor General of 1st defendant to say that the Political Solution Agreement was “an imposition by the then President Olusegun Obasanjo and without legal support or foundation.” The simple reason being that from the Political Solution Agreement document, Mr. Essien was not a party. It was his Governor that was present. Can this court receive a “hearsay evidence” on oath? I think not. Further, whether the Political Solution Agreement was not palatable to some of the parties who participated in drawing it up; or it violated some other previous arrangements, is completely a different thing. Nobody says that the Political Solution Agreement cannot be re-visited for a better option if any. But certainly that must be done by the concurrence of all the parties to the Political Solution Agreement as the Latin Maxim “PACTA SUNT

SERVANDA” must be respected by parties to an agreement. The general principle of law also frowns at “*approbation and reprobation*”, which if given legal sanctity will make agreement uncertain and a sham. Parties to an agreement howsoever may also, from the outset, nurse the idea of mutual mistrust which may stem at any point after the execution of the agreement.

Therefore, can a single party to the Agreement, whether as an individual in the name of Governor or State or howsoever, resile unilaterally from such a contractual agreement? I think not.

It must be reiterated my Lords, that a contract is an agreement giving rise to obligations which are enforced or recognized by law. The factor which distinguishes contractual from other legal obligations is that they are based on the agreement of the contracting parties.

In *Smith v Hughes* (1871) L R 6 (Q.B. 597, 607), Blackburn J, Said:

“If, whatever a man’s real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, the man thus conducting himself would be equally bound as if he had intended to agree to the other party’s terms.”

Unless that principle of law is strictly applied, great uncertainty might result if a person who appeared to have agreed to certain terms could escape liability simply by showing that he had no ‘real intention’ to agree to such contractual terms. Agreement, generally, is made when one party accepts an offer made by the other. It must be certain and final. Agreement can be signified through writing or by oral agreement depending on the circumstances in which the contracting parties find themselves. Where it is expressly in writing, the general rule is that the court will not look beyond that writing to determine what its express terms are. Where the contract/agreement is made orally, the ascertainment of its terms is a pure question of fact. Exhibit AMB 1 show expressly the terms agreed and none of the parties exhibited any evidence to the contrary. The 1st defendant, in these circumstances is, and must be estopped from taking a unilateral decision of resiling from the said agreement. They say in Latin, ‘PACTA SUNT SERVANDA’; i.e. agreements of contracting parties are to be observed. I will certainly not be a party to encouraging such kind of retrogressive movement of one step forward and two steps backward as being

advocated by the defendants. For this and the fuller reasons given by the learned CJN in his lead judgment I, too, enter judgment in favour of the plaintiff in the following terms:

1) "The plaintiff is the owner of the 86 oil wells by virtue of the political solution agreement between the plaintiff and the 1st defendant, the terms of which are contained in exhibit AMB1 and therefore entitled to be paid revenue derivable therefrom under the provisions of section 162 of the 1999 Constitution from April, 2009 till date and subsequently.

2) The defendants are hereby directed by themselves and/or their appropriate agencies to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the subsisting and binding Political Solution Agreement which sums has since been unlawfully paid to the 1st defendant with effect from April, 2009 till date of this judgment and payment of all such sums to the plaintiff by the 1st defendant forthwith.

3) There shall be interest at the prevailing commercial rate per annum on the total sums calculated as due to the plaintiff from April, 2009 till date of this judgment and thereafter at 8 percent interest per annum on the judgment debt until full liquidation of the judgment sum and interest.

I make no order as to costs.

FABIYI JSC

I have had the advantage of reading the judgment just delivered by my learned brother - Katsina-Alu, CJN. I agree with his reasoning and conclusions. I will however like to briefly express my following opinion on the plaintiff's claim.

As contained in paragraph 29 of the Statement of Claim, the plaintiff claims against the 1st and 2nd defendants jointly and severally as follows:

(i) A declaration that it is unlawful and unconstitutional for the defendants by themselves and through any other statutory bodies including the National Boundary Commission and Revenue Mobilization Allocation and Fiscal Commission to revert to the use of the Historical Titles Method for the delineation of the Maritime Boundaries between the plaintiff and the 1st defendant without the subsisting judgment of the Supreme Court in the case of Attorney-General

of the Federation v. Attorney-General of Abia State and 35 Ors first being set aside and or vacated.

(ii) A declaration that in accordance with the judgment of the Supreme Court of Nigeria in the case of Attorney-General of the Federation v. Attorney-General of Abia State and 35 Ors (supra) and Article 15 of the United Nations Convention on the Laws of the Sea 1982 (UNCLOS) the strict Equidistance Technical Lines Method is the applicable method judicially approved for use in demarcating the Maritime Boundaries of Littoral States in Nigeria.

(iii) A declaration that it is unlawful and unconstitutional for the defendants by themselves or through any statutory body of the Federal Government of Nigeria to alter the quantum of revenue accruing to both the plaintiff and the 1st defendant from the Federation Account in favour of the 1st defendant by reliance on a Report produced by the Revenue Mobilization Allocation and Fiscal Commission which is yet to be tabled before the National Assembly for its approval and sanction in accordance with section 162 (2) of the 1999 Constitution of the Federal Republic of Nigeria and the historical titles method which has never been applicable.

(iv) A declaration that the 172 oil wells ceded to the 1st defendant by statutory bodies of the 2nd defendant based on the use of the Historical Titles Method belong to the plaintiff if the applicable strict equidistance lines method is resorted to.

(v) A declaration that the act of defendants with the aid of statutory bodies of the 2nd defendant in ceding 172 oil wells belonging to the plaintiff to the 1st defendant and paying the revenue accruing there from to the 1st defendant since April 2009 is unlawful, wrongful and unconstitutional.

(vi) Consequential order setting aside the 2009 revised indices for the payment of 13% derivation to Littoral States produced pursuant to the Report produced by the Revenue Mobilization Allocation and Fiscal Commission for being unlawful, unconstitutional, null, void and of no legal effect whatsoever.

(vii) Consequential order directing the defendants to forthwith compute and calculate all such sums of money accruing from the 172 oil wells paid to the 1st defendant with effect from April 2009 until the determination of this suit and for the payment of such sums to the plaintiff by the 1st defendant, (viii) Alternative to Relief (vii) an

order directing the defendants to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the subsisting and binding political solution agreement which sums has (sic) since been unlawfully paid to the 1st defendant with effect from April, 2009 until the determination of this suit and for the payment of all such sums to the plaintiff by the 1st B defendant.

(ix) Interest at the prevailing commercial rate on the total sums calculated as due to the plaintiff from the date of judgment until full liquidation of the judgment sum.

(x) An order of perpetual injunction restraining the Federal Government of Nigeria and the 1st defendant, their functionaries statutory bodies or agencies whosoever including the Revenue Mobilization, Allocation and Fiscal Commission, the National Boundaries Commission and Accountant-General of the Federation from acting on the Report produced by the Revenue Mobilization Allocation and Fiscal Commission and the 2009 Revised indices for the payment of 13% derivation to Littoral States and from altering the maritime boundary maps between the plaintiff and the 1st defendant through the use of the Historical Titles Method in favour of the 1st defendant and proceeding any of the disputed 172 or 50% oil wells thereof or any other oil wells belonging to the plaintiff to the 1st defendant without legal justification or approval. C D E

(xi) Any further reliefs in the interest of justice.

On behalf of the parties, Final Written Addresses were filed. In his written address, the 2nd defendant raised a preliminary objection to the jurisdiction and competence of this court to hear and determine the claims of the plaintiff. F

Jurisdiction of the court is very fundamental. As such, it should be determined first. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and finally decided. A defect in competence is not only intrinsic, but also extrinsic to the entire process of adjudication. See: *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) 508. G H

The preliminary objection raised by the 2nd defendant in the Notice of Preliminary objection reads as follow:-

1. The subject matter of this suit is not one capable of invoking

the original jurisdiction of this Honourable Court.

2. Consequent on the above, this Honourable Court lacks the jurisdiction to entertain the matter.

The invocation of the original jurisdiction of this court is provided by section 232 (1) of the Constitution of the Federal Republic of Nigeria, 1999. It reads as follows:-

“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.”

As can be garnered from the claim of the plaintiff, it is essentially a maritime claim between the plaintiff and the 1st defendant. It is a contest as to who owns 172 oil wells or part thereof within the maritime territory that abuts both States and the method to be employed in its determination.

It is clear to me that the dispute herein, a maritime dispute, is between two States to wit: Rivers State of Nigeria as plaintiff and Akwa-Ibom State of Nigeria as 1st defendant and the Federal Government which tried to ‘broker peace’ and whose agencies carried out some crucial assignments on its behalf as 2nd defendant. The dispute involves questions of law and facts on which legal rights depend. By virtue of section 150(1) of the 1999 Constitution, the Attorney-General of the Federation who is the Chief Law Officer of the Federation is a competent party to be sued in any suit against the Federal Government. This is also buttressed by the provision of section 20 of the Supreme Court Act, Cap S15 Laws of the Federation, 2004.

I hold that this court has original jurisdiction to hear and determine this matter. The Attorney-General, Federation has locus standi to defend the suit. In a long line of authorities, such has been the vogue. It is in tandem with the law. In short, the claim was initiated with due process and against necessary/desirable parties. The jurisdiction of this court was rightly invoked. See: *Madukolu v. Nkemdilim* (supra). The preliminary objection is ill-tuned. It is hereby overruled.

In the plaintiff’s brief of argument filed on 30th August, 2010, four (4) issues couched for determination read as follows:-

(a) Whether the plaintiff is entitled to a declaration that in ac-

cordance with Article 15 of the United Nation Convention on the Law of the Sea, 1982 and International State practice regarding maritime boundary delimitation to maintain the pre - 2006 equidistance boundary between it and the 1st defendant.

(b) Whether the 1st and 2nd defendants are by virtue of the Political Solution Agreement entered into in October, 2006 given effect to by the Presidential directive of November 2006 estopped by agreement, conduct and representation from acting contrary to the terms contained therein. B

(c) Whether the 1st defendant having not in any manner or form proved authority and sovereignty over the Islands situated in and around the area which is subject-matter of this action entitled to a declaration that the Historical Titles should be taken into consideration in the delimitation of the boundary between it and the plaintiff. C

(d) Whether the plaintiff is entitled to the proprietary and economic rights arising from and pertaining to the maritime boundary delimitation which is subject-matter of this action. D

In the Final Written Address filed on 11th January, 2011 by the 1st defendant the lone issue couched for determination reads as follows:- E

Does the disputed maritime territory within which lies the 172 oil wells (Disputed Maritime Territory) belong howsoever to Rivers State represented by the plaintiff hereof. By extension is Rivers State entitled howsoever to the attribution of the 172 oil wells or any part thereof? F

On behalf of 2nd defendant, three issues were formulated in its own Final Written Address. They read as follows:-

(1) Whether in view of the reliefs by the plaintiff, this honourable court has original jurisdiction to entertain this suit. G

(2) Whether the National Boundary Commission properly exercised its powers in delimiting the boundary between the plaintiff and the 1st defendant.

(3) Whether the political solution agreement brokered by the President of the Federal Republic of Nigeria between the plaintiff and the 1st defendant is applicable in the allocation of 13% revenue derivable from the disputed oil wells to the plaintiff and the 1st defendant. H

With respect to issue 1, the plaintiff desires to place reliance on

Article 15 of the United Nations Convention on the Law of the Sea, 1982 and International State practice regarding maritime boundary delimitation to maintain the pre-2006 equidistance boundary between it and the 1st defendant. The position of the law herein was stated by this court in Attorney-General Federation vs. Attorney-General of Abia State and Ors. (No. 2) (2002) 6 NWLR (Pt. 764) 542 at 728 - 729. Therein, coastal State in relation to UNCLOS 1982 was defined as follows:-

“Coastal State” under the United Nations Convention on the Law of the Sea 1982 means Nation State and not internal States of a country like the Littoral States in Nigeria. In a Federation, it applies not to the Federating States that comprise the Federation. This is necessarily 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 to the Federation.”

With the above position of the law, it is clear that the plaintiff and the 1st defendant herein are two (2) of the 36 cluster States within the Federation of Nigeria. They are not members of the comity of Nations. As such, articles of UNCLOS do not apply to them; *stricto sensu*. They only apply to the Federation of Nigeria.

I feel that the plaintiff is not on a firm ground in its issue 1. Same is resolved against it.

That takes me to issue 2 formulated by the plaintiff. It is the real bone of contention. Between 2004 - 2006, the 172 oil wells went in favour of the plaintiff by the application of the Strict Technical Equidistance Lines method employed by the National Boundary Commission in drawing its maritime maps. The 1st defendant complained. On October, 27, 2006, a meeting presided over by the President with the two Governors of the affected States and other stakeholders in attendance was convened. Thereat, the matter was resolved amicably and the then President of Nigeria, Chief Olusegun Obasanjo wrote Exhibit AMB1. The letter reads as follows:-

“You will recall that I presided over a meeting on the above subject Friday, 27th October, 2006 at the Presidential Villa with Gov-

errors of Akwa-Ibom and Rivers States present among other stakeholders. You will recall that in the course of the meeting which was to finding a lasting solution to the lingering problems over the oil wells between the three States concerned i.e. Akwa-Ibom, Cross-River and Rivers, three options were considered viz: Technical Solution, Historical Solution and Political Solution. After exhaustive deliberations, the meeting opted for and upheld the political solution in line with the earlier advice given by the Attorney-General of the Federation and Minister of Justice. Subsequently, a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November, 2006.

(i) Cross-River/Akwa-Ibom States

(a) Cross- River - 76 wells

(b) Akwa-Ibom - 14 wells

(ii) Akwa-Ibom / Rivers State

(a) Akwa-Ibom - 86 wells

(b) Rivers State - 86 wells

(iii) Total: Cross River 76 wells Akwa-Ibom 100 wells and, Rivers - 86 wells. Accordingly the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final close for implementation by all concerned with effect from the said date of 1st November, 2006.

Above is therefore for your information and further necessary action please."

It appears that parties felt satisfied with the above for a while. Each of the parties in contest herein to wit: plaintiff and 1st defendant enjoyed their dues from the 86 oil wells agreed to by the parties. After a while, fresh agitation reared its head through the 1st defendant to the Late President. The National Boundary Commission produced a new map which ceded the 172 oil wells to the 1st defendant which has been benefiting from the same since April 2009. This is what has precipitated this action.

The plaintiff has contended that the parties to the agreement in Exhibit AMB1 are estopped from resiling from same.

Let me start with the doctrine of estoppel by contract. This is a bar that prevents a person from denying a term, fact or performance arising from a contract that the person has entered into. Black's Law Dictionary, Ninth Edition page 630.

There is what is often referred to as equitable estoppel. This is a doctrine preventing one party from taking unfair advantage of another when through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. It is also termed estoppel by conduct or estoppel in pais.

I need to further express it that section 151 of the Evidence Act clearly incorporates the doctrine of equitable estoppel. In *Ude v. Nwara & Am.* (1993) 2 NWLR (Pt. 278) 638 at 662, this court pronounced forcefully that by operation of the rule of estoppel a man is not allowed to blow hot and cold, to affirm at one time and deny at the other, or, as it is said, to approbate and reprobate. See: also *Joe Iga & Ors. v. Ezekiel Amakiri & Ors.* (1976) 11 SC 11.

There is also the doctrine of 'Facia sunt servanda' which means D agreements of parties to a contract are to be observed.

