

SUPREME COURT OF NIGERIA
10TH JULY, 2012. SC. 250/2009
CORAM:- D. MUSDAPHER CJN, M. MOHAMMED,
J. A. FABIYI, O. O. ADEKEYE, S. GALADIMA,
B. RHODES-VIVOUR, N. S. NGWUTA, JJSC

A-G CROSS-RIVER STATE PLAINTIFF
AND
1. A-G OF THE FEDERATION
2. A-G AKWA IBOM STATE DEFENDANTS

STATUTES - Revenue allocation - Entitlement to - By s. 1(1) of On-shore/Offshore Dichotomy Abolition Act 2004 - State can claim natural resources - Located within 200 meters water depth isobath - Contiguous to the State (H1)

JUDGMENTS - ICJ judgment - Effect - Revenue allocation - Disputed 76 oil wells cannot be attributed to plaintiff - Since it is no longer a littoral State - By virtue of the judgment of ICJ (H2)

ACTIONS - Declaratory action - Purpose - Such action is to seek equitable relief - Whereby plaintiff prays court to exercise its jurisdiction - By declaring existing state of affairs in his favour (H3)

ACTIONS - Courts - Declaratory action - Proof - Plaintiff must show existence of subsisting or future legal right - Court is prepared to recognize - And that same is contested (H4)

CONTRACTS - Frustration - Determination - Frustration occurs whenever court recognizes that - Without default of either party - Contractual obligation has become incapable of being performed (H5)

CONTRACTS - Frustration - Effect - Contract which is discharged by frustration - Is brought to an end automatically by operation of law - Irrespective of wishes of parties (H6)

FACTS

Plaintiff and 2nd defendant are involved in boundary dispute.

Plaintiff seeks to be entitled to derivation revenue from some 76 oil wells located within 200 meters water depth Isobaths contiguous to its territory as contained in Sections 1 and 2 of the Allocation of the Principle of Derivation Act 2004. Pursuant to this desire, plaintiff instituted this suit against defendants in the original jurisdiction of Supreme Court pursuant to Section 232 of the 1999 Constitution of the Federal Republic of Nigeria. The plaintiff claims inter alia, a declaration that there was no boundary dispute between plaintiff and 2nd defendant to warrant defendants embarking upon purported boundary adjustment between plaintiff and 2nd defendant. Hence, no basis for 1st defendant to act on purported boundary adjustment to the detriment of plaintiff.

1st defendant (Attorney-General of the Federation who represented the Revenue Mobilization, Allocation and Fiscal Commission (R.M.A.F.C) and National Boundary Commission) contends that the R.M.A.F.C's meeting of 15th April 2008 affirmed that Cross River State is now a non-littoral State in Nigeria sequel to the judgment of the International Court of Justice delivered in October 2002 in the Cameroon/Nigeria boundary dispute. 1st defendant further stated that after the execution of the said judgment which ceded Bakassi Peninsula and the estuarine part of the internal waters called 'Cross River' to the Cameroon, plaintiff no longer qualify as a littoral State for the sake of revenue allocation accruing from the said 76 oil wells.

ISSUES FOR DETERMINATION

1. *Whether there is in existence any issue of boundary adjustment between the plaintiff and the 2nd defendant in view of the binding agreement and resolution between the parties under the supervision of the 1st defendant since 2006 through its agencies.*

2. *Whether the plaintiff is entitled to the derivation revenue from the seventy-six oil wells which were previously located within the 200meter water depth isobaths contiguous to its territory as stipulated in Sections 1 & 2 of the Allocation of Revenue (Abolition of Dichotomy) with the principle of Derivation Act 2004.*

3. *Whether the order of mandatory and perpetual injunctions restraining the 1st defendant by himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral state are enforceable.*

HELD (Unanimously dismissing the appeal per

ADEKEYE JSC)

STATUTES - Revenue allocation - Entitlement to

1. By virtue of the onshore/offshore Dichotomy Abolition Act 2004, a State of the Federation can claim natural resources located within two hundred meters water depth Isobaths contiguous to that State. If a State does not lie contiguous to the two hundred meters water depth Isobath, she cannot claim derivation entitlement to the natural resources that lie within that territory. In other words, though the Federal Government of Nigeria has constitutional and exclusive jurisdiction over offshore natural resources, by virtue of Section 1(1) of the Offshore/Onshore Dichotomy Abolition Act 2004, littoral States do have some interests (derivation) in offshore natural resources located within 200 meters water depth Isobath contiguous to a state, these 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.

(p. 2745 H)

ICJ judgment - Effect - Revenue allocation

2. Consequently, the plaintiff was deprived of its status as a littoral State. The judgment of this court in Suit SC.124/1999 - A-G Cross River State v. A-G Federation & anor (2005) 15 NWLR (Pt.947) Pg.77 adequately described the aftermath of the ICJ judgment on the plaintiff. This court held that the ICJ judgment wiped off what used to be the estuarine sector of Cross River State as a result of which the State is hemmed in by the International boundary between Nigeria and Cameroon. Cross River State no longer has any maritime boundary. It is landlocked. The plaintiff not being a littoral State and not having a maritime boundary or abutting the sea, the 76 oil wells which is the subject matter of her claim in this suit, which lies off shore and within a maritime territory cannot be attributed

2720 A-G Cross-River State v. A-G Federation (2012) 7 KLR
to it. (p. 2747 D)

Declaratory action - Purpose

3. It is trite law that the purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to promote or declare an existing state of affairs in law in his favour as may be discernable from the averments in the statement of claim. (p. 2749 H)

Declaratory action - Proof

4. In order to be entitled to a declaration, a person must show the existence of a legal right, subsisting or in 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 consequences too. (p. 2750 A)

CONTRACTS - Frustration - Determination

5. It is the duty of the court to state whether and when frustration has occurred; in other words, to determine the existence of frustration. Frustration occurs whenever the court recognizes that without default of either party a contractual obligation has become incapable of being performed. The courts have recognized certain situations or events as listed below that constitute frustration –

- a. Subsequent legal changes
- b. Outbreak of war.
- c. Destruction of the subject matter of contract.
- d. Government requisition of the subject matter of the contract.
- e. Cancellation of an expected event.

In other words, a court would recognize that a contract is frustrated where after the contract was concluded, events occur which make performance of the contract impossible, illegal or something radically different from that which was in the contemplation of the parties at the time they entered into the contract. (p. 2750 H)

CONTRACTS - Frustration - Effect

6. A contract which is discharged on the ground of frustration is brought to an end automatically by the operation of law, irrespective of the wishes of the parties. This unfortunately is now the fate of the agreements between the parties which have been automatically terminated by the implementation of the judgment of the ICJ. The court cannot close its eye to this existing situation and declare that the plaintiff should continue to enjoy the benefits and privileges of a littoral State when it is no longer one by subsequent legal changes. (p. 2751 D) B
C

NOTABLE POINTS OF INTEREST

ADEKEYE JSC

1. Doctrine of frustration in contract – Meaning D

The doctrine of frustration is applicable to all categories of contracts. It is defined as the premature determination of an agreement between parties, lawfully entered into and which is in the course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement. (p. 2750 E) E

RHODES-VIVOUR JSC F

2. Peninsula – Meaning

A peninsula is an area of land that is almost surrounded by water but is joined a larger piece of land. In this case the larger piece of land that Bakassi Peninsula was joined to is the present day Cross River State, while the water that almost surrounded the peninsula was the Atlantic Ocean. Now, a littoral state is a state adjacent to the shore, or lying along the shore, adjoining or bordering the shore, and that shore is the most southerly part of the Bakassi peninsula. That made Cross River State a Littoral State. (p. 2761 C) H

NGWUTA JSC

3. Precedent – Meaning

A precedent is a decided case that furnishes a basis for determining later cases involving similar facts or issues. (p. 2769 E)