Same should be honoured. This should apply more especially in the art of governance of a State even where there is a change of the Chief Executive. Such will provide the much needed requisite atmosphere for peace, tranquillity and concord in the polity.

In my considered opinion, it is not right for the defendants to back out from the agreement in Exhibit AMB1. The 1st defendant referred to Exhibit AMB1 as a 'Presidential fiat'. Such sounds uncharitable; in the main. The 1st defendant cannot retrace his step in the prevailing circumstance. All the doctrines of estoppel discussed F above operate against the 1st defendant. He is estopped from backing out from the terms of Exhibit AMB1 which remains inviolate and binds the parties to same; 1st defendant inclusive.

As I said at the on-set, I agree with the reasoning and conclusion of my learned brother Katsina-Alu, CJN that judgment should G be entered in favour of the plaintiff.

I find merit in the plaintiff's case. I enter judgment as follows:-

1. The plaintiff is the owner of the 86 oil wells by virtue of the political solution agreement as in Exhibit AMB1 and entitled to be H paid revenue derivable therefrom under the provisions of section 162 of the 1999 Constitution from April, 2009 till date and subsequently.

2. The defendants should forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plain-

tiff by virtue of the subsisting political solution agreement which sums have since been unlawfully paid to the 1st defendant with effect from April 2009 to date and pay same to the plaintiff forthwith.

3. There shall be interest at the prevailing commercial rate per annum on the total sums calculated as due to the plaintiff from April, 2009 till date of this judgment and thereafter at 8 percent-interest per annum on the judgment debt until full liquidation of the judgment sum and interest.

4. I make no order as to cost.

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother, A.I. Katsina-Alu, the Hon. Chief Justice of Nigeria. I agree entirely with my lord that the issue involved in this case is straightforward and within narrow limit.

The Attorney-General of Rivers State of Nigeria as the representative of the Government of Rivers State invoked the original jurisdiction of this court, by filing a Statement of Claim dated 5/3/10 against the defendants -the Attorney-General of Akwa Ibom State of Nigeria - as the representative of the Government of Akwa Ibom State, the 1st defendant and the 2nd defendant, the Attorney-General of the Federation as the representative of the Federal Government of Nigeria and government agencies in particular, National Boundary Commission (NBC), Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) and the Accountant-General of the Federation (AGF)

In addition to their respective briefs and written addresses, parties relied on documentary evidence. Such documents germane to this case are:-

(1)Exhibit AMB1 - the letter of 2006 Political Solution Agreement between the Executive Governors of Rivers and Akwa Ibom States.

(2)Exhibits AMB2 and AMB3 - letters of complaint by the 1st defendant and the Reply by the plaintiff.

(3)Exhibit AMB4 -A copy of Oil Fields location letter by the National Boundary Commission dated 13th of February 2008 recommending the Historical Titles Method for delimitation of Boundaries.

(4) Exhibit AMB5 - A copy of The Report of RMAFC Crude Oil 5 Monitoring Committee recommending attribution of 988 off-shore oil wells including the disputed 172 oil wells to the 1st defendant.

(5) Geo-data maps of Maritime Boundaries of the littoral states
B attached and marked A, B, C,

(6) Exhibits AGF 1-3 Maritime Boundaries Maps of 2004 and 2008. Parties were directed to file their originating processes pursuant to Order 3 Rule 7 of the Supreme Court Rules as amended in 2002 on the 23rd of February 2010. In the 29th paragraph of the
C Statement of Claim, the plaintiff copiously adumbrated its claims jointly and severally against the 1st and 2nd defendants as follows -

(i) A declaration that it is unlawful and unconstitutional for the defendants by themselves and through any other statutory bodies
D including the National Boundary Commission and Revenue Mobilization Allocation and Fiscal Commission to revert to the use of the Historical Titles Method for the delineation of the Maritime Boundaries between the plaintiff and the 1st defendant without the subsisting judgment of the Supreme Court in the case of Attorney-General of the Federation v. Attorney-General of Abia State & 35 ors (supra)
E first being set aside and or vacated.

(ii) A declaration that in accordance with the judgment of the Supreme Court of Nigeria in the case of Attorney-General of the Federation v. Attorney-General of Abia State & 35 ors (supra) and
F Article 15 of the United Nations Convention on the Laws of the Sea 1982 (UNCLOS) the strict Equidistance Technical Lines Method is the applicable method judicially approved for use in demarcating the Maritime Boundaries of Littoral States in Nigeria.

(iii) A declaration that it is unlawful and unconstitutional for the defendants by themselves or through any statutory body of the Federal Government of Nigeria to alter the quantum of revenue accruing to both the plaintiff and the 1st defendant from the Federation Account in favour of the 1st defendant by reliance on a Report
G produced by the Revenue Mobilization Allocation and Fiscal Commission which is yet to be tabled before the National Assembly for its approval and sanction in accordance with Section 162 (2) of the 1999 Constitution of the Federal Republic of Nigeria and the historical titles method which has never been applicable.
H

(iv) A declaration that the 172 oil wells ceded to the 1st defendant by statutory bodies of the 2nd defendant based on the use of the Historical Titles Method belong to the plaintiff if the applicable strict equidistance lines method is resorted to.

(v) A declaration that the act of the defendants with the aid of statutory bodies of the 2nd defendant in ceding 172 oil wells belonging to the plaintiff to the 1st defendant and paying the revenue accruing there from to the 1st defendant since April 2009 is unlawful, wrongful and unconstitutional.

(vi) Consequential Order setting aside the 2009 revised indices for the payment of 13% derivation to Littoral States produced pursuant to the Report produced by the Revenue Mobilization Allocation and Fiscal Commission for being unlawful, unconstitutional, null, void and of no legal effect whatsoever.

(vii) Consequential Order directing the defendants to forthwith compute and calculate all such sums of money accruing from the 172 oil wells paid to the 1st defendant with effect from April 2009 until the determination of this suit and for the payment of such sums to the plaintiff by the 1st defendant.

(viii) Alternative to Relief (vii), an order directing the defendants to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the plaintiff by virtue of the subsisting and binding political solution agreement which sums has since been unlawfully paid to the 1st defendant with effect from April 2009 until the determination of this suit and for the payment of all such sums to the plaintiff by the 1st defendant.

(ix) Interest at the prevailing commercial rate on the total sums calculated as due to the plaintiff from the date of judgment until full liquidation of the judgment sum.

(x) An order of perpetual injunction restraining the Federal Government of Nigeria and the 1st defendant, their functionaries, statutory bodies or agencies whosoever including the Revenue Mobilization Allocation and Fiscal Commission, the National Boundaries Commission and Accountant-General of the Federation from acting on the Report produced by the Revenue Mobilization Allocation and Fiscal Commission and the 2009 Revised indices from the payment of 13% derivation to Littoral States and from altering the maritime boundary maps between the plaintiff and the 1st defen-

dant through the use of the Historical Titles Method in favour of the 1st defendant and ceding any of the disputed 172 or 50% oil wells there of or any other wells belonging to the plaintiff to the 1st defendant without legal justification or approval.

(xi) Any further reliefs in the interest of justice.

B The learned senior counsel for the plaintiff, Mr. Okeaya-Inneh adopted and relied on the briefs of argument and the reply briefs including the Reply Brief to the Preliminary Objection filed by the 2nd defendant. In the brief of argument filed on the 30th of August 2010, the plaintiff identified four issues for determination by this court which are -

(a) Whether the plaintiff is entitled to a declaration that in accordance with Article 15 of the United Nations Convention on the Law of the Sea 1982 and International State practice regarding maritime boundary delimitation to maintain the pre-2006 equidistance boundary between it and the 1st defendant.

(b) Whether the 1st and 2nd defendants are by virtue of the Political Solution Agreement entered into in October 2006 given effect to by the presidential directive of November 2006 estopped by agreement, conduct and representation from acting contrary to the terms contained therein.

(c) Whether the 1st defendant having not in any manner or form proved authority and sovereignty over the Islands situated in and around the area which is subject-matter of this action entitled to a declaration that the Historical Titles should be taken into consideration in the delimitation of the boundary between it and the plaintiff.

(d) Whether the plaintiff is entitled to the proprietary and economic rights arising from and pertaining to the maritime boundary delimitation which is subject-matter of this action.

The 1st defendant in the Final Written Address deemed filed on 11/1/11 earmarked a sole issue for determination which reads: -

Does the disputed Maritime territory within which lies the 172 Oil Wells (Disputed Maritime Territory) belong howsoever to Rivers State represented by the plaintiff hereof. By extension is Rivers State entitled howsoever to the attribution of the 172 Oil Wells or any part thereof?

The 2nd defendant settled three issues for determination as follows: -

(1) Whether in view of the reliefs sought by the plaintiff, this

honourable Court has original jurisdiction to entertain this suit.

(2) Whether the National Boundary Commission properly exercised its powers in delimiting the boundary between the plaintiff and the 1st defendant.

(3) Whether the political solution agreement brokered by the President of the Federal Republic of Nigeria between the plaintiff and the 1st defendant is applicable in the allocation of 13% revenue derivable from the disputed oil wells to the plaintiff and the 1st defendant.

Mr. Anuga for the 2nd defendant filed Notice of Preliminary objection pursuant to Section 232 (1) of the 1999 Constitution of the Federal Republic of Nigeria and the inherent jurisdiction of this court. The learned counsel urged this court to strike out the plaintiff's suit on the undermentioned preliminary points of law -

(a) That the subject-matter of this suit is not one capable of invoking the original jurisdiction of this court.

(b) Consequent to the above, this court lacks the jurisdiction to entertain this matter. The objection is predicated on the following grounds: -

(1) That the plaintiff's case does not disclose a dispute between a State and the Government of the Federation within the meaning of Section 232 (1) of the Constitution of the Federal Republic of Nigeria.

(2) That the plaintiff's case is against the exercise of the functions of the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission.

(3) The Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are statutory bodies corporate with capacity to sue and be sued in their respective names.

(4) The necessary and proper parties for the effective and effectual determination of the issues are not before this honourable court.

The 2nd defendant distilled a sole issue for the determination of the preliminary objection, which is -

"Whether in view of the plaintiff's case this honourable court has original jurisdiction to entertain this suit".

In the argument and submission in support of this issue, the 2nd defendant/objector examined the provisions of Section 232 (1)

of the 1999 Constitution as regards the original jurisdiction of the Supreme Court and Section 153 of the 1999 Constitution - the law creating the Revenue Mobilization Allocation and Fiscal Commission Act Cap R7 Laws of the Federation of Nigeria 2004. The objector also considered the National Boundary Commission Act 2004. He thereupon concluded that both commissions are statutory bodies corporate with capacity to sue and be sued in their respective names where the exercise of their respective " functions is in issue. The crux of the controversy in the suit is in respect of the exercise of the functions of the Revenue Mobilization Allocation and Fiscal Commission and those of the National Boundary Commission and therefore not a dispute between a State and the Government. The Revenue Mobilization Allocation and Fiscal Commission is a creation of the Constitution with specific functions and is not an agency of the Federal Government and therefore cannot be represented by the 2nd defendant. This court is urged to decline original jurisdiction over this suit as the plaintiff's case has failed to disclose a dispute within the meaning of Section 232 (1) of the 1999 Constitution. By way of reply to the objection, the learned senior counsel for the plaintiff filed a brief where he adequately considered the grounds for the objection and submitted that the dispute is between the government of Rivers State and Akwa Ibom State on the one hand and the Government of Rivers State and the Federal Government represented by the Attorney-General of the Federation. Further that the Revenue Mobilization Allocation and Fiscal Commission and National Boundary Commission are agencies of the Federal Government of Nigeria; the Attorney-General has the capacity to represent them being the - Chief Law Officer of the Federation. The learned senior counsel supported the submission with decisions of this court as follows -

A-G Kano State v. A-G Federation (2007) 3 SC 1.
 Quo Vadis Hotels and Restaurant Ltd. V. Commissioner of Lands
 Mid-Western State & Others. (1973) 6 SC 71.

H A-G Federation v. A-G Imo Sate & Others (1991) 4 NWLR
 pt.188 pg.773.
 Ndoma-Egba v. Government of Cross River State (1991)
 (pt.188) pg. 733 at pg. 788.

The plaintiff urged this court to dismiss the Notice of Prelimi-

nary Objection. The 1st defendant following on the plaintiff's heels urged this court to dismiss the preliminary objection for the reason that the National Boundary Commission and Revenue Mobilization Allocation and Fiscal Commission are both agencies of the Federal Government and they performed their functions on behalf of a disclosed principal. The disclosed principal is eligible to be sued in the circumstance of this case. The court is urged to dismiss the objection. B

The objection raised by the 2nd defendant is about the original jurisdiction of this court and whether it is applicable to the plaintiff's case. The 2nd defendant in other words is challenging the competency of this court to adjudicate on the plaintiff's suit. Once there is a defect in competence it is extrinsic to adjudication the proceedings however well and properly conducted are a nullity. C

Ajao v. Alao (1986) 5 NWLR pt. 45 pg. 802.

Asore v. Lemonu (1994) 7 NWLR pt. 356 pg. 284. D

Udene v. Ugwu (1997) 3 NWLR pt. 491 pg. 57.

When a court's jurisdiction is challenged by the defence being a threshold issue, the court must first be competent before it can proceed to adjudicate on the case on the merits. The reason being that jurisdiction is a radical and crucial question of competence. Either the court has jurisdiction to hear a case or it has not. It is very expedient for a court to examine and determine whether it has jurisdiction before proceeding any further in a matter. E

Oloriode v. Oyebi (1984) 1 SCNLR 390. F

Ezomo v. Oyakhire (1985) 1 NWLR pt. 2 pg. 195.

Sofekun v. Akinyemi (1980) 5-7 31.

N.D.I.C. v. CBN (2000) 7 NWLR pt.683 pg.57.

Madukolu v. Nkemdilim (1962) 2 SCNLR 341.

A-G Anambra v. A-G Federation (1993) 6 NWLR pt.302 G
pg.692.

Barclays Bank v. CBN (1976) 1 All WLR pt.1 pg.409.

Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR pg.296.

It is utterly unnecessary to belabour the single issue of jurisdiction raised by the 2nd defendant, but to go directly and glean through the provisions of Section 232 (1) of the 1999 Constitution so as to determine the yardstick for invoking the original jurisdiction of the Supreme Court. Section 232 (1) provides that - H

"The Supreme Court shall, to the exclusion of any other court

have jurisdiction in any dispute between the Federation and a State or 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. ”

This section outlines (a) party jurisdiction - between

- B (1) The Federation and a State
- (2) Between States
- (b) Subject-matter jurisdiction -

In so far as disputes involves any question (whether of law or of fact) on which the existence or extent of a legal right depends.
C Parties in the instant case are -

- (a) Plaintiff - Rivers State v. Akwa Ibom as 1st defendant.
- (b) Rivers State and the Federal Government as 2nd defendant.

D Subject-matter of dispute can be captured from two paragraphs of the statement of claim where the plaintiff averred as follows-
Paragraph 17

The plaintiff avers that the defendants particularly the 2nd defendant acting in concert with the Revenue Mobilization Allocation and Fiscal Commission and the Accountant-General of the Federation have since jettisoned the political solution agreement and recommended that the President of the Federal Republic of Nigeria approves the report pursuant to which a 2009 Revised 13% Derivation indices has since been produced by the RMAFC to the detriment of the plaintiff and in favour of the 1st defendant. The Revised Indices and the RMAFC letter forwarding it to the Accountant-General of the Federation dated 12th March 2009 will be relied on at the hearing.