REPRESENTATION

- Yusuf O. Ali SAN, Paul Erokoro SAN, Dr. Wahab Egbewole; Nelson
 B Uzoegbu; K.K. Eleja; Anozie Okwudili; S.A. Oke; Michael Ajara; A.O.
 Abdulkadir; Ifeyinwa Arum; Alex Akoja; Kingsley Odey; N.N.
 Adegboye; Barbra Omosun; K.T. Sulaiman; Patrick Abang; K.O.
 Lawal; Audu Swaben; Ololade Odemuyiwa;
 C Okonache Ogar; F.O. Moronfoye; Anozie Nonso; S.O.Q. Giwa, for
 the Appellant
 D.D. Dodo SAN, Mike Mamman Osuman SAN, A.R. Fatunde;
 Ufok Mark Ibekwe; Jumbo Festus; Aniefon U. Umoso; Donald O.
 Okogbe; Samson A. Egege; Seusaha T, Yenge; Adewale Adegboyega,
 D Chief Bayo Ojo SAN, Paul Usoro SAN, Chief Duro Adeleye SAN;
 Offiong E.B. Offiong SAN; Dorothy Ufot SAN;
 Solomon Umoh SAN, Uko Udom; Aniekan Ukpanah; Nsikak Udo;
 Fola Ojibara, for the Respondents

E CASES REFERRED TO

- A-G Gross River State v. A-G Fed (2005) 15 NWLR (Pt. 947) 71
 A-G Rivers State v. A-G Akwa (2011) 8 NWLR (Pt. 1248) 31
 Knight Frank & Rutley (Nig) v. A-G Kano State (1998) 7 NWLR (Pt.
 556) 1
 F Ujam v. Institute of Management and Technology (2007) 2 NWLR
 (Pt. 1010) 490
 A-G Fed v. A-G Abia State (No.2) (2002) 6 NWLR (Pt. 764) 543
 A-G Adamawa State v. A-G Fed (2005) 18 NWLR (Pt. 958) 581
 G Adigun v. A-G Oyo State (No.1) (1987) 1 NWLR (Pt. 53) 678
 Dantata v. Mohammed (2000) 7 NWLR (Pt. 664) 176
 Ekundayo v. Baruwa (1965) 2 All NLR 211
 Nwokudu v. Okanu (2010) 3 NWLR (Pt. 1181) 362
 N.B.C.I v. Standard Nig Eng. Co. Ltd (2002) 8 NWLR (Pt. 768) 104
 H Mazin Engineering Ltd v Tower Aluminium Nig Ltd (1993) 5 NWLR
 (Pt.295) 526
 Araka v. Monier Construction Co Ltd (1978) 2 LME 60

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 8(2), 162(2), 232

Revenue Mobilization, Allocation and Fiscal Commission Act Cap R7 LFN 2004, s. 6(1)(b)

National Boundary Commission Act Cap N10 LFN 2004, s. 7(c) B

Allocation of Revenue Act Cap A 27 LFN 2004, ss. 1, 2

Supreme Court Rules 2002, O. 3 r.7

LEAD JUDGMENT BY ADEKEYE JSC

The plaintiff, Cross River State, one of the 36 States, instituted this suit in the original jurisdiction of this court pursuant to Section 232 of the 1999 Constitution of the Federal Republic of Nigeria. The plaintiff filed her originating summons initiating this suit on 14th September 2009. On the 4th of May 2010, this court directed the plaintiff to convert the Originating Summons into a writ of summons pursuant to Order 3 Rule 7 of the Supreme Court Rules 2002 and attach all other processes for service on the parties in the suit within 14 days. The defendants were ordered to file their respective front loaded statement of defence within 45 days of service of the plaintiff's processes on them. Pursuant to this order, the plaintiff filed the Statement of Claim, Witnesses Statement on Oath and the brief of argument and replies to statement of defence of the 1st and 2nd defendants on 17th May 2010. The defendants filed their respective statements of defence, briefs and written addresses and witnesses' statement on oath. C D E F

At the hearing of this action on 14/5/2012, the plaintiff; 1st and 2nd defendants adopted and relied on the processes filed. In the statement of claim, plaintiff prayed for the under-mentioned reliefs:- G

1. A declaration that there was no boundary dispute between the plaintiff and the 2nd defendant to warrant the defendants to embark upon a purported boundary adjustment between the plaintiff and the 2nd defendant and accordingly no basis for the 1st defendant to act on the purported boundary adjustment to the detriment of the plaintiff. H

2. Declaration that the defendants are stopped from raising the issue of boundary adjustment as between the plaintiff and the 2nd defendant having regard to the conclusive and binding agree-

ment/resolution reached between the plaintiff and the 2nd defendant since 2006 and upon which the parties acted since.

3. A declaration that the defendants cannot lawfully refuse to accept, act upon or comply with the determination of the boundary between the plaintiff and the 2nd defendant made by the 1st defendant in 2006 through its appropriate agency (s) that was vested with power and authorities over boundary issue.

4. A declaration that the plaintiff is entitled to derivation revenue from the seventy-six oil wells located within 200 meters water depth Isobath contiguous to its territory as contained in Sections 1 and 2 of the Allocation of the Principle of Derivation Act 2004.

5. A perpetual Injunction restraining the defendants by themselves, their agents and/or privies from interfering with the plaintiffs right to revenue from the 76 oil wells within its territory or lying contiguous thereto within 200 meters water depth Isobath.

6. An order mandating the defendants to treat the maritime boundary determined by the 2nd defendant in 2006 as the recognized boundary between 1st defendant and the plaintiff and to share all derivation revenue from the area in accordance with that agreed boundary.

7. A declaration that the historical method for determining the estuarine or maritime boundary between littoral states in Nigeria is valid and that the application of the said method in the settlement of the boundary dispute between the 1st defendant and the plaintiff in 2006 was lawful and valid.

8. An order of perpetual injunction restraining the 1st defendant himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral state.

9. The total 13% derivation entitlement of the plaintiff from the 76 oil wells within the territory of the plaintiff since November 2009 to 10th March 2010 in the sum of N15,577,188,241.39 made up of N9,261,450,727.86 for Cross River State and N6,315,737,513.53 for the Local Government Councils of Cross River State respectively.

10. An order for account between the parties as to any other amount due to the plaintiff from 76 oil wells from 11th March 2010 until the date of judgment and thereafter. Further order directing the

payment of the sum found due with interest at 20% to the plaintiff.

The case of the plaintiff based on the written statement on oath of one of the witnesses for the plaintiff, Mr. Raph Idiku Uche, the Surveyor-General of Cross River State is that the April 2008 followed by the August 2008 Inter-Agency Meeting was convened at the instance of President Umaru Yar'Adua. The meeting was to consider among other items, the complaint by the Governor of Akwa Ibom State, Governor Godswill Akpabio against the application of the political solution rather than the historical title principle which the parties had invoked to resolve the Akwa Ibom/Cross River State boundary dispute. At the meeting organized by the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC), a decision was taken to adjust the boundary between the plaintiff and the 2nd defendant; Akwa Ibom State. The boundary between the two states was not in dispute at the time of the Inter-Agency meeting. The parties were not invited to the Inter-Agency meeting before taking such a vital decision. Proper procedure was not followed by the National Boundary Commission.

The Inter- State Boundary Technical Committee must be set up to look into the exercise according to Section 8 (2) of the 1999 Constitution. The Inter-Agency meeting relied on the judgment of the International Court of Justice delivered in 2002 and the Supreme Court judgment in *A-G Cross River State v. A-G Akwa Ibom State* (2005) NWLR (Pt.947) Pg.71 to conclude that Cross River State is now landlocked and no longer a littoral state. The state is presumed no longer contiguous or abuts the sea. It has no 200 meters Isobaths into the sea neither does it share maritime boundary with any of the States. Cross River State is now divested of its maritime territory and oil wells. The plaintiff claimed to have acquired the oil well through proper demarcation of boundaries based on historical titles. The plaintiff also acquired 76 oil wells based on the political solution of President Obasanjo to which all parties agreed. The terms were communicated to both the plaintiff, the defendants and all agencies of the Federal Government including the National Boundary Commission and the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC). The Chairman of the Revenue Mobilization based on the letter Exhibit 1, wrote the Accountant-General of the Federation furnishing him with the new indices for the distribution of the 13% deri-

vation fund and the plaintiff's name was unilaterally omitted on the list. The plaintiff and the 2nd defendant had agreed to settle their boundary issue. The International Court of Justice judgment and the cessation of Bakassi and the Cross River estuary to Cameroon did not deny Cross River State of direct access to the sea through Calabar sea port. Ships have access to Calabar sea port through Cross River State without passing through the territory of any other state or country. The entire Calabar estuarine Region is still in Cross River State. The Eastern Naval Command of the Nigerian Army is based in Calabar. The new International boundary between Nigeria and Cameroon leaves the Cross River Estuary within Nigerian Territorial waters. The judgment of this court in *A-G Cross River v. A-G Akwa Ibom* delivered in 2005 found oil well operated by Moni Pulo and Addax oil to be within the internal waters of Cross River State and not off shore. The Supreme Court then awarded damages for losses suffered by Cross River State by wrongful attribution of the wells to Akwa Ibom State. The wells have now been transferred to Akwa Ibom by the Inter-Agency Committee decision. The plaintiff has been deprived of 13% derivation entitlement of the plaintiff from the 76 oil wells within the territory of the plaintiff since April 2009 to 10th March 2010 and from 11th March 2010 until date of judgment and thereafter. According to the additional written statement on oath by the plaintiffs 2nd witness, the total sum due and payable to the plaintiff from the defendants from April 2009 to February 2012 from the wrongful diversion of derivation revenue is N86,806,949,166.03. The court is urged to order the payment of this sum with interest at 20% to the plaintiff. The plaintiff identified three issues for the determination of this court from the statement of claim as follows:-

a. Whether having regard to the fact and circumstances of this matter the 1st defendant was justified in fact, law and under the Constitution to have set out to decide a nonexistent boundary dispute between the 2nd defendant and the plaintiff when there was no legal basis for same and thereby set aside, make void and discard the mutually agreed boundary determination between the 2nd defendant and the plaintiff under which each party had acted since 2005 to their mutual benefit.

b. Whether having regard to the facts and circumstances of this matter the defendants are stopped from resiling from the mutual

agreement reached between the parties in 2005 on the then boundary dispute between the 2nd defendant and the plaintiff especially after the parties had taken benefit from the said mutual agreement as evidenced by Exhibits A, B and C attached.

c. Whether in the determination of maritime and estuaries boundaries between two states in Nigeria the relevant authorities saddled with resolution of such boundaries are not entitled to use and adopt any of the internationally recognized accepted methods of settlement by agreement of the parties, the historical or strict technical equi-distance rules methods in the determination of the boundaries as the circumstances may dictate.

The 1st defendant - the Attorney-General of the Federation represented the Federal Government agencies particularly, Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) and National Boundary Commission affected by the complaint of the plaintiff as participants in the Inter-Agency meeting of August 2008. Pursuant to the order of court made on 4th May 2010, the 1st defendant eventually filed her 1st amended statement of defence, amended list of witnesses, 1st defendant's amended written address and the 1st defendant's brief of argument. The 1st defendant also filed the 1st statement on oath of Kamal Ibrahim and the 2nd witness on oath of Surveyor Alhaji Bashir Shettima. The brief facts of the case of the 1st defendant based on the witnesses' statement on oath of Surveyor Alhaji Bashir Shettima and Mr. Kamal Ibrahim stated the statutory functions of the Revenue Mobilization Allocation and Fiscal Commission which include-

a. To monitor the accruals and disbursement of revenue from the Federation Account and review from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities and

b. To demand and obtain regular and relevant information, data or returns from any government agencies.

Every State of the Federation in Nigeria and the FCT is a member of the Commission. The states are usually represented at all the meetings of the Revenue Mobilization Allocation Fiscal Commission including the Inter-Agency meetings of 15th April 2008 and August 2008. The RMAFC, Inter-Agency meeting of August 2008 was convened to attribute off shore oil wells/fields to Nigeria's Littoral States

and for the purpose of calculating the derivation funds payable to the littoral states in accordance with the 1999 Constitution of the Federal Republic of Nigeria. The RMAFC's meeting of 15th April 2008 affirmed that Cross River State is now a non-littoral state in Nigeria sequel to the judgment of the International Court of Justice delivered in October 2002 in the Cameroon/Nigeria boundary dispute and Supreme Court judgment in *A-G Federation v. A-G Abia State & ors* (No.2) 2002 6 NWLR (Pt.764) Pg.542. After the execution of the International Court of Justice judgment which ceded Bakassi Peninsula and the estuarine part of the internal waters called 'Cross River' to the Cameroon, the plaintiff no longer qualify as a littoral state. It has no maritime boundary with the 2nd defendant. Prior to the judgment of the International Court of Justice, the plaintiff was a littoral state in that it had direct access to the sea through Bakassi Peninsula and Cross River Estuary without passing through any other state's territory. As the plaintiff is no longer a littoral state and as it has no Maritime Territory, the 76 oil wells which now lie offshore within another maritime territory not that of the plaintiff cannot be attributed to the plaintiff. In order that any Nigerian littoral state may be entitled to the attribution of any off-shore oil field/well within the 200 meters Isobaths and the derivations therefrom, the oil field/well must lie off-shore but within the state's Maritime Territory which means that the state itself must abut and/or lie contiguous or proximate to the sea and have a Maritime Territory up to the 200 meters Isobaths.

The Revenue Mobilization, Allocation and Fiscal Commission did not demarcate any boundary at the August 2008 Inter-Agencies Kano retreat. The plaintiff would have remained a littoral state if the effort made by President Olusegun Obasanjo to retain the western part of Bakassi Peninsula in Nigeria had succeeded. The plaintiff would have retained the direct access to the sea. The 1st defendant emphasized

1. The letter dated 4th January 2005 addressed to the former President Olusegun Obasanjo caption "Akwa Ibom/Cross River Interstate Maritime Boundary".

2. The letter dated 31st October 2006 on the political solution in respect of oil wells between Cross River State/Akwa Ibom State/Rivers State were based on the negotiation and expectation that the western parts of the Bakassi Peninsula would be retained as a Nige-

rian Territory. The International Court of Justice judgment was delivered in 2002. The Greentree Agreement between Nigerian and Cameroon governments was signed on June 12, 2006 while handing over of the entire Bakassi Peninsula was eventually completed on the 14th of August 2008. There is now in existence a National Boundary Commission 2008 Map showing the seven littoral states in Nigeria after the hand-over of Bakassi Peninsula to Cameroon of which the plaintiff is not one of them. The status of the plaintiff was changed by the ICJ judgment which also disentitled the plaintiff from deriving benefits from the 76 oil wells which now belong to the 2nd defendant. B C

The 1st defendant raised the following issues for determination -

1. Whether there had been an agreement between the parties upon which the 1st defendant could be stopped from resiling. D
2. Whether the role played by the 1st defendant at her Inter-Agency Retreat held in Kano in August 2008 could be interpreted as a usurpation of the adjudicatory jurisdiction of the court.
3. Whether from the combined effects of the judgment of the International Court of Justice and the judgment of this court in Suit No. SC.124/1999 which is reported as A-G Gross River State v. A-G Federation & Anor (2005) 15 NWLR (Pt.947) Pg.71, the plaintiff has a seaward boundary, estuarine sector or maritime boundary to entitle it to oil wells located off shore. E

The 2nd defendant, Attorney-General Akwa Ibom State adopted and relied on documents as follows - 2nd defendant's 1st Amended Statement of Defence deemed filed on 14/5/2012; the witnesses statement of Okokon Essien and Augustine Dominic Odokwo the Akwa Ibom State Surveyor-General and Director of Civil Litigation of the Ministry of Justice for and on behalf of the 2nd defendant, the 2nd defendant's Final Written Address in disputing the claim of the plaintiff to the attribution of 76 oil wells to Akwa Ibom State. F G

According to the brief facts of the 2nd defendant's case, these 76 oil wells are located offshore the coast of Nigeria to which the plaintiff - the Cross River State represented by the Attorney-General of the State lays claim for the purpose of the payment of 13% derivation revenue pursuant to Section 162(2) of the Constitution of the H

Federal Republic of Nigeria 1999. The statement of claim of the plaintiff captions the bone of contention in this suit as follows -

“This unilateral removal of the plaintiffs name among the beneficiaries of the 13% derivation fund and the recalcitrance of the 1st defendant to change the position culminated in the filing of this case.”