Paragraph 18

G The plaintiff avers that as a result of the above facts, the 2nd defendant through its aforesaid agencies and parastatal have ceded the entire 172 oil wells and have since April 2009 been paying huge revenue accruing therefrom to the 1st defendant unlawfully despite the pendency and subsistence of the Political Solution Agreement
H freely entered into by the 1st defendant and the plaintiff in 2006.

The National Boundary Commission, the Surveyor-General of the Federation and the Revenue Mobilization Allocation and Fiscal Commission are agencies constitutionally responsible for delineation of National and Interstate Maritime boundaries and the prepara-

tion of the Indices for the distribution of 13% Derivation Fund.

The dispute in respect of boundaries of a State raises the question of law and fact. This dispute, which also involves the interpretation of Section 162 (2) of the 1999 Constitution, examine powers of the National Boundary Commission under the National Boundary Commission Act Cap N10 Laws of the Federation 2004 is justiciable. B
The issue of what amounts to a dispute was examined by this court in the case of A-G of the Federation v. A - G of Abia State & 35 Ors (2001) 11 NWLR pt. 215 pg. 689 where the word ‘dispute’ was defined by my Lord S.M.A. Belgore, JSC, CJN (as he then was) as C follows: -

“To my mind a dispute involves acts of argument, controversy, debate, claims as to rights, whether in law or fact, varying opinions whether passive or violent or any disagreement that can lead to public anxiety or disquiet. I will not close the category of disputes.” D

The dispute in this suit touches upon the legal rights of the parties. By virtue of Section 20 of the Supreme Court Act Cap 515 Laws of the Federation 2004, any proceedings against the Federation in a dispute between a State and the Federation must be brought in the name of the Attorney-General of the Federation. This court aptly E considered the conditions for the exercise of its original jurisdiction in cases like-

A-G Abia State v. A-G of the Federation (2007) 6 NWLR pt.1029 pg.200 at pg.214.

A-G Bendel State v. A-G Federation (1982) 3 MCLR 1.

A-G Federation v. A-G Imo State (1983) 4 MCLR pg.118.

A-G Ondo State v. A-G Federation (2002) 9 NWLR pt.772 pg.222.

A-G Federation v. A-G Lagos State (2004) 18 NWLR pt.904 G pg.1

A-G Plateau State v. A-G Federation (2006) 3 MWLR pt.967 pg.346.

We have no reason to differ from the subsisting stand of this court in the instant case. H

Revenue allocation is not one of the items over which the Federal High Court has jurisdiction as provided in Section 251 of the 1999 Constitution. In sum and based on the foregoing reasoning, the objection raised by the 2nd defendant that the subject-matter of

this suit is not one capable of invoking the original jurisdiction of this court cannot be sustained. It is accordingly struck out.

The facts commonly admitted and not disputed by the parties are as averred in paragraphs 4, 5 and 6 of the plaintiff's statement of claim; paragraph 5 of the 1st defendant's First Amended Statement of Defence and paragraphs 1 and 2 of the 2nd defendant's Amended Statement of Defence. The parties in these averments unanimously accepted that prior to the Supreme Court judgment in the case of Attorney-General Federation v. Attorney-General Abia State (No.1) 2002 11 NWLR pt.725 pg.689, the Federal Government has constitutional and exclusive jurisdiction over offshore natural resources. Thereafter the offshore/onshore Dichotomy Abolition Act 2004 was also passed into law. By virtue of Section 1 (1) of the Act, the littoral States - now have some interests - derivation in offshore natural resources located within their 200 meters water depth isobath. The Act thereby provides that the two hundred meters water depth isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purpose of computing the revenue accruing to the Federation Account from the State pursuant to the provisions of Section 162 (2) of the 1999 Constitution. The National Boundary Commission also in the process of searching for an appropriate equitable lasting solution to the conflict between the parties in respect of their maritime boundaries recommended the Political Solution Method to the President, Chief Olusegun Obasanjo which the parties agreed to and adopted between 2006 - 2009. The National Boundary Commission bowed to the pressure by the 1st defendant in defiance of the Political Solution Agreement, to produce another map in 2008. The Revenue Mobilisation Allocation and Fiscal Commission relied on the 2008 map to recommend the attribution of 988 oil wells including the disputed 172 oil wells to the 1st defendant. The 2nd defendant gave credence to the recommendations of the National Boundary Commission and Revenue Mobilisation Allocation and Fiscal Commission to approve the 2009 revised 13% indices as a result of which the Attorney-General has since April 2009 relied on the Revised Indices to deprive the plaintiff of revenue accruing from the 86 wells pursuant to the Political Solution Agreement. Parties joined issues on the other averments in the Statement of Claim and Amended Statement of Defence to the effect that the National

Boundary Commission in conjunction with the Office of the Surveyor-General had intervened in the matter of demarcation of the maritime boundaries of the parties and produced two overall maps of all the littoral states in 2004 and 2008. I have gleaned through these two maps attached to this suit as Exhibits C and D by the plaintiff and Exhibits AGF3A and AGF1A by the defendants. Exhibits D or AGFA1 was prepared in 2004 by Law of the Sea Admiralty Consultancy Services United Kingdom Hydrographic office. This map carried the stamp of the National Boundary Commission. The 2008 map was prepared by the National Boundary Commission. The 2nd defendant exhibited an extra copy of the map as AGFA2 this was prepared for the purpose of comparing and distinguishing the controversial difference in the features on the two maps.

I shall now proceed to consider and determine the issues raised for determination serially.

Issue One

Whether the plaintiff is entitled to a declaration that in accordance with Article 15 of the United Nations Convention on the law of the Sea 1982 and International State practice regarding maritime boundary delimitation to maintain the pre-2006 equidistance boundary delimitation between it and the 1st defendant.

It is the case particularly that of the plaintiff that after the enactment of the onshore/offshore Dichotomy Abrogation Act 2004 - the National Boundary Commission was directed by President Olusegun Obasanjo on 26/10/04

(a) To produce the delimitation of the Maritime Boundary of Nigeria's littoral States- Akwa Ibom, Bayelsa, Cross River, Delta, Ogun, Ondo and Rivers States from the shore/baselines into the sea up to 200 meters isobaths and

(b) Determine the total number of offshore oil wells for each littoral State so that the Revenue Mobilization Allocation and Fiscal Commission can implement the Constitution and prepare indices for the sharing of the proceeds in the Escrow Accounts and the 13% derivation fund.

The National Boundary Commission introduced the strict Technical (Equidistant) lines as the most acceptable method for delimitation of maritime boundaries as it was supported by the United Nations Convention on the Law of the Sea (Unclos) 1982. On the exer-

cise, the 1st defendant averred as follows - in paragraph 5 (c) of the 1st defendant's First Amended Statement of defence that: -
Paragraph 5 (c)

"In carrying out its aforesated assignment in 2004, the NBC erroneously attributed to Rivers State 256 oil wells including the 172 oil wells that are in dispute in this suit (the 172 oil wells) thereby creating a maritime triangle in part of which triangle situate 172 oil wells. NBC purported to so alienate the maritime boundary between Akwa Ibom and Rivers State pursuant to strict Technical (Equidistant) Solution (Strict Technical Equidistant Method)."

Akwa Ibom Government, the 1st defendant consistently faulted and persistently protested to the adoption of Strict Technical Equidistant Method used in the 2004 Map to delineate the maritime boundaries between the parties and particularly the consequential wrongful attribution of 172 oil wells to Rivers State. The National Boundary Commission addressed a letter dated 8th August 2005 to President Obasanjo where it touched upon the three options for delimitation of boundaries and advised President Olusegun Obasanjo on the Political Solution Option. Parties agreed to the Political Solution Method - and the terms were implemented between the parties between 2006-2009. Vide Exhibit AMB1. The persistent protest of the 1st defendant still continued as it agitated that the Historical Title Method be used in the delineation of maritime boundary between Akwa Ibom and Rivers States. The letter of Recommendation dated the 13th of February 2008 written to the then President Musa Yar'Adua Exhibit AMB4 was rejected. The letter AKSG2 dated 17th April 2008 and the evidence of Mr. Okonkwo - the Surveyor-General, Akwa Ibom and Mr. Isah, a Director in the National Boundary Commission show that the 2004 map was revisited in the process of resolving a solution to the complaints received by the Commission. The Revenue Mobilization Allocation and Fiscal Commission at its inter-Agency meeting of the 15th of April 2008 directed the Commission to carry out a fresh delimitation exercise adopting the following guidelines -

a. Without influence and consideration of economic interests of states and in accordance with the rule of law to ensure equity, fairness and transparency.

b. Based on the Supreme Court judgment in Suit No. SC.28/2001 of 5th April 2002 and the Abrogation of Dichotomy Act 2004.

c. Take into account all National and International Rules and Convention. The 2008 map was produced based on Strict Technical Equidistance line Method using the Perpendicular/Bisector principles. The results of the 2008 Maritime delimitation Map are -

a. The location of the Disputed Maritime Boundary favoured Akwa Ibom. B

b. The attribution of the 172 oil wells previously in Rivers State came to Akwa Ibom.

The plaintiff has invited this court to declare that the equidistance/median line that had already been determined by the National Boundary Commission pursuant to its statutory duties and accepted by all the parties in 2004 as the legal maritime delimitation boundary between the plaintiffs and the 1st defendant. The plaintiff submitted that the equidistance principle accords with the International Law, Convention, Custom and state practice. The plaintiff cited the statements and decisions of International Court of Justice, Arbitral Tribunals and State Practice to support the efficacy of the equidistance principle. The plaintiff went further to cite examples of countries where the equidistance principle was found appropriate in the settlement of their boundary disputes. Such countries like Georgia and Turkey in Europe in 1999, in the Black Sea Region between Turkey and Bulgaria, Poland and the Soviet Union in 1985, Lithuania and Russia in 1997, Estonia and Latvia in 1996, Cameroon and Nigeria 2002, Haiti and Cuba in 1997, Haiti and Columbia 1979, St. Lucia and France (Martinique) 1981, Dominica and France in 1988, Jamaica and Columbia in 1994, Guinea and Guinea Bissau case in 1985. The plaintiff concluded that in view of Article 15 of the United Nations Convention on Law of the Sea 1982, the principle/method of equidistance arising from the decisions of International Court of Justice relating to delimitation of maritime boundaries between adjacent states, the application of the principle of equidistance in bilateral treaties and states practice, given judicial approval to in the A-G Federation v. A-G Abia & 35 ors (2002) 6 NWLR pt.764 pg.542, it is entitled to maintain the pre-2006 boundary line between itself and the 1st defendant. C
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The 1st defendant submitted that the National Boundary Commission Act Cap N10 Laws of the Federation 2004 gave the Commission the power to undertake the 2004 and 2008 delineation ex-

ercises. There is no section of the National Boundary Act 2004 which commands the Commission to mandatorily apply the provisions of the United Nations Convention on Laws of the Sea 1982 in the resolution of Maritime boundary issues involving the Nigerian Federating States. The 1st defendant refuted the fact that the Supreme Court
B gave judicial approval to Strict Equidistance Method for demarcating boundaries of littoral states in accordance with Article 15 of the United Nations Convention on Law of the Sea or the Historical Title Method as the guiding principle for the demarcation of maritime boundaries
C between littoral states.

The 2nd defendant's case explained that the United Nations Convention on the Law of the Sea 1982 (Unclos) recognises the use of Equidistance/Ethical Lines Method for the delimitation of maritime boundaries where Historical Titles and other special circumstances
D do not apply. Article 15 of the Law of the Sea gave guidelines only to be applied in the demarcation of territorial seas between member states with opposite and adjacent coasts. The National Boundary Commission is not bound to apply the same method in the demarcation of boundaries between Federating States in Nigeria. The Supreme Court in the case of A-G Federation v. A-G Abia & 35 ors did not prescribe any method for demarcating boundaries of littoral states. The 2004 map reflected the presence of sand banks around the opening of Opobo River when the strict equidistance principle was applied. The 2nd defendant concluded that the application of strict
F equidistance principle is inappropriate as it does not effectively reflect the coastal relationships between the plaintiff and the 1st defendant and does not conform to the fundamental equitable principles of non-encroachment. In the 2008 map produced by the National
G Boundary Commission with the office of the Surveyor-General of the Federation, the mistakes and shortcomings in the 2004 map was rectified. The bisector/perpendicular method was engaged in the 2008 exercise. The 2nd defendant concluded that it has produced a result that effectively reflects coastal relationships leading to a proportion-
H ate division of the area in dispute.

The purpose of a declaratory action sought from court is essentially an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to pronounce or declare an existing state of affairs in law in his favour as may be discernible from

the averments in the statement of claim. In order to be entitled to a declaration, a person must show the existence of a legal right, subsisting or in the future and that the right is contested. What would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made it is prepared to give legal consequence to. A declaratory action is discretionary. B

Adigun v. Attorney-General of Oyo State (1987) 1 NWLR pt.53 pg.678.

Dantata v. Mohammed (2000) FWLR pt.21 pg.889; (2000) 7 NWLR (pt.664) pg.176. C

Ekundayo v. Baruwa (1965) 2 All NLR pg.211

Nwokidu v. Okanu (2010) All FWLR pt.522 pg.1633.

Gleaning through the facts in this case in the area of Public Revenue, Section 162 (i) of the 1999 Constitution stipulates as follows - D

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.* E

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, 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 G 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.

162 (3) *“Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Government and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.”* H

162 (4) *“Any amount outstanding 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.”

Section 153 (1) of the 1999 Constitution of the Federal Republic of Nigeria established the Revenue Mobilization Allocation and Fiscal Commission. The powers of the Commission are as contained in Part 1 of the Third Schedule to the Constitution in paragraph 32.

Section 6 1(e) of the Revenue Mobilization Allocation and Fiscal Commission Act Cap R 7 Laws of the Federation of Nigeria 2004, stipulates that the Commission shall -

e) “Make recommendations and submit its findings by a report thereto to the Government of the Federation or of the State, as the case may be regarding the formula for the distribution of the Federation Accounts and the Local Government Account”.

The case of A-G Federation v. A-G Abia State (No.2) 2002 6 NWLR 763 pg.542 is emphatic on the fact that prior to that decision, the southern or seaward boundaries of littoral states cannot be inferred from legislations or Acts.

In 2004, the National Assembly enacted into law an Act known as Revenue Allocation (Abolition of Dichotomy) in the Application of the Principle of Derivation Act. The Act reads as follows -

Section 1 (1) *“As from the commencement of this Act two hundred meter water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purpose of computing the revenue accruing to the Federation from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999 or any other enactment.”*

Section 2 *“Accordingly for the purpose of the application of the principle of derivation, it shall be immaterial whether the revenue accruing to the Federation Account or a State is derived from Natural Resources located onshore or offshore.”*

By the foregoing legislation, the extension deemed to have been given to the seaward boundary of the littoral State is specifically for the purpose of computing the revenue accruing to the Federation Account from the littoral States.