B As at the time of the institution of this suit, the controversial 76 oil wells were and are still attributed to Akwa Ibom State represented by the 2nd defendant. The Inter-Agency meeting of the Revenue Mobilization and Fiscal Commission held in August 2008 followed and relied on the 2008 littoral states maritime boundaries delineations by the National Boundary Commission. The letter of the Revenue Mobilization, Allocation and Fiscal Commission to the Accountant General of the Federation in March 2009 forwarding the 2009 Revised 13% Derivation Indices for the payment of Derivation funds to littoral states omitted the name of Cross River State. It was decided at the RMAFC Inter-Agency meeting of the 15th April 2008 that in line with the National Boundary Commission Littoral States boundaries delineations. The offshore oil wells will be attributed to the littoral states jointly by all the agencies using the coordinates to be supplied by the Department of Petroleum Resources under the supervision of the Revenue Mobilization Allocation and Fiscal Commission.

The RMAFC Inter-Agency Report was produced in August 2008. By virtue of Section 6(1)(b) of the Revenue Mobilization, Allocation and Fiscal Commission Act Cap R7 Laws of the Federation of Nigeria 2004, the RMAFC is empowered to-

“a. Monitor the accruals to and disbursement of revenue from the ‘Federation Account and review from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities.

b. Section 6(2)(b) of the Act also gives the RMAFC the power to demand and obtain regular and relevant information data or returns from any government agencies.”

H On the other hand, Section 7(c) of the National Boundary Commission Act Cap N10 Laws of the Federation of Nigeria 2004 gives the National Boundary Commission the power to -

a. Define and delimitate boundaries between states, local government areas or communities in the Federation and between Nigeria and her neighbours in accordance with delimitation instrument or

document established for that purpose.

At the RMAFC Inter-Agency Meeting of 15th April 2008, Cross River State was factually affirmed as a non-littoral state in Nigeria sequel to the judgment of the International Court of Justice in 2002 in the Cameroon/Nigeria Boundary dispute. The 2nd defendant gave the qualification of a littoral state, whether in Nigeria or anywhere in the world or whether a sovereign country or a state in a federation. Such state must have a territory which must abut or be contiguous to the sea; it must be possible to have direct access to the sea from the state without passing through any other state's territory. Sequel to the judgment of the International Court of Justice delivered in 2002 and the ultimate execution in August 2008, Cross River State became landlocked and no part of its territory is contiguous to nor abuts the sea. The judgment of the Supreme Court in the case of Attorney-General of Cross River State v. Attorney-General of the Federation and one other (2005) 15 NWLR (Pt.947) Pg.71 pronounced that Cross River State has no maritime boundary with Akwa Ibom State. The 2nd defendant highlighted that prior to the judgment of the International Court of Justice, Cross River State qualified as a littoral state because as at that time it had access to the sea through the Bakassi Peninsula and the estuarine part of the inland waters; the "Cross River". The Cross River State used to claim a riparian territory abutting the sea through the peninsula and the estuary which then were part of Nigeria. The Bakassi Peninsula lies contiguous to the sea while the Cross River estuary empties into the sea. The fact of Bakassi Peninsula and the Cross River Estuary being part of Cross River State was the sole qualification and reason for being adjudged as a Nigeria littoral state. The National Boundary Commission 2008 Maritime Boundary Map did not reflect Cross River State as a littoral state. The 2nd defendant maintained that by virtue of Cross River State not being a littoral state and therefore not having any maritime territory, the 76 oil wells which are the subject matter of dispute in this suit and which lie offshore, within a maritime territory cannot be attributed to Cross River State. For any Nigerian littoral state to be entitled to the attribution of any offshore oil field/well within the 200 meters isobaths, the oil field/well must be offshore but within the State's maritime territory which means that the state itself must abut and/or lie contiguous or proximate to the sea and have a maritime territory up to

the 200 metres isobath or as the case may be in some circumstances have a riparian territory abutting the sea. The plaintiff does not presently have a land/shore/baseline abutting the sea. The 76 oil wells, subject matter of dispute, lie off shore and in a maritime territory within 200 meters isobaths from Akwa Ibom State shore/base line into the sea. The 2nd defendant concluded that the RMAFC Inter-Agency meeting report was therefore factually correct in attributing the 76 oil wells to Akwa Ibom while the Federal Government has been acting legally and correctly in paying to Akwa Ibom State the derivation funds from the said 76 oil wells. The 2nd defendant agrees that there was no boundary dispute between Cross River State and Akwa Ibom State.

The 2nd defendant however formulated two issues for the determination of this court in this suit as follows -

1. At all times material to this suit, was and is Cross River State a Nigerian Littoral State and entitled thereby to attribution and derivation revenues in respect of the 76 oil wells pursuant to the provisions of Section 162 (2) of the 1999 Constitution and Section 1 of the Allocation of Revenue (Abolition of Dichotomy in the application of the Principle of Derivation) Act Cap A 27 Laws of the Federation of Nigeria 2004?

2. Does the judgment of this honourable court in Attorney-General, Rivers State v. Attorney-General, Akwa Ibom State & 1 Or (2011) 8 NWLR (Pt.1248) pg. 31 apply to this case and can that judgment be relied upon to entitle Cross River State howsoever to attribution and derivation of revenues in respect of the 76 oil wells?

The foregoing is the resume of the reliefs sought by the plaintiff in the statement of claim, the case of the parties respectively and the issues formulated by the parties.

A cursory examination of all these issues reveals the crucial issues raised for determination in this suit. They can easily be identified as follows:

1. Whether there is in existence any issue of boundary adjustment between the plaintiff and the 2nd defendant in view of the binding agreement and resolution between the parties under the supervision of the 1st defendant since 2006 through its agencies.

2. Whether the plaintiff is entitled to the derivation revenue from the seventy-six oil wells which were previously located within

the 200 meter water depth isobaths contiguous to its territory as stipulated in Sections 1 & 2 of the Allocation of Revenue (Abolition of Dichotomy) with the principle of Derivation Act 2004.

3. *Whether the order of mandatory and perpetual injunctions restraining the 1st defendant by himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral state are enforceable.*

I intend to be guided by these three issues in the determination of this case. Yusuf Ali learned senior advocate for the plaintiff predicated the case of the plaintiff on the processes filed and particularly the written statement on oath of Raph Idiku Uche. The plaintiff emphasized that by the 31st of January 2005, the issue of boundary was mutually settled by the parties. The 2nd defendant, Akwa Ibom State wrote to the President on the 31st of January 2005 through Exhibit A to confirm her consent to the agreement. By the letter of the National Boundary Commission dated the 4th of January 2005, the agreed maritime boundary between the plaintiff and the 2nd defendant are -

a. The terminal point of the Akwa Ibom/Cross River Inter-State boundary in the Cross River Estuary has coordinates 43733 N and 82439 E.

b. The Maritime boundary between Akwa Ibom and Cross River State should be a line drawn from the point referred in (a) above southwards until it intersects with Nigeria/Equatorial Guinea International Maritime boundary.

c. Items (a) and (b) above have further implications as follows

d. Cross River State has 35904 N and 81253 E as coordinates of the terminal point on the Nigeria/Equatorial Guinea International Maritime boundary.

Cross River will gain 75 numbers of oil wells and Akwa Ibom State will lose the same number of oil wells. The status of the plaintiff as an oil producing state was sequel to the amicable resolution of the boundary dispute between the plaintiff and the 2nd defendant in 2005. The plaintiff also submitted that the 1st defendant or any of its agencies has no power to resolve the purported dispute without the contribution and the views of the plaintiff and the defendant. The

statutory duty of the National Boundary Commission implies that there must be a boundary dispute before the Commission can refer the dispute to its technical committee. The plaintiff also dismissed the claim of the federal government that the decision of the International Court of Justice in the Cameroon/Nigeria Border dispute on the Bakassi Peninsula, as the basis of the review of the Derivation Fund Formula and why the plaintiff's name was removed from the table of beneficiaries. The plaintiff disagreed with this reason in view of the following facts -

a. The decision of the International Court of Justice was made in 2002.

b. The boundary dispute between the plaintiff and 2nd defendant was amicably settled in 2005.

c. The decision of the ICJ has implication of the retention of the Western part of Bakassi Peninsula by Nigeria which means legally and administratively Bakassi LGA of Cross River State remains integral part of Nigeria. This entails that Cross River State has an outlet to the sea.

d. The ICJ decision can no longer be the basis for changing realities as erroneously canvassed by the RMAFC and NBC.

The plaintiff further submitted that the 1st defendant having acted ultra vires of its powers under the law, the purported settlement of non-existence boundary dispute is null and void. The plaintiff cited cases to support the submission that the 1st defendant acted ultra vires of its powers:- Knight Frank & Rutley (Nig) v. A-G Kano State (1998) 7 NWLR (Pt.556) Pg. 1 at pg. 19. Ujam v. IMT (2007) 2 NWLR (Pt.1010) Pg.490 at Pgs. 498 -499. The 1st defendant through her counsel Mr. Mike Usman, learned senior counsel argued and submitted that the National Boundary Commission; the Revenue Mobilization Allocation of Funds Committee; the Surveyor-General of the Federation and the Department of Petroleum Resources did not determine any boundary dispute between the plaintiff and the 2nd defendant at her Inter-Agency Retreat in Kano in August 2008. The Revenue Mobilization, Allocation and Fiscal Commission relied on her statutory power under Section 6(1) (a) and (b) of the Revenue Mobilization, Allocation and Fiscal Commission Act Cap R7 Laws of the Federation 2004 where it is empowered to -

"Monitor the accruals to and disbursement of Revenue from

the Federation Account and review from time to time the revenue allocation formulae and principles in operation to ensure conformity with changing realities.”

The Revenue Allocation Commission would rely on information supplied by relevant various departments in the preparation of the 13% derivation Revenue Indices pursuant to Section 162(2) of the 1999 Constitution and Section (1) of the Onshore/Offshore Dichotomy Abolition Act 2004. The 1st defendant specified the statutory duty of the National Boundary Commission based on Section 7(1) of the National Boundary Commission (Establishment) Act Cap N10 Laws of the Federation of Nigeria 2004 which reads that the *“National Boundary Commission is empowered to define and delimitate boundaries between States, Local Government Areas or Communities in the Federation and between Nigeria and her neighbours in accordance with delimitation instrument or document established for that purpose.”*

The 2nd defendant submitted through the learned senior counsel Chief Bayo Ojo about the effect of International Court of Justice’s judgment on the boundary demarcation between the plaintiff and the 2nd defendant. The judgment of the International court was delivered in 2002. The decision was taken into consideration in resolving the Maritime boundary dispute in 2005. The letter of 4th January 2005 specified the boundary but the letter was written under the impression that Nigeria would be allowed to retain Western Bakassi. The judgment of the International court did not give Nigeria the privilege of retaining Western Bakassi neither did the judgment at any time excise Bakassi nor award it to Nigeria. The entire Peninsula was handed over to Cameroon in August 2008. The letter of 4th January 2005 was written with the hope that Bakassi Peninsula would become part of Nigeria and the National Boundary Commission in 2005 transferred and attributed to Cross River State the 76 oil wells which hitherto were legally the property of and within the Maritime boundaries of Akwa Ibom State. The National Boundary Commission’s letter dated 4th January 2005 was hinged on the prospects that Nigeria would succeed in retaining Western Bakassi Peninsula. The map Exhibit CRSG 1 was said to have been approved by the President on the 24th of January 2005. This court in the case of A-G Cross River State v. A-G Federation (2005) 18 NWLR (Pt.958) Pg.581 rejected

the National Boundary Commission revised boundary map that was then approved by the President of the Federal Republic of Nigeria in that it will be premature for the court to determine the maritime boundary of the two states. Nigeria and Cameroon has to conclude their negotiation to finality and the international boundary fixed by the International Court of Justice is codified and published in line with the agreement. In effect, this court decided in that case contrary to the facts put forward in this case in this suit, that Cross River State and Akwa Ibom State do not share maritime boundaries in which circumstances there could not possibly be a maritime boundary dispute that could possibly be settled between the two states. The National Boundary Commission 2005 delineation/map was rejected by this court in the case *A-G Cross River State v. A-G Federation*. Both Exhibits F and B were nullified in that case. It is a misconception to conclude that RMAFC Inter-Agency meeting went in search of a non-existent maritime boundary dispute between Cross River and Akwa Ibom States. With the decision and execution of the judgment of International Court of Justice between Nigeria and Cameroon, there can never be a maritime boundary dispute between Cross River and Akwa Ibom States. As an outcome of the judgment of that court, Cross River State is now landlocked and has no seaward boundary. It is not a littoral state and consequently shares no maritime boundary with Akwa Ibom State. The National Boundary Commission and the Revenue Mobilization, Allocation and Fiscal Commission have the statutory power to react to the changes and realities the after effect of the judgment of the International Court of Justice. The plaintiff failed to tender any map to support the contention that Cross River State has access to the sea directly and not through any other State. The plaintiff also argued in favour of maritime boundary agreement based on the agreement of parties and supported same with two decisions of the International Court of Justice in the case concerning the Temple of Preach Vihear (Maris) Cambodia-Thailand ICJ Report (1962) and the case of Frontier Dispute (Burkina Faso) v. Republic of Mali (1986) ICJ Report.

The decision of this court in the case of *A-G Rivers State v. A-G Akwa Ibom State* adequately supported the use of negotiated agreements in the resolution of maritime boundary disputes. The 2nd defendant however pointed out that such agreements may only be

possible in the context of onshore/offshore Dichotomy Abolition Act 2004 where the parties share maritime boundaries. The plaintiff and the 2nd defendant do not share boundaries and there cannot be an enforceable agreement between the two states on the attribution of the 76 oil wells pursuant to the Dichotomy Abolition Act. The case *A-G Rivers State v. A-G Akwa Ibom State* (2011) 8 NWLR (Pt.1248) B Pg.31 has no application to this case as both States in that suit are and still remain Littoral States. The 2nd defendant urges this court to so hold.

Issue one as identified by this court is prompted by the contention of the plaintiff that there was no maritime dispute between the plaintiff and the 2nd defendant hence there was no basis for the alteration of the existing indices for revenue distribution to have called for a fresh implementation of the powers of the RMAFC as relied upon in Exhibit 1 attached herewith. By the letter of 4th January D 2005 already approved by the President, an agreed maritime boundary was identified between the plaintiff and the 2nd defendant. The Revenue Mobilization, Allocation and Fiscal Commission acted on the amicable boundary dispute resolution between the plaintiff and the 2nd defendant and the plaintiff enjoyed to some extent payment E of the derivation fund. The plaintiff now disputed in this suit the unilateral removal of the plaintiff's name among the beneficiaries of the 13% derivation fund and the recalcitrance of the 1st defendant to change the position, culminated in the filing of this case (vide the F plaintiffs statement of claim and Final Written Address Exhibit 1). It is not disputed that in order to qualify for the payment of the 13% derivation fund or revenue, the state must appear on the National Boundary Commission Maritime Boundary Delineation Map as a littoral State. The RMAFC Inter-Agency meeting held in Kano in 2008 G relied on the National Boundary Commission 2008 Maritime Boundary delineation Map to decide those which are littoral states and consequently entitled to the payment of the derivation. It is convenient to explain at this stage that the bone of contention is 76 oil wells located offshore the coast of Nigeria to which Cross River State, represented H by the plaintiff, lays claim for the purpose of 13% derivation revenue attribution pursuant to Section 162(2) of the 1999 Constitution of the Federal Republic of Nigeria.

By way of brief background as at the time the judgment of this

court in *A-G Federation v. A-G Abia State* (2002) 6 NWLR (Pt.764) Pg.542 was pronounced, only the Federal Government and not the littoral states could lawfully exercise legislative, executive and judicial powers over the maritime belt or territorial waters and sovereign right over the exclusive economic zone subject to universally recognized rights. The immediate effect of that judgment popularly referred to as the Resource Control judgment was the promulgation of the Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act 2004. By virtue of Sections 1(1) and (2) of the Act, as from the date of commencement in 2004 the 200 meters water depth Isobaths contiguous to a State of the Federation was deemed to be a part of that State for the purpose of computing the revenue accruing to the Federation Account from that state pursuant to the provisions of the 1999 Constitution or any other enactment. For the purpose of the application of the principle of derivation, it is immaterial whether the revenue accruing to the Federation account from the state is derived from the natural resources located onshore or offshore. In effect, by virtue of Section 1(1) of the Allocation of Revenue (Abolition of Dichotomy) Act 2004, all littoral States had some derivative interests in offshore natural resources located within 200 meters water depth Isobaths. Relevant agencies of government like the National Boundary Commission with the Surveyor-General of the Federation have the statutory duty of delineation of national and maritime boundaries. The National Boundary Commission was established by the National Boundary Commission Act Cap N10 Laws of the Federation 2004.