The Federal Government of Nigeria has constitutional and exclusive jurisdiction over offshore natural resources. By virtue of Section 1 (i) of the Offshore/Onshore Dichotomy Abolition Act 2004, all

littoral States do have some derivative interests in offshore natural resources located within 200 meters of water depth isobath. Which in other words means that the Act provides that the two hundred meter water depth isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purposes of computing the revenue accruing to the Federation Account from the State pursuant to the provisions of Section 162 of the 1999 A-G Federation v. A-G Abia State & 35 ors (No.2) SC.28/2001 delivered on the 5th of April 2002, 2002 6 NWLR pt.763 pg.264. A-G Adamawa & 4 ors v. A-G Federation & 8 ors (2005) 18 NWLR pt.958 pg.581. B C

It is therefore imperative for the Federation of Nigeria to depict the extension of the limits of Nigerian littoral States from the shore baseline into the sea up to the 200 meters isobath for the purposes of determining the revenue accruing to the littoral States from offshore oil resources. The National Boundary Commission was established by the National Boundary Commission Act Cap N10 Vol.10 Laws of the Federation 2004. The functions of the Commission shall be - D

a. To deal with, determine and intervene in any boundary dispute that may arise between Nigeria and any of her neighbours or between any two States of the Federation with a view to settling such dispute. E

b. To advise the Federal Government on issues affecting Nigeria's borders with any neighbouring countries.

c. To entertain any recommendation from the Technical Committee and to advise the Federal Government on such recommendations. F

d. To do such other things connected with boundary matters as the President may from time to time direct.

It is not disputed by the parties that the then President of the Federal Republic of Nigeria - President Olusegun Obasanjo directed the National Boundary Commission on the 26th of October 2006 to act as follows - G

1. To provide maps of littoral States to determine the attribution of oil/wells based on the technical map. H

2. To show the demarcation of the Maritime Boundaries of the littoral States.

3. To submit the map to the Revenue Mobilization Allocation and Fiscal Commission to enable it prepare the indices for the shar-

ing of the proceeds in the Escrow Accounts and subsequently the monthly 13% derivation fund.

This court is invited to rule on the method adopted by the National Boundary Commission in the determination of the Maritime Boundary between two neighbouring States - the Rivers State and Akwa Ibom State. In giving account of the performance of that statutory duty - the defendants gave evidence that the National Boundary Commission erroneously attributed to Rivers State 256 oil wells including the 172 oil wells now in dispute between the plaintiff and the 1st defendant on the Map AGF1 or D. It demarcated the boundary between Akwa Ibom State and Rivers State by using the Strict Technical Equidistant Solution or Strict Technical Equidistant Method. As an outcome of the exercise, the National Boundary Commission created a maritime Triangle which abuts Akwa Ibom State and Rivers State. Akwa Ibom State persistently protested against the 2004 littoral State Boundaries delineation map and suggested that the Historical Title Method be adopted. (Vide AGFA 1-3 or Exhibits C & D). According to the 1st defendant, the Presidency rejected that solution. The National Boundary Commission produced another map in 2008 using the Bisector lines/perpendicular method. Exhibit AGF3 or C.

The 2009 indices produced by the Revenue Mobilization Allocation and Fiscal Commission for the implementation of the 13% derivation policy was based on the maritime map of 2008 using the Bisector lines/perpendicular Method for the demarcation and not the Historical Titles as wrongly alleged by the plaintiff.

The plaintiff canvassed strongly in support of the demarcation by Strict Technical means as the only option acceptable outside the political solution agreement. That this method is predicated on Article 15 of the United Nations Convention on the Law of the Sea (Unclos) 1958 which was ratified by Nigeria in 1982 and principles of Public International Law Convention, Custom and State Practice. The plaintiff argued that the Equidistance Principle flows from Article 15 of 1982 United Nations Convention on the Law of the Sea (Unclos). However Article 2 of Unclos provides that for the purpose of the present articles "State" means -

1. The State and its various organs of government.
2. Constituents units of a Federal State.

3. Political subdivisions of the State.

4. Political subdivisions of the State which are entitled to perform acts in the exercise of the sovereign authority of the State.

5. Agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform acts in the exercise of the sovereign authority of the State.

6. Representative of the State acting in that capacity.

The decision of this court in the case *A-G Federation v. A-G Abia State & 35 ors* (supra) was definite on this issue. It is equally noteworthy that the avalanche of cases cited as examples by the plaintiff were decisions given in maritime disputes between two sovereign States and not between constituent states within a Federation except the decision between *Labrador Nova Scotia v. New found land* both States in Canada. The littoral States particularly Rivers and Akwa Ibom States are part of the thirty-six constituent States of Nigeria and not members of Comity of Nations who are signatories to the convention. The provisions of International Law in a convention do not apply directly to them but to the Federation of Nigeria. I have to remark also that in the Interpretation of our Statutes and the Constitution - we cannot follow judicial decisions which are not in *pari materia* with the provisions of our Statutes or constitution, while only judicial decisions based on foreign Statutes and constitution with identical provisions as the Nigerian Statutes or Constitution carry some measure of weight and persuasive effect.

Nigerian Ports Authority v. Ali Akar & Sons (1965) 1 All NLR 256.

Obadara v. President Ibadan West District Council Grade B Customary Court (1960) 1 All NLR pg.336.

The word "State" used in various International conventions including that on the Law of the Sea refers to a sovereign State and not to a State of the Federation. Thus, the suggestion that this suit affecting the maritime boundary of a State ought to be decided by an international decision or principle dealing with the convention on law of the sea has no merit since the parties herein are not persons within the scope of international law.

A-G Federation v. A-G Abia State (No.2) 2001 6 NWLR pt.764 pg.543.

In the cases of delimitation decided by domestic courts, it was

resolved that in any method used for delimitation

“It is the result which is predominant, the principles adopted are subordinate to the goal. The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. Each case should be considered and judged on its own merits. No attempt should be made here to over conceptualize the application of the principles.”

In 2004 in the exercise engaged by the Admiralty Consultancy Services, the strict equidistance lines were calculated using Caris software to produce the Maritime Boundary Map. It created a maritime Triangle which shifted all the 172 disputed oil wells into the boundary of Rivers State. The conclusion of the National Boundary Commission was that the exercise was not equitable. The exercise was repeated in 2008 - using the same Strict Technical Equidistant method, the equidistant media line-Bisector lines/perpendicular method - this result effectively reflects the coastal line leading to a proportionate division of the areas in dispute - and shifted the 172 disputed oil wells to the territory of the Akwa Ibom - the 1st defendant. This ushered in protests from the plaintiff - Rivers State who had hitherto enjoyed all the proprietary rights over the 172 oil fields from 2004 to 2006. When the President of the Federation intervened in the matter in 2006, the agreement reached by all the parties was seen as an equitable solution. The settlement became known as the Political Solution Agreement.

In the circumstance of this case, it will be unjust and highly inequitable to ask the parties to go back to the pre-2006 equidistance boundary delimitation which generated so much discontent and protests before parties settled for the Political Solution Agreement as a replacement. It is not possible to solve a local problem by invoking an international yardstick; it will become a matter of a fish out of water. The plaintiff is not entitled to this declaration for reason of being a party to the Political Solution Agreement. The declaration sought in Issue one is hereby refused.

Issue No. 2

Whether the 1st and 2nd defendants are by virtue of the Political Solution Agreement entered into in October 2006 and given effect to by the Presidential directive of November 2006 is estopped by agreement, conduct and representation from acting contrary to the

terms contained therein.

When the National Boundary Commission - the body saddled with the statutory responsibility of delimitation of boundaries declared the exercise of 2004 inequitable between the parties due practically to the functional error of the Commission, the plaintiff opted for the political solution agreement. As an alternative in this suit, the plaintiff prays that the Political Solution be enforced. B

In support of the foregoing, the plaintiff attached to the statement of claim filed as Exhibit AMB1, a presidential directive dated the 1st of November 2006 signed by the then President of the Federal Republic of Nigeria, President Olusegun Obasanjo which reads as follows - C

“Meeting on Implementation of the onshore/offshore Dichotomy Abrogation Law as it relates to the Maritime Boundaries between Cross River/Akwa Ibom/Rivers State vis-a-vis the Judgment of the Supreme Court of June 24, 2005.

You will recall that I presided over a meeting on the above subject on Friday, 27th October, 2006 at the Presidential Villa with Governor of Akwa Ibom and Rivers States present among other stakeholders. You will also recall that, in the course of the meeting which was (sic) at finding a lasting solution to the lingering problems over the oil wells between the concerned i.e. Akwa Ibom, Cross River and Rivers, three options were considered viz

Technical Solution

Historical Solution and

Political Solution

After exhaustive deliberations, the meeting opted for and upheld the political solution in line with the earlier advice given by the Attorney-General of the Federation and Minister of Justice. Subsequently, a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November 2006.

(1) Cross River/Akwa Ibom States

(a) Cross River - 76 well

(b) Akwa Ibom - 14 wells

(ii) Akwa Ibom/Rivers States

Akwa Ibom - 86 wells

Rivers - 86 wells

H

Total: Cross River- 76 wells, Akwa Ibom 100 wells and Rivers - 86 wells. Accordingly, the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final state for implementation by all concerned with effect from the said date 1st November 2006. Above is therefore, for your information and further necessary (sic) please.
Olusegun Obasanjo”

“The National Boundary Commission advised President Olusegun Obasanjo that in view of the difficulties in the application of the technical as well as the Historical Title Solutions and the court cases instituted by Cross River State at the Supreme Court and that of Akwa Ibom at the Federal High Court all against the indices derived from purely technical delimitation undertaken by the National Boundary Commission, in view of this and without prejudice to the technical delimitation, a political solution based on weighting 25% of the areas disputed between Cross River and Akwa Ibom on the one hand and 50% between Akwa Ibom and Rivers State on the other hand may be considered after due consultation with the state parties. This would entail some gains and losses of certain number of oil wells from each of the three States relevant maps and oil wells distribution are attached herewith.”

The plaintiff revealed that it agreed to the Political Solution Agreement though it did not go down well with the people of Rivers State for peace to reign in the Niger Delta and the solution was agreed upon by the parties with no further objection. I have to revisit AMB1 for reason of emphasis.

The Sharing formula was reached at a meeting presided over by President Olusegun Obasanjo at the presidential villa. The Governors of Akwa Ibom and Rivers State were present. The purport of the meeting was to find a lasting solution to the lingering problems over the oil wells between Akwa Ibom, Cross River and Rivers State. Three options were exhaustively considered as follows -

1. Technical Solution
2. Historical Solution
3. The Political Solution

The meeting opted for the political solution in line with the advice of the Attorney-General of the Federation and Minister of Justice and the National Boundary Commission. In view of the pres-

ence of the Attorney-General and Minister for Justice, all the legal implications of the political solution must have been considered before a consensus was reached and the meeting agreed on the following sharing formula as from the 1st of November 2006 -

(i) Cross River/Akwa Ibom States

a. Cross River - 76 wells

b. Akwa Ibom - 14 wells

(ii) Akwa Ibom/Rivers States

a. Akwa Ibom - 86 wells

b. Rivers - 86 wells

Present at the meeting were -

1. President of the Federal Republic of Nigeria - President

Olusegun Obasanjo

2. Governors of Akwa Ibom, Cross Rivers and Rivers State

3. Honourable Minister of Finance

4. Chairman Revenue Mobilization Allocation and Fiscal Com-

mission

5. Accountant-General of the Federation

All state parties were duly consulted at the meeting.

In a paper presented by the National Boundary Commission to the Minister of State Petroleum on the implementation of the Allocation of Revenue (Abolition of Dichotomy) in the Application of the Principle of Derivation Act, 2004 - a paper attached to this suit as NBC1 - the National Boundary Commission maintained that-

a. If the submissions of Akwa Ibom to use the Historical Method Solution are upheld, they would prove to be illegal and inconsistent with the judgment of the Supreme Court of June 2005.

b. That they would entail revising the whole study.

c. That they would question the basis of Nigeria International Negotiations and Agreements.

d. They would have the effect of increasing the land areas of some littoral states as can be seen in the maps.

e. That the claims of Akwa Ibom State's Government that all the oil wells under reference reflect Akwa Ibom languages, names, deities, culture and history lacks substance and cannot be weighed in their favour.

The 2004 exercise gave all the disputed oil wells to the plaintiff - while the 1st defendant protested. The 2008 exercise attributed all

the disputed oil wells to the first defendant - and the plaintiff disagreed. The plaintiff described the 2008 exercise as a somersault. It is the conclusion that in the demarcation of maritime boundaries no one particular principle is applied, and that every delimitation dispute is specific on its facts, assessed from relevant or special circumstances. Such special circumstances are also referred to and deemed as relevant circumstances in the case law of the courts and arbitral jurisprudence as facts necessary to be taken into account in the delimitation process. Socio-Economic, Security and Political considerations were held to be pertinent factors in the catalogue of relevant circumstances - by Malcom Shaw Q.C. learned author of International Law (5th Edition) Cambridge University Press (2003).

The broad general principle of every maritime boundary dispute settlement is the achievement of an equitable solution consistent with domestic laws and practices. Oil attribution has in several instances and over the years been acknowledged by the Nigerian State to be a significant factor. This court can conclude that the paramount thing when dealing with maritime boundary dispute between States is to offer an equitable solution. This was the solution reached by President Obasanjo in his presidential directive to the parties on the 1st of November 2006 Exhibit AMB1. The Political Solution was meant to be a lasting solution to the lingering problems over the oil wells between the state concerned -Akwa Ibom, Cross River and Rivers. The political solution was adopted for peace to reign between the neighbouring states of the Niger Delta and Nigeria as a nation. The Supreme Court did not in the case of A-G Federation v. A-G Abia State & 35 ors or in any other case give judicial approval to the strict equidistance method as the acceptable method for drawing up maritime boundary maps of littoral states. From the circumstance of this case and the evidence of the parties, it is quite clear that the strict equidistance method pre-2006 advanced by the plaintiff was not a conclusive or decisive method of maritime boundary delimitation between the disputing states. A method of special circumstance based on an agreement between the relevant states - the Political solution agreement has offered an equitable solution in the delimitation of maritime boundaries between these two coastal states. Even the 2nd defendant agreed that the essence of the agreement was to foster peace. The National Boundary Commission attempted to justify the

2008 delimitation but prior to that, the political solution agreement existed between the parties since the 1st of November 2006 on its recommendation.

The crucial issue necessitating demarcation of boundaries of littoral states are that -

a. As from the commencement of the Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act 2004, the two hundred meter water depth isobaths contiguous to a state of the Federation shall be deemed to be a part of that state for the purpose of computing the revenue accruing to the Federation Account from the state pursuant to the constitution of the Federal Republic or any other enactment. B
C

b. Accordingly for the purposes of the application of the principle of Derivation, it shall be immaterial whether the revenue accruing to the Federation Account from a state is derived from natural resources located onshore or offshore. D

The aspect of the issue of boundary which the case of A-G Adamawa & 21 ors v. A-G Federation (supra) had properly addressed is very crucial and this calls for emphasis that-

“A careful reading of Section 1 subsection 1 of the 2004 Act shows that the extension deemed to have been given to the seaward boundary of the littoral state is specifically for the purpose of computing the revenue accruing to the Federation Account to the littoral states and nothing else. The boundary is to be deemed to be two hundred meter water depth isobath contiguous to the littoral state.” E
F

The boundary is imaginary and not real and the emphasis is on the accrual of revenue. The case of Attorney-General Cross River State v. Attorney-General Federation (2005) 15 NWLR (pt.947) pg. 71 at pg. 101 amplified further on the definition of boundary that - G

“A boundary is an imaginary line which marks the confines or line of division of two contiguous parcels of land. The term is also used to denote the physical objects by reference to which the line of division is described, as well as the line of division itself. In that sense boundaries may be classified as natural and artificial according as to whether or not such physical objects are man-made. Boundaries are fixed either H

1. By proved acts of the respective owners as for example by agreement, assurance, undisturbed possession and estoppel.

2. *By statutes or orders of the authorities having jurisdiction and*

3. *By legal presumption.*”

The Boundary of Littoral States for the purpose of applying the principle of derivation pursuant to the Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act 2004 as defined in the case of A-G Adamawa & 4 ors v. A-G Federation & 8 ors (2005) 18 NWLR (pt.958) pg.581 is -

“The boundary is to be deemed to be the two hundred meters water depth isobath contiguous to the littoral states.”

The presidential directive AMB1 was communicated to those concerned who were present at the meeting as follows -

Governor of Akwa Ibom

Governor of Cross Rivers

D Governor of Rivers

Minister of Finance

Chairman of Revenue Mobilization, Allocation and Fiscal Commission

Director-General of the Nigerian Boundaries Commission

E Accountant-General of the Federation

On the efficacy of the Political Solution agreement, President Olusegun Obasanjo or any President of the Federal Republic of Nigeria has the vires to propose and approve the Political Solution Agreement for the following reasons being a policy decision made in the interest of the parties -

a. As an appropriate authority as regards Federation Accounts by virtue of Section 162 (2) of the 1999 Constitution.

sb. The National Boundary Commission Act Cap N10 vol.10
G Laws of Nigeria 2004 - Section 3 (a) stipulates that -The Commission shall do such other things connected with boundary matters as the President may from time to time direct.

c. In the area of National Security as the President and Commander-In-Chief of the Armed Forces.

H d. According to the evidence of the 1st defendant that the Political solution Agreement was presented to the National Assembly pursuant to Section 162 (2) of the 1999 Constitution.

The Accountant-General of the Federation had since April 2009 revised the Indices for the derivation of revenue to deprive the plain-

tiff of the revenue accruing from the 86 oil wells attributed to it pursuant to the political solution method. Both the plaintiff and the 1st defendant represented by their Governors had entered into this Political Agreement Solution since October 2006. Both parties adhered to it until April 2009. The final stanza of the Political Solution Agreement AMB1 reads:-

“Accordingly the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final state for implementation by all concerned with effect from the said date 1st November 2006.”

The plaintiff pleaded that the defendants are estopped from acting contrary to the terms contained therein by invoking estoppel by conduct, by agreement and representation and supported same with cases. The various species of Estoppel referred to by the plaintiff are applicable to the government parastatals which have refused to enforce the presidential directives in the Political Solution Agreement. The terms of the agreement are meant to be a final solution. Section 151 of the Evidence Act Cap E4 Laws of the Federation 2004 provides that -

“When one person has by his declaration, act or omission intentionally caused or permitted another to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed in any proceedings between himself and such person or such person’s representative in interest to deny the truth of that thing.”

For a conduct to estop, it must be clear and unequivocal and must have led the other person to suffer loss. The plaintiff in this case continues to suffer loss by conceding the attribution of 86 wells to Akwa Ibom State.

Ferguson v. Duncan (1953) 14 WACA 316.

Robert Koney v. Union Trading Co. Ltd. (1934) 2 WACA 1888.

S. Nasser & Sons Nig. Ltd. v. Lagos Executive Dev. Board (1959) 4 FSC 242.

Fakorede v. A-G (West) (1972) 3SC 81.

Ikpuku v. Ikpuku (1991) 5 NWLR (pt.193) pg.571.

Odua Investments Ltd. v. Talabi (1991) 1 NWLR (pt.170) pg.79.

Menakaya v. Menakaya (1996) 9 NWLR (pt. 172) pg.256.

Acceptance of the Political Solution Agreement and reaping

derivative funds from 2006 to 2009 had shut the mouth of the 1st defendant. The 2nd defendant is also prohibited from taking any steps which will abate the terms of the agreement as they were parties to the agreement. The National Boundary Commission cannot produce the 2008 map while the Revenue Mobilization Allocation and Fiscal Commission has no basis to act on the map to produce the Revised 2009 Indices for the implementation of 13% derivation fund while the Political Solution is still binding on them. It was decided in the undermentioned cases that -

C “A party cannot rely or take the benefits of the contents of a document and at the same time turn round to question the legality of the same document. It is the rule of equity that one cannot approbate and reprobate.

Fakorede v. A-G Western State (1972). 1 All NLR (pt.1) pg.178.

D Agidigbi v. Agidigbi (1992) 2 NWLR (pt.221) pg.98.

Ladoga v. Durosinmi (1978) 3SC 91.

“It is a doctrine of justice and equity that it would be unjust and inequitable to blow hot and cold - this principle finds expression in the latin maxim “Allegans Contraria Non Est Audiendus.”

E Tika-Tore Press Limited v. Abina & ors (1973) All NLR pg.887.

Ude v. Osuji (1998) 13 NWLR (pt.583) pg. 1

Aina (1973) 1 All NLR (pt.11) pg.244.

Amaro Ltd. v. B.I.M. Ltd. (1991) 8 NWLR (pt.207) pg.37.

F Iga v. Amakiri (1976) 11 SC 1.

Okonkwo v. Kpajie (1992) NSCC (pt.1) pg.349.

Adeyemo v. Idu & ors (1998) 4 NWLR (pt.547) pg.504.

Rowafnc & Far Eastern Ltd. v. John Chief Artenake & ors (1958) WRNLR pg. 92.

G Oyeeyemi v. Commissioner for Local Government (1992) 2 NWLR (pt.226) pg.661.

WAEC v. Akinkunmi (2002) 7 NWLR (pt.766) pg.327.

Iloabachie v. Iloabachie (2002) 5 NWLR (pt.656) pg. 178.

H Immediately after the administration of President Obasanjo - the Political solution generated comments within the parties. The defendants described the agreement as the arbitrary political prescription of President Obasanjo which focused only on how to share the derivation revenues that accrued from the 172 oil wells without addressing the issues of maritime boundary.

The defendants cannot turn round to plead or give evidence that they were not signatories to the presidential directive AMB1 as the contents of the document show that they were parties to the agreement. The wordings of Exhibit AMB1 are crystal clear and not complex. Moreover, a court of law must respect the sanctity of the agreement reached by the parties -where they are in consensus ad idem as regards the terms and conditions freely and voluntarily agreed upon by them and expressed in a form like Exhibit AMB1. B

Sona Breweries Plc v. Peters (2005) 1 NWLR pt.908 pg.478.

Owoniboy Technical Services Ltd. v. U.B.N. Ltd. (2003) 15 NWLR pt.844 pg.545. C

SE Co. Ltd v. N.B.C.I. (2006) 7 NWLR pt.978 pg.201.

Cell and Nephwi Ltd. v. Ouston (1914) AC 251.

Orient Bank (Nig.) Plc. v. Bilante International Ltd. (1997) 8 NWLR pt.515 pg.37. D

This issue is resolved in favour of the plaintiff.

Issue No. 3

Whether the 1st defendant having not in any manner or form proved authority and sovereignty over the Islands situated in and around the area which is subject matter of this action entitled to a declaration that the Historical Titles should be taken into consideration in the delimitation of the boundary between it and the plaintiff. E

After the parties had adopted the Political Solution Agreement AMB1, the 1st defendant's governor wrote a letter dated 13th January 2008 Exhibit AMB4 to President Musa Yar'Adua suggesting that Historical Method be considered for demarcation of the maritime boundaries for the littoral States. The 1st defendant gave evidence that the suggestion was rejected by the Presidency, contrary to the contention of the plaintiff in this suit. It will amount to an academic exercise to consider this issue - which had been overtaken by events. F

Issue IV

Whether the plaintiff is entitled to the proprietary and economic rights arising from and pertaining to the maritime boundary delimitation which is subject matter of this action. H

The plaintiff argued that the claim to the area in dispute is based principally on geographical location of the plaintiff as a littoral State. The rights are proprietary rights belonging to the plaintiff. The plaintiff relies on a broad interpretation of Section 43 of the 1999

Constitution. Section 43 of the 1999 Constitution stipulates that -

“Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.”

B Proprietary Rights are those rights which go with ownership of real property or a business. These are rights exercised as owner of the land against a defendant. It is a right which is part of a person's estate, assets or property as opposed to a right arising from the person's legal status. They are designed to protect ownership.

C Ogunniyi & Anor v. Adaramola & Anor (1973) All NLR, 1973 SC Pg.47.

Oyewunmi & Anor v. Ogunesan (1990) 5 SC pt.1 pg.1.

Oko v. Ntukidem & ors (1993) 2 SCNJ 33.

D Prior to the promulgation of the Revenue Allocation (Abolition of Dichotomy In the Application of the Principle of Derivation) Act 2004, and as at the time the judgment in A-G Federation v. A-G Abia State (No. 2) (supra) was pronounced, the Federal Government alone and not the littoral States can lawfully exercise legislative, executive and judicial powers over the maritime belt or territorial
E waters and sovereign right over the exclusive economic zone subject to universally recognised rights. The power accrued to Nigeria as a sovereign state and a coastal state (country) under international conventions such as the United Nations Convention on the Law of the Sea 1982 and not to her littoral states who have no international
F personality. The southern boundaries of the littoral States of Nigeria are the sea. 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 from that state was the
G low water mark of the land surface thereof or the seaward limit of their internal waters. The Abolition of Dichotomy Act 2004 has now extended the southern boundary of each of the littoral states to two hundred meters water depth isobath contiguous to a state and that shall be deemed to be part of that state, a notional extension, not
H ceded to the states, but for the purpose of derivation fund only. It is therefore imperative that for the purpose of computing the revenue accruing to the Federation Account from the States of the parties – the plaintiff and the 1st defendant - The National Boundary Commission has to demarcate the maritime boundaries of the two states

based on the Political Solution Agreement now approved by this court in this judgment. It is the law and non sequitor that a state shall be entitled to natural resources emanating from within its boundaries so as to qualify for the allocation of funds from the Federation Accounts. The definition of such natural resources includes oil and gas wells. A-G Federation v. A-G Abia State & 35 ors (2002) 6 NWLR (pt.763) B pg.542.

The 86 oil wells in this case are now part of the natural resources of Rivers State going by the Political Solution Agreement. It is a logical conclusion that where you claim proprietary right or right of ownership over a property, you must have dominion or absolute ownership over that property. The extent of the plaintiff's proprietary rights over them are limited to that permitted by the community reading of the provisions of Section 162 (2) on the principles of 13% derivation and the Allocation of revenue (Abolition of Dichotomy D in the Principle of Derivation) Act 2004, Section 44 (3) of the 1999 Constitution and Section 1 (i) of the Minerals and Mining Act Cap M12 LFN 2004. It is the finding of this court that hinged on the Political Solution Agreement; the plaintiff is still entitled to the derivative revenue accruing from the 86 wells. There is a continuous and autonomous Federal Government of Nigeria and a change in leadership does not relieve any incumbent government of its basic responsibilities. The defendants cannot take advantage of the change in leadership to resile from the terms of the political solution agreement, F which is a policy decision made in the interest of the Nation.

With fuller reasons given in the lead judgment, I agree with the reasoning and conclusion of my learned brother, Katsina-Alu, Hon. Chief Justice of Nigeria that there is merit in the case of the plaintiff. Consequently, judgment is hereby entered in favour of the plaintiff. I G abide by the consequential orders made in the lead judgment.

GALADIMA JSC

The Plaintiff Commenced this Suit before this Court against the defendants by way of originating summons dated 29/1/2010 based H on this Court's Original jurisdiction. However pursuant to Order 3 rule 7 of the Supreme Court Rules, on 23/2/2010 this Court ordered the conversion of the Originating Summons processes to a Writ of Summons processes and directed the parties to file their respective

frontloaded originating processes. The plaintiff, therefore, filed, inter alia, a Statement of Claim on 5/3/2011 together with an Affidavit evidence sworn to on 5/3/2010 by Mrs. Aisha Mohammed Bello, a Solicitor, under the employment of Messrs. M. A. Bello & Co., then Counsel to the Plaintiff. Also filed by the Plaintiff were the following processes documents amongst others:

- (a) Affidavit Evidence in Support of the Plaintiff's action sworn to on 30/8/2010 by Adekunbi Ibikunle-Awopetu Esq., counsel to the plaintiff.
- (b) Further Affidavit in Support of the plaintiff's action sworn to on 23/9/2010 by Adekunbi Ibikunle-Awopetu, Esq.
- (c) 2nd Further Affidavit in Support of plaintiff's Action sworn to on 29/10/2010.
- (d) 3rd Further Affidavit in Support of plaintiff's action sworn to on 5/1/2011.
- (e) 4th Further Affidavit in Support of plaintiff's action sworn to on 6/1/2011
- (f) Plaintiff's Briefs of Argument dated 27/8/2010 but filed on 30/8/2010.
- (g) Plaintiff's Reply Brief to the 2nd Defendant's Brief filed on 5/1/2011.
- (h) Plaintiff's Written Address in Response to 2nd Defendant's Preliminary Objection dated and filed 6/1/2011.
- (i) Witness Statement of Gaius Assor dated and filed on 2/9/2010.

For a better understanding of the plaintiff's case, I consider it apposite to reproduce in full the plaintiff's Statement of Claim which are as follows:-

"1. The Plaintiff is the Attorney General of Rivers State of Nigeria and brings this action as the representative of the Government of Akwa Ibom State.

2. The 1st defendant is the Attorney General of Akwa Ibom State of Nigeria and is sued as the representative of the Government of Akwa Ibom State.

3. The 2nd Defendant is the Attorney General of the Federation and is sued as the representative of the Federal Government of Nigeria and other Agencies or Parastatals of the Government (in particular National Boundary Commission NBC, Revenue Mobilization

Allocation and Fiscal Commission - RMAFC, and Accountant General of the Federation AGF) against whom a complaint is made or in connection with which an allegation of fact is leveled.

4. *The Plaintiff states that upon the implementation of the Onshore/Offshore Dichotomy abrogation Law 2004 pursuant to the decision of this Honourable Court in Suit No. SC./28/2001 between A.G. Cross Rivers State Vs A.G. Federation a dichotomy separating onshore and offshore production and restricting oil producing states to draw their 13% derivation funds from revenue produced onshore only was introduced.*

5. *The Plaintiff avers that the 2nd Defendant thereafter directed its agency - the National Boundary Commission (NBC) to produce maps of littoral states to determine the attribution of oil wells based thereon, with a view to demarcating the maritime boundaries of littoral states including the Plaintiff and 1st Defendant.*

6. *Further to the above, the Plaintiff states that the NBC was directed to submit the maritime maps to the Revenue Mobilization Allocation and Fiscal Commission (RMAFC) for purposes of preparing indices for the sharing of the 13% derivation funds to the littoral states on a monthly basis.*

7. *The Plaintiff avers that upon the drawing up of the relevant maps by the NBC and submission of same to the RMAFC for necessary action, the RMAFC started to receive complaints from littoral states challenging the Boundary Demarcation and one of these complaints was lodged by the 1st Defendant*

8. *The Plaintiff avers that the complaint of the 1st Defendant was that its boundary with the Plaintiff showed a disputed annexation of a triangular portion of the Sea from Akwa Ibom to Rives State and requested for application of the Historical Titles Method as against the use of the strict Technical Equidistance lines method used by the NBC in drawing up the maritime maps on the ground that in accordance with Articles 15 and 7.1 of the United Nations Convention on the Law of the Sea (USMCLOS) 1982, only the Historical Titles Method is applicable.*

9. *The Plaintiff avers that apart from the fact that Articles 15 of UNCLOS 1982, recognizes the Strict Equidistance technical Lines Method as the applicable method for use in drawing up maritime maps, this Honourable Court in the case of Attorney General of the*

Federation Vs Attorney General of Abia State (2002) FWLR (PT. 10) 1 specifically excluded the use of the Historical Titles Method for use in boundary demarcation between littoral states.