Section 1(a) depicts that the Commission shall 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. Section 7(1) empowers the Commission to define and delimit boundaries between States, Local Government Areas or Communities in the Federation and between Nigeria and her neighbours in accordance with delimitation instrument or document established for that purpose. The National Boundary Commission had the presidential mandate to produce the delimitation of the Maritime Boundary of Nigeria Littoral States: Akwa Ibom, Bayelsa, Cross River, Rivers, Delta, Ogun, Ondo States from the shore/baselines into the sea up to 200 meters isobaths.

(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 on the 4th of January 2005 in Exhibit F gave proposals for the Cross River State and Akwa Ibom State Maritime Boundary delineation followed by the allotment of 76 oil wells to Cross River State. The parties accepted the issues of boundary delineation as mutually settled to the satisfaction and benefit of both parties (See Exhibit A of the plaintiff which is a letter from the Akwa Ibom State Governor to the president dated 31st January 2005). This court rejected the National Boundary Commission 2005 revised map in the case of Attorney-General Cross River State v. Attorney-General Federation & anor (2005) 15 NWLR (Pt.947) Pg.71 and concluded that in the prevailing circumstance of the judgment of the International Court of Justice on the case between Nigeria and Cameroon.

“The effect of the judgment of the International Court of Justice dated 10/10/2002 on the land and maritime boundary case between Nigeria and Cameroon is that it has wiped off what used to be the estuarine sector of Cross River State as a result of which the State is hemmed in by the new international boundary between Nigeria and Cameroon. That being the case, there seems to be no longer any estuarine boundary between Akwa Ibom State and Cross River State. If the median line principle or the ‘thalweg’ principle is adopted in drawing the boundary line along the Cross River between the Cross River State and Akwa Ibom State, the line must intersect and the new maritime line between Nigeria and Cameroon with the result that Cross River State no longer has a seaward boundary. In the circumstance, it is unnecessary to consider in the instant case the question about the applicable principle in determining the maritime boundary between the two states.”

Another fine point projected in the case by Edozie JSC (as he then was) at Pg. 109 paras. D-H is that

“It can easily be seen from paragraph 17 of the above affidavit that the revised boundary delimitation of the NBC dated 5/7/2004 which the plaintiff is urging this court to declare as the maritime boundary of the two states is predicated on the negotiations between Nige-

ria and Cameroon which negotiation is almost but not finally concluded.

It also needs to be stressed that the NBC revised boundary map was made and allegedly approved by the President at a time when the boundary dispute was sub judice. In the light of the observations I have expressed above regarding the NBC revised boundary delimitation, I do not feel comfortable to grant the declaration sought. Until both Nigeria and Cameroon conclude their negotiation to finality and the international boundary fixed by the ICJ is modified and published in line with the agreement, it will be premature for this court to determine the maritime boundary of the two states.”

The plaintiff argued that the decision of the International Court of Justice can no longer be the basis for changing realities as erroneously canvassed by Revenue Mobilization, Allocation and Fiscal Commission and the National Boundary Commission. The reasons given were that (1) the decision of the International Court of Justice was made in 2002.

(2) The boundary dispute between the plaintiff and the 2nd defendant was amicably resolved in 2005.

(3) The decision has the implication of the retention of the Western part of Bakassi Peninsula by Nigeria which means legally and administratively Bakassi LGA of Cross River State remains an integral part of Nigeria. This entails that Cross River State has an outlet to the sea.

This foregoing to my mind is a misconception. As the attempt by Nigeria through President Olusegun Obasanjo to retain Western Bakassi Peninsula sequel to the ICJ judgment proved abortive. On the basis of the retention, Cross River State would still have had direct access to the sea and would have remained a Nigerian Littoral State. It was based on the negotiation and the expectation that Nigeria would be allowed to retain Western Bakassi that the NBC letter of 4th January 2005, the plaintiffs Exhibit F titled ‘Akwa Ibom/Cross River Inter-State Maritime Boundary’ was approved by the President and the 76 oil wells transferred and attributed to Cross River State. ‘However between 2002 to 2008, after the ICJ judgment to the time of the implementation and the transfer of the Bakassi Peninsula and the estuarine area of Cross River State to Cameroon, Cross River State continued to enjoy the 13% derivation revenue from the 76 oil

wells. After the affected areas were ceded to Cameroon, Cross River State became landlocked with no seaward boundaries. It was deprived the status of a littoral State and eventually Cross River State shares no maritime boundary with Akwa Ibom State or any other Nigerian State. The position came before this court in the case of A-G Cross River State v. A-G Federation & anor (2005) 15 NWLR ^B (Pt.947) Pg.71.

The RMAFC Inter-Agency meeting of August 2008 was convened to attribute offshore oil wells/fields to Nigeria's littoral state for the purposes of calculating the derivation funds payable and due to the littoral states in 2009 by virtue of Section 162 (2) of the Constitution of the Federal Republic of Nigeria 1999. The RMAFC has the power by section 6(1)(a) and 6(1)(b) of the RMAFC Act Cap R7 Laws of the Federation 2004 to monitor the accruals to disbursement of revenue from the Federation Account and review from time to time the revenue allocation formula and principles in operation to ensue conformity with changing realities. The National Boundary Commission and the Revenue Mobilization, Allocation and Fiscal Commission used their statutory powers to react to changes brought about by the implementation of the judgment of the International Court of Justice. The ICJ judgment altered the configuration of Nigeria's maritime boundary with Cameroon. The argument of the plaintiff that none of the parties - Cross River State or Akwa Ibom State was invited to the August Kano RMAFC Inter-Agency meeting and thereby causing the issue of breach of fair hearing is irrelevant ^F and out of context. The relevant question is whether the plaintiff is entitled to the derivation revenue from the seventy-six oil wells located within the 200 meters water depth Isobaths contiguous to its territory as stipulated in Section 1(1) and (2) of the Allocation of Revenue (Abolition of Dichotomy) Act 2004. On this issue, the plaintiff averred in paragraph 18 of the statement of claim that - "Strangely, however in 2008 the Revenue Mobilization, Allocation and Fiscal Commission wrote to the President of Nigeria suggesting that the 76 oil wells attributed to Cross River State be given to Akwa Ibom, claiming falsely that Cross River State had ceased to be a littoral state on the ground that Nigeria had ceded the Bakassi Peninsular to the Republic of Cameroon. The plaintiff shall contend at the trial that as at the time the Commission made this claim even though there was hand- ^H

ing over of Bakassi to Cameroon, the two countries that is, Nigeria and Cameroon had set up a mixed commission that was to work out details of the areas affected by the judgment of the ICJ and this exercise is still on going.

Paragraph 19

B *“The plaintiff shall contend at the trial of this case that Cross River lies between Akwa Ibom State and Cameroon. The 76 oil wells were attributed to the plaintiff long after the judgment of the International Court of Justice. They have always been located in the same place contiguous to the territory of the plaintiff,”*

C Paragraph 24

“it is the plaintiffs averment that in the letter referred to above, it was clearly stated that the delineation of the maritime boundary between Cross River and Akwa Ibom States in 2005 was as a result of the expected retention of the Western part of Bakassi by Nigeria - meaning that the maritime portions of Bakassi is still part of Cross River State.”

In the claim of the plaintiff, she claimed jointly and severally against the defendants as follows -

E 1. A declaration that the defendants are estopped from raising the issue of boundary adjustment as between the plaintiff and the 2nd defendant having regard to the conclusive and binding agreement/resolution reached between the plaintiff and 2nd defendant under the supervision of the 1st defendant since 2006 and upon which the parties had acted since the 2nd defendant has received and continued to receive allocation from the 14 oil wells in Cross River which were attributed to it as a result of the agreement between the parties.

F 2. A declaration that the plaintiff is entitled to a share of the 13% derivation revenue from the seventy-six oil wells located within the 200 meter water depth Isobaths contiguous to its territory as contained in Sections 1 and 2 of the Allocation of Derivation Act 2004.