10. The Plaintiff avers that in the case of *A.G. Federation Vs A.G. Abia State & 35 Ors* (supra), the Strict technical Equidistance Lines Method for demarcating boundaries of littoral states in accordance with Article 15 of the UNCLOS 1982 was given judicial approval as the acceptable method for drawing up maritime maps of littoral states in Nigeria.

11. The Plaintiff avers that sometime in 2006, the 2nd Defendant intervened and the Plaintiff and 1st Defendant represented by their respective executive Governors met and agreed to a Political Solution Method which led to the weighting of 50% of the disputed areas comprising 172 oil wells with each of the two littoral states receiving 86 oil wells and the revenue accruing therefrom with effect from November, 2006. This agreement which was reduced into writing and dated 31st October, 2006 will be relied upon at the trial.

12. The Plaintiff avers that it accepted the Political Solution Method agreement in the interest of peace and stability of the Niger Delta Region and further states that the Agreement which was freely and willingly agreed to by the two states regulated the attribution of the 172 oil wells and 13% derivation funds payable therefrom until the tail end of 2007 when the 1st Defendant unilaterally sought to rescind the agreement and commenced his agitation for the application of the Historical Titles Method contrary to the Supreme Court decision and Article 15 of UNCLOS, 1982 aforesaid.

13. The Plaintiff avers that in response to this fresh agitation by the 1st Defendant, it has supplied cogent reasons why the Historical Titles Method (which has never been applicable) was not feasible and requested for the reversal to the acceptable strict technical Equidistance Lines Method judicially approved by this Honourable Court in the case of *A.G. Federation Vs A.G. Abia State & 35 Ors* (supra) and UNCLOS, 1982. The Plaintiff will rely on both the 1st Defendant's complaint and his response at the hearing.

14. The Plaintiff will contend that the 2008 maritime boundary map produced by the National Boundary Commission - NBC was produced in deference to the aforesaid judgment of this Honourable Court and based on the Strict Technical Equidistance

Lines Method. The Plaintiff will rely on the 2008 maritime boundary map drawn by the LNBC using the strict Technical Equidistance Lines Method at the hearing.

15. The Plaintiff avers that rather than insist that the parties abide by the Political Solution agreement referred to above, the NBC in defiance of the subsisting decision of this Honourable Court and the Political Solution Agreement aforesaid has since caved in to the pressure and influence of the 1st Defendant to recommend the use of the Historical Title Method without any legal justification whatsoever vide its letter dated 13th February, 2008 to the President of the Federal Republic of Nigeria (2nd Defendant). B
C

16. The Plaintiff avers that as a follow up to the letter of NBC referred to above, the Revenue Mobilization Allocation and Fiscal Commission -RMAFC, set up a Crude Oil Monitoring Committee which at its retreat held in Kano between August 19 - 21, 2008, recommended the attribution of 988 oil wells (including the disputed 172 oil wells) to the 1st Defendant through the use of coordinates produced by the Department of Petroleum Resources and the Historical titles Method. The report of this committee will be relied on at the hearing. D
E

17. The Plaintiff avers that the Defendants particularly the 2nd Defendant acting in concert with the Revenue Mobilization allocation and Fiscal Commission and the Accountant General of the Federation have since jettisoned the Political Solution agreement and recommended that the President of the Federal Republic of Nigeria approves the report pursuant to which a 2009 Revised 13% Derivation Indices has since been produced by the RMAFC to the detriment of the Plaintiff and in favour of the 1st Defendant. The Revised Indies and the RMAFC letter forwarding it to the Accountant General of the Federation dated 12th March, 2009 will be relied on at the hearing. F
G

18. The Plaintiff avers that as a result of the above facts, the 2nd Defendant through its aforesaid agencies and parastatals have ceded the entire 172 oil wells and have since April, 2009 been paying huge revenue accruing therefrom to the 1st Defendant unlawfully despite the pendency and subsistence of the Political Solution agreement freely entered into by the 1st Defendant and Plaintiff in 2006. H

19. The Plaintiff will further contend that despite the subsisting

decision of this Honourable Court in *A.G. Federation Vs A.G. Abia & 35 ors (supra)* which prescribes the use of the *Strict technical Lines Method* as the applicable method for demarcating boundary maps of littoral states as against the *Historical Titles Method*, the 2nd Defendant through its agencies have since reverted to the use of the *Historical Titles Method* to cede the entire 172 oil wells (including the 86 oil wells belonging to the Plaintiff pursuant to the subsisting *Political Solution Agreement*) to the 1st Defendant.

20. The Plaintiff avers that in a bid to redress the unlawful actions of the Defendants and its agencies aforesaid, suit No. FHC/ABJ/CS/501/508 was earlier instituted in September, 2008 at the Federal High Court, Abuja against the Defendants but the trial court in its ruling delivered on 26th January, 2010 declined jurisdiction on grounds that dispute of this nature between 2 states can only be resolved by this Honourable Court pursuant to Section 232(1) of the 1999 Constitution.

21. The Plaintiff avers that the Defendants have since jettisoned the *Political Solution agreement* unilaterally and reverted to use of the *Historical Titles Method* in ceding the entire 172 oil wells to the 1st Defendant thus introducing a new revenue formula without complying with Section 162(2) of the 1999 Constitution.

22. The Plaintiff shall contend that the 2009 Revised Derivation Indices made pursuant to the RMAFC Report 2008, and based on the *Historical Titles Method* was approved by the 2nd Defendant without the approval of the National Assembly first being sought and obtained pursuant to Section 162(2) of the 1999 Constitution.

23. The Plaintiff avers that the 2nd Defendant and its agencies including the RMAFC and the Accountant General of the Federation has since April, 2009 been implementing the 2009 Revised Derivation Indices and have been paying billions of Naira belonging to the Plaintiff unlawfully on a monthly basis to the 1st Defendant.

24. The Plaintiff avers and will contend that by virtue of the subsisting *Political Solution agreement* which is still binding on the 1st Defendant and Plaintiff, the 86 oil wells belongs to the Plaintiff and cannot be competently ceded to the 1st Defendant through the use either the *Historical Titles Method* or the 2009 Revised Derivation Indices by the Defendants acting unilaterally and without the input of the National Assembly first sought and obtained in line with the pro-

visions of Section 162(2) of the 1999 Constitution.

25. *The Plaintiff pleads that the payments of huge funds emanating from the disputed oil wells to the 1st Defendants since April, 2009 are unlawful and unconstitutional and same ought to be reversed in the supreme interest of justice.*

26. *The Plaintiff pleads that it now believes that unless restrained by this Honourable Court, the Defendants and its aforesaid agencies shall continue to perpetuate their unlawful activities in respect of the disputed oil wells in favour of the 1st Defendant to the detriment of the good people of Rivers State.*

27. *The Plaintiff pleads that the most decisive issues at all times materials to this suit are:*

(i) *Whether the 2nd Defendant and its agencies can exercise their statutory powers to cede the disputed 172 oil wells to the 1st Defendant?*

(ii) *Whether the Defendants can unilaterally jettison the Political Solution Agreement agreed between the 2 states and revert to the use of the Historical Titles Method in demarcating the maritime map of the littoral states contrary to the position laid down by this Honourable Court in the case of A.G. Federation Vs A.G. Abia State & Ors (supra) and provisions of Article 15 of UNCLOS, 1982?*

(iii) *Whether the Defendant can continue to implement the 2009 Revised Derivation Indices in paying huge revenue to the Defendant without the new formula first being approved by the National Assembly pursuant to Section 162(2) of the 1999 Constitution?*

(iv) *Whether the Defendants are not liable to compute and pay all revenue belonging to the Plaintiff but unlawfully being paid to the 1st Defendant since April, 2009 back to the Plaintiff in the interest of justice?*

28. *The Plaintiff pleads and shall rely on all relevant documents attached to the affidavit evidence to their full intent and effect at the hearing of suit and puts the Defendants by themselves or through their aforesaid agencies and parastatals on notice to produce the originals and/or Certified true Copies of these documents at the hearing.*

29. *Whereof the Plaintiff has been damnified and claims against the Defendants jointly and severally as follows:*

(i) A DECLARATION that it is unlawful and unconstitutional for the Defendants by themselves and through any other statutory bodies including the National Boundaries Commission and Revenue Mobilization Allocation and Fiscal Commission to revert to the use of the Historical Titles Method for the delimitation of the maritime boundaries between the Plaintiff and 1st Defendant without the subsisting judgment of the Supreme Court in the case of Attorney General of the Federation Vs Attorney General of Abia State & 35 Ors (supra) first being set aside and or vacated.

(ii) A DECLARATION that in accordance with the judgment of the Supreme Court of Nigeria in the case of Attorney General of the Federation Vs Attorney General of Abia State & Ors (supra) and Article 15 of the United Nations Convention on the Laws of the Sea 1982 (UNCLOS) the Strict Equidistance Technical Lines method is the applicable method judicially approved for use in demarcating the maritime boundaries of littoral states in Nigeria.

(iii) A DECLARATION that it is unlawful and unconstitutional for the Defendants by themselves or through any statutory body of the Federal Government of Nigeria to alter the quantum of revenue accruing to both the Plaintiff and 1st Defendant from the Federation Account in favour of the 1st Defendant by reliance on a Report produced by the Revenue Mobilization Allocation and Fiscal Commission which is yet to be tabled before the National Assembly for its approval and sanction in accordance with Section 162(2) of the 1999 Constitution of the Federal Republic of Nigeria and on the historical titles method which has never been applicable.

(iv) A DECLARATION that the 172 oil wells ceded to the 1st Defendant by statutory bodies of the 2nd Defendant based on the use of the Historical Titles Method, belong to the Plaintiff if the Applicable strict equidistance lines method is resorted to.

(v) DECLARATION that the act of the Defendants with the aid of statutory bodies of the 2nd Defendant, in ceding 172 oil wells belonging to the Plaintiff to the 1st Defendant and paying the revenue accruing therefrom to the 1st Defendant since April, 2009 is unlawful, wrongful and unconstitutional.

(vi) CONSEQUENTIAL ORDER setting aside the 2009 Revised Indices for the payment of 13% derivation to littoral states produced pursuant to the report produced by the revenue Mobilization

Allocation and Fiscal Commission for being unlawful, unconstitutional, null, void and of no legal effect whatsoever.

(vii) *CONSEQUENTIAL ORDER* directing the Defendants to forthwith compute and calculate all such sums of money accruing from the 172 oil wells paid to the 1st defendant with effect from April, 2009 until the determination of this suit and for the payment of all such sums to the Plaintiff by the 1st Defendant. ^B

(viii) *ALTERNATIVE TO RELIEF (Vii)*, an order directing the defendants to forthwith compute and calculate all such sums of money accruing from 86 oil wells belonging to the Plaintiff by virtue of the subsisting and binding Political Solution agreement which sums has since been unlawfully paid to the 1st defendant with effect from April 2009 until the determination of this suit and for the payment of all such sums to the Plaintiff by the 1st Defendant. ^C

(ix) *INTEREST* at the prevailing commercial rate on the total sums calculated as due to the Plaintiff from the date of judgment until full liquidation of the judgment sum. ^D

(x) *AN ORDER* of perpetual injunction restraining the Federal Government of Nigeria and the 1st Defendant, their functionaries, statutory bodies or agencies whosoever including the Revenue Mobilization Allocation and Fiscal Commission, National Boundaries Commission and Accountant General of the Federation from acting on the report produced by the Revenue Mobilization Allocation and Fiscal Commission and the 2009 Revised Indices for the payment of 13% derivation to littoral states and from altering the maritime boundary maps between the Plaintiff and the 1st Defendant through the use of the Historical Titles Method in favour of the 1st Defendant and ceding any of the disputed 172 or 50% oil wells thereof or any other oil well belonging to the Plaintiff to the 1st Defendant without legal justification or approval. ^E ^F

(xi) *ANY further reliefs in the interest of justice.* ^G

The 1st Defendant filed its initial Statement of Defence dated 28/4/2010 which, with the leave of this Court that was granted on 2/11/2010, was supplanted by the 1st Defendants First Amended Statement of Defence dated 9/11/2010. The 1st Defendant also filed two Witnesses' Statements dated 28/4/2010 and respectively sworn to by Okoko Essien the 1st Defendant's Surveyor-General and Augustine Dominic Odokwo, the Director of Civil Litigation in the Ministry of ^H

Justice.

In their Statement of Defence the 1st Defendant admitted in general terms, the plaintiff's averments but specifically denies paragraphs 9, 10, 11, 12, 13, 14, 19 and 26 of the Statement of Claim. The 2nd Defendant also filed its originating processes, notable amongst
B which are the following:

(a) 2nd Defendant Amended Statement of Defence dated 1/11/2010.

(a) Witness Statement of Mohammed Sani Isah NBC Director;
C Inter-State Boundaries Department sworn to on 1/11/2010 and

(b) 2nd Defendant Further Affidavit Evidence Sworn to on 16th December, 2010 by Yunusa Umaru, Counsel to the 2nd Defendant.

In the Plaintiff's Brief of Argument in support of their Statement of Claim, 4 issues were identified for the determination as follows:

*"(i) Whether the plaintiff is entitled to a declaration that in accordance with Article 15 of the United Nations Convention on the Law of the Sea 1982, and International State Practice regarding
E Maritime boundary delimitation to maintain the pre - 2006 equidistance boundary delimitation between it and the 1st defendant.*

(ii) Whether the 1st and 2nd defendants are by virtue of the Political Solution agreement entered into in October 2006, given effect to by the Presidential directive of November 2006 estopped by agreement conduct and representation from acting to the contrary to the terms contain therein.
F

(iii) Whether the 1st defendant having not in any manner or form proved authority and sovereignty over Islands situated in and around the area which is subject matter of this is action entitled a declaration that the Historical Titles should be taken into consideration in the delimitation of the boundary between it and the plaintiff.
G

(iv) Whether the plaintiff is entitled to the proprietary and economic rights arising from and pertaining to the maritime boundary delimitation which is subject matter of this action."
H

As for the 1st Defendant there is a single and sole issue for determination in this suit, namely:

"Does the disputed maritime territory within which lies the 172

Oil Wells ("Disputed Maritime Territory") belong howsoever to Rivers, represented by the plaintiff hereof. By extension, is Rivers State entitled howsoever to the attribution of the 172 Oil Wells or any thereof?"

The 2nd Defendant filed Notice of Preliminary objection on 24/12/2010 and on 5/1/2011 filed a written address thereon. The sole issue raised for determination is:

"Whether in view of the plaintiff's case this Honourable Court has original jurisdiction to entertain this Suit."