G This court is urged to make an order mandating the defendants to treat the maritime boundary determined by the 1st defendant in 2006 as the recognized boundary between the 2nd defendant and plaintiff and to share all derivation revenue from the area in accordance with the agreed boundary between the parties. The sum total of the plaintiffs claim is that she has been wrongfully and unlaw-

fully excluded from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Account as a littoral state based on the 76 oil wells attributed to it as a result of the agreement between the parties. Such agreements are based on the amicable settlement of her boundary with Akwa Ibom State reliance on Exhibits A and F. B

b. Agreement based on Exhibit C; between Cross River and Akwa Ibom States which ceded the attribution of the derivation revenues in respect of the 76 oil wells to Cross River State.

This court should not permit the 2nd defendant to resile from the said agreement Exhibit C. Exhibit C was prepared by President Olusegun Obasanjo on 31st October 2006 and distributed to the Governors of Akwa Ibom, Cross River and Rivers States, Minister of Finance, Chairman Revenue Mobilization, Allocation and Fiscal Commission, Director General Nigeria Boundary Commission and the Accountant-General of the Federation. The document is captioned “Meeting on Implementation of the Onshore/Offshore Dichotomy Abrogation Law as it relates to the Maritime Boundaries between Cross River/Akwa Ibom/River States vis-a-vis the Judgment of the Supreme Court of June 24, 2005.” The plaintiff is tenaciously claiming that it is a littoral state as it has access to the sea through Calabar without passing through any other State. C D E

The 1st defendant contends that until the judgment of the International Court of Justice in 2002, the plaintiff was an oil producing state and was enjoying the benefits derivable from such status. After the judgment of the International Court of Justice, Nigeria negotiated with Cameroon with the hope that she could retain Bakassi in Nigeria. While the negotiation was in progress, the plaintiff sought reliefs from this court which were refused and deferred until the determination of the negotiation. Both Bakassi and the estuary of Cross River State were handed over to Cameroon between 2006 and eventually 2008. As a consequence of the judgment, the plaintiff became a land locked state with no seaward boundary, estuarine sector or maritime boundary to entitle her to 76 oil wells located offshore. The Government of the Federation cannot disobey the judgment of the International Court of Justice. The 1st defendant contends that oil wells that lie offshore and the derivations therefrom are only available to littoral states of the Federal Republic of Nigeria. This explains F G H

why the RMAFC Inter-Agency meeting could not list the plaintiff in Exhibit I with the other littoral states. The 1st defendant urged this court to hold that the plaintiff lacks reasonable cause of action. The 1st defendant referred to the judgments of this court in: A-G Federation v. A-G Abia State & ors (No.2) (2002) 6 NWLR (Pt.764) Pg.543, B A-G Cross River State v. A-G Federation & anor (2005) 15 NWLR (Pt.947) Pg.71.

The 2nd defendant submitted that the onshore/offshore Dichotomy Abolition Act was made solely for the benefit of Nigeria's littoral states and does not admit of non-littoral states. Cross River State used to be a littoral State up to 2008 when the ICJ judgment was fully implemented with the ceding of Cross River estuary and the physical hand-over of the entirety of Bakassi Peninsula by Nigeria to Cameroon. The complete implementation of the ICJ judgment in D 2008 frustrated the performance of Exhibit C and made the contract envisaged between the parties to the agreement of no application. In the case of A-G Rivers State v. A-G Akwa Ibom State (2011). 8 NWLR (Pt.1248) Pg.31, parties remain littoral states, share maritime boundaries and thereby qualifying for derivation revenues pursuant to on- E shore/offshore Dichotomy Abolition Act.

It is right and proper to remember at this stage that the central issue in this dispute is 76 oil wells located offshore the coast of Nigeria. The plaintiff, Cross River State claims the 76 oil wells for the purpose of the payment of 13% derivation Revenue pursuant to F Section 162 (2) of the 1999 Constitution of the Federal Republic of Nigeria. The 76 oil wells were attributed to Akwa Ibom State, the 2nd defendant following the 2008 littoral states maritime boundaries delineation by the National Boundaries Commission. This map was G adopted and acted upon by the Revenue Mobilization and Fiscal Commission Inter-Agency meeting held in Kano in August 2008. The RMAFC forwarded to the Accountant-General of the Federation the 2009 Revised 13% Derivation Indices which excluded the plaintiff from the list of littoral States. The plaintiff challenged her removal H from the list of beneficiaries of 13% derivation revenue. The determination of whether a state is a littoral State within the Federal Republic of Nigeria is a question of fact and moreover there is statutory precondition for the payment of the offshore derivation revenue to states. Section 162(1) of the 1999 Constitution of the Federal Re-

public of Nigeria stipulates that -

“The Federation shall maintain a special account to be called ‘the Federation Account’ into which shall be paid all revenues collected by 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.” B

Section 162(2)

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

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

On the 16th of February 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 2004.

Section 1(1) reads -

“As from the commencement of this Act two hundred metres water depth Isobath contiguous to a State of a federation shall be deemed to be a part of that state for the purposes 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 G or any other enactment.”

It is obvious that the purpose of this Act is to introduce a more readily ascertainable basis of apportionment of the income derived from the natural resources in a State. It is a devise intended for the purpose of computing the revenue which accrues to the Federation H Account from the littoral States. A-G Adamawa state v. A-G Federation (2005) 18 NWLR (Pt.958) Pg.581. **By virtue of the onshore/offshore Dichotomy Abolition Act 2004, a State of the Federation can claim natural resources located within two hun-**

dred meters water depth Isobaths contiguous to that State. If a State does not lie contiguous to the two hundred meters water depth Isobath, she cannot claim derivation entitlement to the natural resources that lie within that territory. In other words, though the Federal Government of Nigeria has constitutional and exclusive jurisdiction over offshore natural resources, by virtue of Section 1(1) of the Offshore/Onshore Dichotomy Abolition Act 2004, littoral States do have some interests (derivation) in offshore natural resources located within 200 meters water depth Isobath contiguous to a state, these 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. When the judgment of this court was delivered in the case of A-G Federation v. A-G Abia State (2002) 6 NWLR (Pt. 764) Pg. 543, there were eight littoral States in Nigeria - Akwa Ibom, Cross River, Rivers, Bayelsa, Delta, Lagos, Ogun, Ondo and their southern or seaward boundaries are the seaward limit of their internal waters or their low water mark. This shall be used for the purpose of calculating the amount of revenue accruing to the Federation Account directly from that State pursuant to Section 162(2) of the 1999 Constitution. This court paid particular attention to the peculiar situation of Cross River State with an archipelago of Islands. The seaward limit shall be that of inland waters in the state.

A littoral State in the Nigerian context or globally must be contiguous or abut the sea. It must have direct access to the sea through its own territory. A littoral State shall be entitled to the attribution of offshore oil well/field within 200 meter water depth Isobaths. The oil field/well must lie offshore but within the State's maritime territory up to the 200 meters Isobaths and in some peculiar case as it were in the case of Cross River State. Cross River State, the plaintiff had all these attributes and was entitled to and paid the derivation revenue up to 2008. The situation in that State was changed irredeemably by the International Court of Justice judgment which found in favour of Cameroon in 2002. The implementation and final execution of the judgment was between 2006-2008.