The 2nd Defendant's preliminary objection is predicated on the following grounds, on which it has urged this Court to strike out this Suit for want of jurisdiction. The 4 grounds are:

"1. The plaintiff's case does not disclose a dispute between a State and the Government of the Federation within the meaning of section 232(1) of the Constitution of the Federal Republic of Nigeria. D

2. The Plaintiff's case is against the exercise of the functions of the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission.

3. The Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are statutory bodies corporate with Capacity to sue and be sued in their respective names. E

4. The Necessary and proper parties for the effective and effectual determination of the issues in controversy are not before this Honourable Court."

The Plaintiff in opposition reacted with its written Address in Response to the Preliminary Objection. The 2nd Defendant as a "ding-dong" affairs has to file another *"Reply on points of law to its Preliminary Objection."* I must observe that the Plaintiff has reacted to the sole issue formulated by the 2nd Defendant in their arguments canvassed in support of the Preliminary Objection. In its Reply the 2nd Defendant has set out four broad-based issues "distilled" from the arguments canvassed by the plaintiff in reaction to the preliminary objection. Except for issues 1 and 2 dealing with whether the Defendants Preliminary objection, is an abuse of Court process, I do not see the need to further raise issues 3 and 4 in the 2nd Defendants' Reply on point of Law. I agree with the learned senior counsel for the 2nd Defendant that issues 1 and 2 are fresh and have their pivot on facts and point arising from the two Further Affidavits filed by the F G H

plaintiff on 5th January 2011 and 16th January 2011 respectively. These affidavits were filed after the 2nd Defendant had already canvassed arguments in support of Preliminary objection. It is necessary therefore for the 2nd Defendant to address those issues.

B The Preliminary points of law by the 2nd defendant are that the subject matter of this suit is not one capable of invoking the original jurisdiction of this Court. Subsequently this Court lacks the jurisdiction to entertain the matter. I must say out rightly that in the circumstance of this matter, the preliminary objection is an abuse of the process of this Court. However, I do not think there is any merit in the 2nd Defendant's raising this preliminary objection. The dispute in this action is between the plaintiff and the Akwa Ibom State and the Federal Government represented by their respective Attorneys General. The paragraphs of Statement of Claim all the reliefs contained D therein are 12, 13, 17, 18, 21 and 22. These paragraphs have been reproduced above. The Revenue Mobilization Allocation and Fiscal Commission are agencies of the Federal Government of Nigeria. As a result, the 2nd Defendant has capacity to represent them being the chief Law Officer of the Federation. See Attorney-General of Kano State V. Attorney-General of the Federation (2007) 3 S.C. (Pt.1) 59 E at 84. Where this Court held inter alia as follows:

"Attorney-General of a State or the Federation can be sued, in any Civil Claim or complaint against the Government of a State or the Federation as the case may be, but this can only properly happen where the claim or complaint is directly against the State or Federal Government concerned in this case, the Federal Government was not directly concerned and no relief was sought against them by the plaintiff in the action. The provision of Section 232 of the 1999 Constitution under which this action is purported to be instituted cannot therefore in my view be applicable here. I accordingly so hold."

Parties agree that the enabling statute setting up the Revenue Mobilization Allocation and Fiscal Commission provide that they can sue or to be sued. This is not to say that they must be sued in a matter H where the infractions and breaches that they have committed provide only evidential value and more especially in a matter in which the Attorney-General of the Federation is competent to represent the interest of the Federal Government and any of its agencies. See Further QUO 'VADIS HOTELS AND RESTAURANT LTD. V. COM-

MISSIONER OF LANDS, MID-WESTERN STATE & OTHER (1973) 6. SC 71 at 82. MAKER V KENTA (1990) 7 NWLR (Pt. 163) 411 at 420.

The Attorney-General has the locus standi to commence and/or defend actions for and on behalf of the Federal Government. In the instant case he has sufficient interest. See the Attorney-General of The Federation V. The Attorney-General of Imo State and Ors. (1991) 4 NWLR (Pt. 188) 773 at 788. B

The objection to this suit by the 2nd Defendant, becomes even more futile and untenable in view of Order 9 Rule 14(1) of the Federal High Court Civil Procedure Rules 2009. It provides that: C

“No proceeding shall be defeated by reason of misjoinder or non-joinder of parties, and a Judge may deal with the matter in controversy so far as regards the right and interest of the parties actually before him.” D

See SAPO Vs SUMONU (2010) (3 - 8) SC (Pt. II) 130 at 13 Onwuka Kalu V. Chief Odili - In Re: Chief Nwoja & 5 Ors. (1992) 2 SCNJ (Pt.1) 76 at 115. Osunrinde & 7 Ors. V. Ajamogun & 5 Ors. (1992) 6 NWLR (Pt. 246) 156 at 183 - 184. And Ifeanyi Chukwu Osondu V Solleh Boneh (2000) 3 SC 42 at 81. E

Furthermore, a point has been made here by the learned Senior Counsel for the Plaintiff that the 2nd Defendant had also urged at the Federal High Court the Revenue Mobilization Allocation and Fiscal Commission and National Boundary Commission were not proper parties and that the substantive action was between State and State; and State and Federal Government, and therefore the matter be tried in the original jurisdiction of the Supreme Court (this Court). Taking a critical look at this matter, it is essentially a maritime boundary dispute between the Plaintiff and the 1st Defendant as representative of the Government of Akwa Ibom State. The 2nd Defendant is sued as representative of the Federal Government of Nigeria and other agencies or parastatals of the Government. Issues pertaining to those Agencies or parastatals are restricted to mere matters of evidence. F

In the light of the foregoing I consider this objection of the 2nd Defendant lacking in merit and I accordingly dismiss it. G

In view of the complex nature of this matter, I consider it quite apt to treat the five issues raised by the plaintiff and the sole issues set H

out by the 1st and 2nd Respondents, together. I shall as well consider all the relevant documentary evidence in furtherance of the claims of the parties, written statements of expert witnesses and of course, the applicable law, principles and conventions regulating the delimitation of Maritime Boundaries, where necessary. I shall however recapitulate, the submissions of respective counsel for the parties, during the hearing of the case.

On the 11th January 2011 when this suit came for hearing learned Senior Counsel for the plaintiff A. O. Okeaya-Inneh SAN, identified the Plaintiff's statement of claim filed on 5th of March 2010, Brief of Argument filed on 30th October 2010, written address in response to the Preliminary Objection filed by the 2nd Defendant, and the above listed affidavits and processes.

The plaintiff filed the following documentary evidence along with its statement of claim. These are Exhibits "AMB1" the Presidential directive of 01/11/2006 opting for Political Solution to the lingering problems over the oil wells. Exhibit "AMB2" - the letter of 24th October 2007 by the then Governor of Akwa Ibom to the Hon. President Umaru Musa Yar'Adua. Exhibit "AMB3" - the letter of 14th March 2008 by the Rivers State Governor to the President referring to the position before 2006. Exhibit "AMB4" - NBC's letter of 13th February 2008 to the President recommending Historical Title Method for the 2008 delineation exercise, and finally Exhibit - "AMB5" - the recommendation of Oil Monitoring Committee set by R.M.A. FC as a result of its Kano meeting between 19th - 21st February 2010. The plaintiff also annexed geodata maps and marked them 'A' 'B' 'C' and also annexed is Witness' Statement on oath of the Surveyor General of Rivers State Government.

Upon identification of the above process and documents learned counsel for the plaintiff, proceeded to adopt them and urged the Court to grant all the reliefs sought by the plaintiff. He gave detailed facts in contest in suit and the historical background. A number of foreign reported authorities and opinions of experts regarding delimitation of Continental Shelf were cited in reliance. In the plaintiff brief this Court is urged to make the following declarations and orders.

1. That the Plaintiff is entitled to the declaration that the pre - 2006 maritime boundary between the plaintiff and Defendant rep-

resenting the equidistance method is the existing boundary and is extinct.

2. In the alternative to declare that the 1st and 2nd Defendants are bound by the October 2006 Political Solution Agreement and estopped from acting contrary to the terms contained therein.

3. To declare that the Plaintiff is entitled to revenue accruing from the 176 Oil Wells situated in the delimitation area based on the pre - 2006 equidistance principle method and to in consequence order that it be paid all outstanding revenues arising therefrom. B

4. In the alternative to paragraph 3 above declare that it is so entitled to the 86 Oil Wells located within the delimitation area pursuant to the Political solution Agreement of October 2006, and that in consequence. Having order that it be paid all outstanding revenues arising therefrom. C

On his part, learned Senior Counsel for the 1st Defendant identified brief of argument filed on 10th January 2006. He adopted the brief from which an issue was raised. He submitted that the 2nd Defendant's Preliminary Objection was lacking in merit. It is argued that the Revenue Mobilization Allocation and Fiscal Commission (RMAPC) and National Boundary Commission (NBC) are mere agencies of the Federal Government of Nigeria as a result the 2nd Defendant has capacity to represent them, being the Chief Law Officer of the Federation. He has urged us to dismiss the preliminary objection, but he adopted the argument in his written address in its entirety and accordingly dismiss the Plaintiff's claim and the reliefs sought for in the substantive suit. D E F

On the other hand learned Counsel for the 2nd Respondent's grounds for the Preliminary Objection are that: the plaintiff's case does not disclose a dispute between a State and the Government of the Federation. That the Revenue Mobilization and Fiscal Commission and the National Boundary Commission both being statutory bodies corporate to sue and be sued in their respective names, they are necessary and proper parties for the effective and effectual determination of the issues in controversy before this Court. May it be noted here that I have considered the 2nd Defendant and I held that the objection lacks merit and it was dismissed accordingly. G H

Now, to the Plaintiff's claim, the crux of which is contained specifically in paragraph 8 of the Statement of Claim which is repro-

duced hereunder:

“The Plaintiff avers that the complaint of the 1st Defendant was that its boundary with the Plaintiff showed the disputed annexation of a particular portion of the sea from Akwa Ibom to Rivers State and requested for the application of the Historical Titles method as against the use of the Strict Technical Equidistance lines method used by the NBC in drawing up the maritime maps on the ground that in accordance with Articles 15 and 7.1 of the United Nations Convention on Laws of the Sea (UNCLOS) 1982, only the Historical Titles is applicable”

Paragraphs 11 and 12 of the Plaintiff’s statement of claim reproduced above are also crucial to the determination of this matter; The Plaintiff is claiming that sometime in 2006, the 2nd Defendant intervened in the maritime delimitation dispute between itself and the 1st Defendant and that an agreement was entered into in which all the parties agreed to an equitable settlement. The settlement became known popularly as the “Political Solution Method” which led to the weighting of the 50% of the disputed areas comprising 172 oil wells with each of the 2 littoral states receiving 86 Oil wells and the revenue accruing therefrom with effect from November 2006. This agreement was given effect by a Presidential Directive of 31st of October 2006. I herewith reproduce paragraph 12. It reads thus:

“The Plaintiff avers that it accepted the Political Solution Agreement in the Interest of peace and stability of the Niger Delta Region and further states that the Agreement which was freely and willingly agreed to by the two states regulated the attribution of the 172 oil wells and 13% derivation funds payable therefrom until the end of 2007 when the 1st Defendant unilaterally sought to rescind the agreement and commenced his agitation for the application of the Historical Titles Method contrary to the Supreme Court decision and Articles 15 of UNCLOS 1982 aforesaid.”

The Plaintiff avers in paragraphs 15 and 16 of the Statement of Claim, reproduced above that sometime in the year 2008 between January and August, the Nigerian Boundary Commission, a parastatal and instrumentality of the Federal Government of Nigeria in defiance of the subsisting Political Solution Agreement and Principles of Public International Law, regarding the delimitation of maritime boundaries recommended the use of the Historical Title Method

in the delimitation of the maritime boundaries between the Plaintiff and the 1st Defendant without legal justification whatsoever.

Evidence in furtherance of Plaintiffs averments is Exhibit “AMBI”, This is a presidential Directive of 1st November, 2006.” It reads:

“MEETING ON IMPLEMENTATION OF THE ONSHORE/OFFSHORE DICHOTOMY ABROGATION LAW AS IT RELATES TO THE MARITIME BOUNDARIES BETWEEN CROSS RIVER/AKWA IBOM/RIVERS STATES VIS-A-VIS THE JUDGMENT OF THE SUPREME COURT OF JUNE 24, 2005.”

You will recall that I presided over a meeting on the above subject on Friday, 27th October, 2006 at the Presidential Villa with Governors of Akwa Ibom and Rivers States present among other stakeholders.

You will also recall that, in the course of the meeting which was (sic) at finding a lasting solution to the lingering problems over the oil well between the concerned i.e. Akwa Ibom, Cross River and Rivers, three options were considered viz: Technical Solution, Historical solution and Political Solution. After exhaustive deliberations, the meeting opted for and upheld the Political solution in line with the earlier advice given by the Attorney General of the Federation and Minister of Justice. Subsequently, a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November 2006.

(i) Cross River/Akwa Ibom State

a. Cross River - 76 Wells

b. Akwa Ibom - 14 Wells

(ii) Akwa Ibom/Rivers State

a. Akwa Ibom - 86 Wells

b. Rivers - 86 Wells

Total: Cross River - 76 Wells: Akwa Ibom - 100 Wells and Rivers-86 Wells. Accordingly, the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final state for implementation by all concerned with effect from the said date 1st November 2006.

Above is therefore, for your information and further necessary action (sic) please.

On the face of the Exhibit, it is clear that the directive was signed by the then President of the Federal Republic of Nigeria,

Olusegun Obasanjo. The “consensus was reached” with the Governors of Akwa Ibom, Cross Rivers and Rivers State including the Minister of Finance, chairman Revenue Mobilization and Fiscal Commission, Director-General of the Nigerian Boundaries Commission, and the Accountant General of the Federation all in attendance.

B However, from all intent and purpose, Exhibit “AMB2” of 29th
 October 2007 written to the Hon. President Umaru Musa Ya’Adua
 by Akwa Ibom Governor Godswill Akpabio, was to contravene and
 disregard the political solution method that had been used to resolve
 C the boundary dispute between Akwa Ibom and Rivers State. I agree
 with the learned senior counsel for the Plaintiff that the President was
 misled as to the legal position of delimitation maritime boundaries in
 paragraph 9 at page 4 of the letter under the heading “Prayers”. The
 governor refers to a legal conclusion in respecting the delimitation of
 D maritime boundaries of Cross Rivers State and his seeking Presiden-
 tial approval to apply this conclusion to the delimitation boundaries
 between Akwa Ibom and Rivers State. In my respectful view, the
 content of paragraph 9 of the said Exhibit “AMB2” cannot be true; its
 marks of total disregard to content of Article 15 and 17.1 of the
 E United Nations Convention on the Law of the Sea (UNCLOS) 1982.
 The prayers in paragraph 9 reads:

*“We respectfully seek the protection of Mr. President and humbly
 request that the Oil Wells of Akwa Ibom State now allocated to Rivers
 F State be returned to us under the concept of Historic Titles already
 accepted by the Presidency in the case of Cross River State and as
 provided for under Articles 15 and 7.1 of the UNCLOS 1982 of
 which Nigeria is a signatory.”*

As I have observed the clear intent of that letter was to disre-
 G gard or negate the political solution that has been reached to resolve
 the boundary dispute between the Plaintiff and the 1st Defendant as
 a result of attribution of the 172 oil wells to the said 1st Defendant by
 the 2nd Defendant. I shall have cause to return to this in the course
 of considering this matter.

H Now on the strict EQUIDISTANCE METHOD. It is the conten-
 tion of the Plaintiff that prior to 2006 the equidistance line drawn as
 shown in the two maps (Exhibits ‘A’ and ‘B’) attached to the appel-
 lant affidavit in support of the Plaintiff’s action was the Principle ap-
 plied to the delimitation of the maritime boundary which is presently

subject of dispute before this Court. It is further contended that the maps and documents prepared by the National Boundary Commission (NBC) prior to 2006 relied on the Equidistance principle arising from the application of Article 15 of UNCLOS 1982. The delimitation put the 176 Oil Wells squarely within the territorial jurisdiction of the Plaintiff at this point in time. The revenue accruing from the Oil Wells pursuant to Section 162(2) of the 1999 Constitution was paid to the Plaintiff by the Revenue Mobilization Allocation and Fiscal Commission until the Political Solution Agreement in October 2006. Further, in support of the Plaintiff's claim, it is contended that it was the strife and agitations by the 1st Defendant over the oil wells that led to the Political Solution Agreement which was made effective by the Presidential directive in November, 2006.

It is the Plaintiff's claim that as a result of a breach of the Political Solution Agreement by the 1st Defendant in 2007 vides a letter of 24th of October 2007. (Exhibit AMB2) by the 1st Defendant's Governor to the President, and also that as a result of the reversal by the National Boundary Commission and the Revenue Mobilization Allocation and Fiscal Commission of the said Political Solution, consequentially this Court should apply the provisions of Article 15 of UNCLOS 1982. In effect, in the circumstance, the Plaintiff is urging the usage or application of the equidistance method or option. It therefore sought in its relief 1 for a *"Declaration that it is unlawful and unconstitutional for the Defendants by themselves and through any other statutory bodies including the National Boundaries Commission and Revenue Mobilization Allocation and Fiscal Commission to revert to the boundaries between the Plaintiff and 1st Defendant without the subsisting Judgment of the Supreme Court in the case of Attorney General of the Federation V. Attorney General of Abia State and 35 others (supra) first being set aside and or vacated."*

The 1st Defendant has urged this Court to refuse this relief because this relief and the second relief are hinged on the erroneous belief by the Plaintiff that Historic Title Method was applied by the National Boundary Commission in 2008 delineation of the Akwa Ibom and Rivers State Maritime Boundaries. It is contended that it was the Equidistance Method, moderated by the Perpendicular/Bi-sector Principle that was applied in order to correct the distortions and inaccuracies that were inherent in the 2004 delineation exercise.

Reliance on this contention was based on the facts and evidence of the Defendants' witnesses. It is contended that the decision of Attorney-General Abia & 35 Others (supra) relied on by the Plaintiff is not authority for the application of equidistance method in the delineation of maritime boundaries between Nigerian Federating States.

B This submissions under relief 1 were adopted and applied in urging this Court to refuse reliefs (ii) (iii) (iv), (v), (vi) and (vii) of the plaintiff. **HISTORIC TITLE METHOD.**

C The Plaintiff's case is that the equidistance delineation method would not have given the disputed maritime territory to the 1st defendant and it was consequent upon this fact that a resort was made by National Boundary Commission with the connivance of the 1st Defendant, to Historical Title Method for the said 2008 delineation exercise. I have read Exhibit "AMB4" I agree with the submission of **D** learned Senior Counsel for the 1st Defendant that from the concluding paragraphs of that Exhibit, it is obvious that the recommendation of the National Boundary Commission to the President for the adoption of the Historic Title Method in the delineation of the maritime boundary between the Plaintiff and the 1st Defendant was not **E** approved. Indeed it was only a recommendation with a view to providing an equitable solution between the parties. The said recommendation was not accepted by the Presidency and never implemented. See Evidence of Mr. Isa the Director in charge of Inter-State Boundary Department of the National Boundary Commission - **F** (paragraph 16 of his Amended Witness Statement on behalf of the 2nd Defendant, regarding Exh. AMB4. This evidence is corroborated by Mr. Okon's evidence for and on behalf of 1st Defendant. Given the complete collapse of the Plaintiff's case and assertions on the application **G** of the Historic Title Method for the 2008 delineation exercise, and unacceptable Equidistance Method and Perpendicular/Bisector principles, I find in the circumstances of this case that resort must be had to the Political solution as alternative solution. I have already discussed at length the Political Solution Agreement resulting in the directive issued by President Olusegun Obasanjo and addressed, **H** inter alia, to the Governors of Rivers State, and Akwa Ibom (the Plaintiff and the 1st Defendant herein respectively). This letter is Exhibit AMB1. The main thrust of the Plaintiff's argument is that the Defendants are estopped from denying the validity and continued existence of the

said agreement. I am mindful of Exhibit “AMB1” the Plaintiffs (Governor’s) letter to the then President calling for the application of the Political Solution Agreement. I am of the view and I so hold, that the parties having agreed and decided to be bound by the Political Solution Agreement entered into in October 2006 given effect to by the Presidential Directive of November 2006, they are estopped by that agreement, conduct and representation from acting contrary to the terms contained therein. The Latin maxim is “Pacta Sunt, Servarida”, meaning agreements which are not illegal and do not originate in fraud must in all respects be observed. The National Boundary Commission was definite of the subsisting Political Solution Agreement aforesaid. It should not have caved in to the pressures and influence of any of the parties and consequently embarked on either the Historical Title Method or the more technical and complicated Equidistance Method/Perpendicular/Bisector Principles, all of which the parties were not ad idem on their applicability to the solution of this matter.

In the final analysis and consequent upon all I have said and explained I find merit in the case. I agree with the detailed reasoning and conclusion of my learned brother KATSINA-ALU, Hon Chief Justice of Nigeria that the judgment in this claim be entered in favour of the plaintiff in the following terms:

1. That the Defendants and/or appropriate agencies to forthwith compute and calculate all such sums of money accruing from 86 Oil Wells attributable to the plaintiff by virtue of the subsisting and binding Political Solution Agreement which sums have been unlawfully paid to the 1st Defendant with effect from April, 2009 till date of this judgment.

2. The defendants are hereby directed to pay to the plaintiff interest at the prevailing commercial rate on the sums calculated as due to the plaintiff from the date of judgment until full liquidation of the judgment sum.

3. I make no order as to costs. Each party shall bear its own costs.

Finally I wish to express our gratitude to the Learned Counsel for the parties for their industry and research materials. These and their briefs of argument and oral submissions have been of tremendous help to this Court.

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the leading judgment delivered by the Chief Justice of Nigeria. I am in full agreement with his lordships reasoning and conclusions. I do not intend to repeat the facts, but I do propose to add a few observations on the Preliminary objection and the sanctity of Agreements

PRELIMINARY OBJECTION:

Learned Counsel for the 2nd defendant filed a Notice of Preliminary Objection. It reads:

1. The subject matter of this suit is not one capable of invoking the original jurisdiction of this Honourable Court.

2. Consequent on the above, this Honourable Court lacks the jurisdiction to entertain this matter.

The simple issue for determination is whether this court has original jurisdiction to hear and determine the plaintiffs case.

Jurisdiction is threshold matter, and so it must be resolved at the earliest opportunity, as any proceedings conducted without jurisdiction would amount to a nullity no matter even if the proceedings were conducted with aplomb. It is so important that it can be raised at any stage of the proceedings even on appeal or in the Supreme Court for the first time. See

Bronik Motors Ltd and anor V Wema bank Ltd 1983 1 SCNLR p. 296

Usman Dan Fodio University V Kraus Thompson Organisation Ltd 2001 15 NWLR pt. 736 p.305

Jurisdiction can be raised informally, although it is desirable some process is filed so that the adverse party is not taken by surprise. In this suit a formal Notice of Preliminary Objection was filed and responded to by learned counsel for the plaintiff.

Original jurisdiction of this Court is provided by Section 232 (1) of the Constitution and it reads in part.

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 so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

It is important at this stage that relevant extracts from the state-

ment of claim are examined to see if the original jurisdiction of this court can properly be invoked so that the case is heard and determined here. Paragraphs 12,13,17,18,21,22 reads as follows:

12. The Plaintiff avers that it accepted the political Solution Method Agreement in the interest of peace and stability of the Niger Delta Region and further states that the Agreement which was firmly and willingly agreed to by the two states regulated the attribution of the 172 oil wells and -13% derivation funds payable there from until the tail and of 2007 when the 1st defendant unilaterally sought to scind the agreement and commenced his agitation for the application of the Historical Titles Method contrary to the Supreme Court Decision and Articles 15 of UNCLOS, 1982 aforesaid.

13. The Plaintiff avers that in response to this fresh agitation by the 1st defendant it has supplied cogent reasons why the Historical Title Method (which has never been applicable) was not feasible and requested for the reversal to the accepted strict Technical Equidistance lines Method judicially approved by this Honourable Court in the case of Attorney General of Federation v. Attorney General Abia State and 35 ors (supra) and UNCLOS, 1982. The Plaintiff will rely on both the 1st defendant's complaint and his response at the hearing.

17. The Plaintiff avers that the defendants particularly the 2nd defendant acting in concert with the revenue Mobilization Allocation and Fiscal Commission and the Accountant General of the Federation have since jettisoned the Political Solution Agreement and recommended that the President of the Federal Republic of Nigeria approves the report pursuant to which a 2009 Revised 13% Derivation Indices has since been produced by the RMAFC to the detriment of the Plaintiff and in favour of the 1st defendant. The Revised Indices and the RMAFC letter forwarding it to the Accountant General of the Federation dated 12th March, 2009 will be relied on at the hearing.

18. The avers that as a result of the above facts, the 2nd Defendant through its aforesaid agencies and Parastatals have ceded the entire 172 oil wells and have since April, 2009 been paying huge revenue accruing there from to the 1st defendant unlawfully despite the pending and subsistence of the Political Solution Agreement freely entered into by the 1st Defendant and Plaintiff in 2006.

21. The Plaintiff avers that the Defendants have since jettisoned the Political Solution Agreement unilaterally and reverted to the use

of the Historical Titles Method in ceding the entire 172 oil wells to the 1st defendant thus introducing a new revenue Formula without complying with Section 162(2) of the 1999 Constitution.

22. The Plaintiff shall contend that the 2009 Revised Derivation Indices made pursuant to the Revenue Mobilization Allocation and Fiscal Commission Report 2008 and based on the Historical Titles Method was approved by the 2nd defendant without the approval of the national Assembly first being sought and obtained pursuant to Section 162 (2) of the 1999 Constitution.

My Lords, the dispute in this suit is between the plaintiff and Akwa-Ibom State and the Federal Government, represented by the Attorney General of Federation. The Attorney General is the competent party to be sued in any suit against the Federal Government or any of its agencies.

Furthermore the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are agencies of the Federal Government bearing in mind that an agency can be created by contract or implied or by Statute. The Attorney General has the locus standi to defend actions against the Federal Government or any of its agencies. This court thus has original jurisdiction to hear and determine the plaintiff's action since the suit is between a state and a state, and a state and the Federal Government of Nigeria. See *President of Nigeria and anor v. Governor of Kano* 1982 3NCLR P. 819

Governor of Kaduna State and anor v. President of the Federal Republic of Nigeria & ors 1981 2 NCLR p.786

In the light of all that I have been saying the Preliminary Objection fails and it is hereby dismissed.

172 oil wells are within the maritime territory of Rivers State and Akwa Ibom State. The issue for determination is:

As between the two states which of them owns the 172 oil wells.

In 2006 the President of Nigeria, Chief Olusegun Obasanjo wrote Exhibit AMB 1. It is titled:

MEETING ON IMPLEMENTATION OF THE ONSHORE/OFF-SHORE DICHOTOMY ABROGATION LAW AS IT RELATES TO THE MARITIME BOUNDARIES BETWEEN CROSS RIVER/AKWA IBOM/ RIVERS STATES VIS-A-VIS THE JUDGMENT OF THE SUPREME

COURT OF JUNE 24 2005.

AND IT READS:

“You will recall that I Presided over a meeting on the above subject on Friday, 27th October, 2006 at the Presidential Villa with Governors of Akwa Ibom and Rivers states present among other stakeholders. You will also recall that, in the course of the meeting which was aimed at finding a lasting solution to the lingering problems over the oil wells between the three states concerned, ie Akwa Ibom, Cross River and Rivers, three options were considered viz: Technical Solution, Historical Solution and Political Solution. After exhaustive deliberations, the meeting opted for and upheld the political solution in line with the earlier advice given by the Attorney-General of the Federation and Minister of Justice. Subsequently a consensus was reached and the meeting agreed on the following sharing formula for the affected oil wells with effect from 1st November, 2006

(i) Cross River/Akwa Ibom States

(a) Cross River - 76 wells

(b) Akwa Ibom - 14 wells

(ii) Akwa Ibom / Rivers State

(a) Akwa Ibom - 86 wells

(b) Rivers - 86 wells

(iii) Total Cross River - 76 wells

Akwa Ibom - 100 wells and Rivers - 86 wells.

Accordingly the purpose of this letter is to formally convey the decision reached at the meeting which has brought the matter to a final close, for implementation by all concerned with effect from the said date of 1st November, 2006.

Exhibit AMB 1 contains an agreement for the ownership of 172 oil wells. The plaintiff (Rivers State) and the 1st defendant, Akwa Ibom State agreed that as from the 1st of November, 2006 the plaintiff owns 86 oil wells, while the 1st defendant owns 86 oil wells. The parties agreed that this Political Solution agreement finally settles the ownership of 172 oil wells, shared equally between the plaintiff and the 1st defendant. The Latin maxim “Pacta Sunt Servanda” simply means Agreements are to be observed, and honoured. That is to say parties are held bound by their Agreements. In 2009 the 1st defendant jettisoned the Political Solution Agreement, (ie Exhibit AMB1) the case for the 1st defendant is that parties reverse the Equidistance

lines method and adopt the Historical Title Method to decide ownership of the 172 oil wells. Once parties enter into an agreement voluntarily and there is nothing to show that the agreement was obtained by fraud, mistake, deception, or misrepresentation the parties are to be bound by the terms freely entered into. Consequently a party no longer satisfied with the terms of the agreement cannot resilie or jettison the agreement. This is the doctrine of sanctity of agreements.

Both parties especially the 1st defendant must accept the implications and consequences of the contents of exhibit AMB 1 and it is not the business of this court to rewrite the agreement for the parties or venture into or consider other sharing methods, since an agreement for sharing the wells still subsists. Our task as judges is simply to find out the intention of each party, when agreeing to the contents of exhibit AMB 1. The clear intention is that each party is satisfied with 86 oil wells each. Section 151 of the Evidence Act creates Estoppel. The rule of estoppel is based on equity and good conscience. The object being to ensure honesty and good faith thereby securing justice between the parties. Estoppel is explained as a rule where a person shall not be allowed to say one thing at one time and the opposite at another time. It is wrong and inequitable for the 1st defendant to agree to the sharing of the 172 oil wells and /hereafter resilie. He is estopped from such conduct.

Lengthy submissions by counsel on the Equidistance lines Method or, and the Historical Title Method for identifying ownership of the oil wells fades into insignifience in view of the fact that there is a binding contract between the parties on the sharing/ownership of 172 oil wells. The defendants are bound by the agreement freely entered between them and the plaintiff (Exhibit AMB1).

In conclusion the Preliminary objection is dismissed and I make the orders made by the learned Chief Justice of Nigeria in the substantive suit.

H