Prior to the final execution of the judgment in August 2008, the plaintiff had everything in her favour and enjoyed all the benefits

of a littoral state as follows -

1. It was contiguous to the sea and had a 200 meter water depth isobath within its territory.

2. It enjoyed maritime territory boundary amicably settled with Akwa Ibom State.

3. It had 76 oil wells off shore within its maritime territory. B

4. It was entitled to the payment of 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral state.

The Greentree agreement for the implementation of the orders of the International Court of Justice in the judgment between Nigeria and Cameroon - the Cross River Estuary and Bakassi Peninsula were ceded to Cameroon between 2006 and 2008. The President of Nigeria, Olusegun Obasanjo made an effort to retain Western Bakassi for Nigeria after the first stage of the cessation. The request was turned down. **Consequently, the plaintiff was deprived of its status as a littoral State. The judgment of this court in Suit SC.124/1999 - A-G Gross River State v. A-G Federation & anor (2005) 15 NWLR (Pt.947) Pg.77 adequately described the aftermath of the ICJ judgment on the plaintiff. This court held that the ICJ judgment wiped off what used to be the estuarine sector of Cross River State as a result of which the State is hemmed in by the International boundary between Nigeria and Cameroon. Cross River State no longer has any maritime boundary. It is landlocked. The plaintiff not being a littoral State and not having a maritime boundary or abutting the sea, the 76 oil wells which is the subject matter of her claim in this suit, which lies off shore and within a maritime territory cannot be attributed to it.** The National Boundary Commission Map 2008 filed before this court in this suit was correctly relied upon by the RMAFC Inter-Agency Report to categories the plaintiff as a non-littoral State. The 76 oil wells have legally been attributed to Akwa Ibom State by the Inter-government agencies based on the facts revealed at their meeting. D E F G H

The plaintiff prayed for mandatory orders and perpetual injunctions to restrain the 1st defendant by himself or through any of its agents from excluding the plaintiff from the Federation Accounts as a littoral state. The plaintiff's assertions in her case includes-

a. That the decision of the ICJ made in 2002 was taken into consideration in resolving the maritime boundary in 2005.

b. The plaintiff nursed the hope of Bakassi LGA remaining an integral part of Nigeria which means that Cross River State will still have an outlet to the sea.

B c. ICJ decision cannot be the basis for changing the realities now canvassed by RMAFC and NBC.

d. The parties cannot resile from the binding agreement based on the political solution, Exhibit C in the plaintiff's case.

C e. Plaintiff maintained access to the sea through Calabar River.

The 1st defendant emphasized that whatever benefits by way of oil wells and derivation available to the plaintiff within 200 meters depth Isobaths were lost upon the judgment of the International Court of Justice of 2002 which was fully implemented in 2008. The plaintiff D lost her status as a littoral State. The determination of the status of the plaintiff as a littoral or non-littoral State will determine whether she is entitled to the Derivation Revenue and not whether she has financial commitments to meet. The 2nd defendant contended that Cross River State not being a littoral State and not having any maritime boundary with Akwa Ibom State does not qualify the plaintiff to benefit E from the provisions of the onshore/offshore Dichotomy Abolition Act in respect of the 76 offshore oil wells. The 2nd defendant also explained that as at October 2006 when the agreement Exhibit C was F prepared, Cross River State was de facto a Nigerian littoral State. As at August 2008 when the National Boundary Commission Map was prepared and ratified by the RMAFC Inter-Agency meeting, Cross River State was no longer a littoral State following the implementation of the ICJ judgment and the ceding of Cross River estuary and G the physical handing over of Bakassi peninsula to Cameroon. The 2nd defendant explained that contract frustration had affected Exhibit C as a binding contract between the Parties. The handing over of Bakassi peninsula by Nigeria to Cameroon was circumstance so fundamental as to be regarded by law as striking at the root of Exhibit C and practically beyond the contemplation of the parties when H they entered the agreement. The intervening event which frustrated the contract was not caused by any of the parties to Exhibit C. The decision of this court in the case *A-G Rivers State v. A-G Akwa Ibom* (2011) 8 NWLR (pt.1248) Pg. 31 is not applicable to this case. The

2nd defendant cited the case *Mazin Engineering Limited v. Tower Aluminium (Nigeria) Limited* (1993) 5 NWLR (Pt.295) at Pg. 526 in support of the principle of frustration of contract, Whereas the other parties like Rivers State and Akwa Ibom State remain littoral States and share maritime boundaries thereby qualifying them for derivation revenue pursuant to the onshore/offshore Dichotomy Abolition Act. The 2nd defendant urged this court to dismiss the plaintiff's suit in its entirety. B

I cannot but refer to the contention of the plaintiff based on the case put forward before this court as follows-

Paragraph 7.01 of the plaintiff's brief of argument C

"The facts of this case are clearly settled and they irresistibly point to the position of the plaintiff as the owner of the 76 oil wells which have earlier been conceded by the defendants. The agents of the 1st defendant are attempting to change the factual position by distorting logic on its head." D

Paragraph 6.19

"The principle of the law UBI JUS IBI REMEDIUM and it is only right that the plaintiff be compensated for all these environmental problems like her sister states in the Niger-Delta region. It is not only unjust but absolutely unfair to deny the plaintiff its entitlement as a littoral State especially in the light of the earlier decision of this honourable court in A-G Federation v. A-G Abia State (No.2) (2002) 6 NWLR (Pt. 764) Pg.542." E

The plaintiff's stand and argument failed to face the realities of the moment and the position of affairs after the loss of Bakassi Peninsula and the Cross River estuary to Cameroon after the final implementation of the ICJ judgment in August 2008. Any other claim by the plaintiff after the littoral States delineation of maritime territories by the National Boundary Commission 2009 must be proved by cogent and credible evidence to the satisfaction of this court. The plaintiff's claim to the 76 oil wells is based on declarations, mandatory orders and perpetual injunction. F

It is trite law that the purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to promote or declare an existing state of affairs in law in his favour as may be discernable from the averments in the state- H

ment of claim. In order to be entitled to a declaration, a person must show the existence of a legal right, subsisting or in 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 consequences too. Adigun v. A-G Oyo State (No.1) (1987) 1 NWLR (Pt.53) 678, Dantata v. Mohammed (2000) 7 NWLR (Pt.664) Pg.176, Ekundayo v. Baruwa (1965) 2 All NLR 211, Nwokudu v. Okanu (2010) 3 NWLR (Pt.1181) Pg.362.

The facts before the court do not support the claim of the plaintiff to being a littoral State. A non-littoral state cannot claim oil wells offshore as she has no maritime territory. The plaintiff has no maritime territory since the cessation of Bakassi Peninsula and the Cross River estuary which used to be part of the State prior to August 2008. The present position of the plaintiff cannot be blamed on any government agency particularly the National Boundary Commission and the Revenue Mobilization, Allocation and Fiscal Commission. The two statutory bodies must perform their statutory duties based on facts and realities to compile the indices for the payment of the derivation revenue to entitled States. The existing contract between the parties based on Exhibit C and which the plaintiff alleged that the defendants are estopped to renege on it was discharged by frustration. The doctrine of frustration is applicable to all categories of contracts. It is defined as the premature determination of an agreement between parties, lawfully entered into and which is in the course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement. N.B.C.I v. Standard (Nig.) Eng. Co. Ltd (2002) 8 NWLR (Ppt.768) Pg.104, Mazin Engineering Limited v Tower Aluminium (Nigeria) Ltd. (1993) 5 NWLR (Pt.295) Pg. 526.

It is the duty of the court to state whether and when frustration has occurred; in other words, to determine the existence of frustration. Frustration occurs whenever the court recognizes that without default of either party a contractual obligation has become incapable of being performed. The

courts have recognized certain situations or events as listed below that constitute frustration –

a. Subsequent legal changes

b. Outbreak of war.

c. Destruction of the subject matter of contract.

d. Government requisition of the subject matter of the contract. B

e. Cancellation of an expected event. Cricklewood Property & Investment Trust Ltd v. Leightons Investment Ltd. (1945) 1 All ER 252, Knell v. Henry (1903) 2 KB 740, Obayuwana v. The Governor of Bendel State (1982) Pg. 167, Araka v. Monier Construction Company Ltd. (1978) 2 LME Pg.60. ***In other words, a court would recognize that a contract is frustrated where after the contract was concluded, events occur which make performance of the contract impossible, illegal or something radically different from that which was in the contemplation of the parties at the time they entered into the contract. A contract which is discharged on the ground of frustration is brought to an end automatically by the operation of law, irrespective of the wishes of the parties. This unfortunately is now the fate of the agreements between the parties which have been automatically terminated by the implementation of the judgment of the ICJ. The court cannot close its eye to this existing situation and declare that the plaintiff should continue to enjoy the benefits and privileges of a littoral State when it is no longer one by subsequent legal changes.*** C
This court cannot because of the influx of refugees from Bakassi into Cross River State give a legislative judgment. The government of Nigeria has a means of providing for the social needs of the people of Cross River State faced with the social problems thrust on the State due to the cessation of the Bakassi Peninsula to the Cameroon. The government of Cross River State must explore this avenue. The entire claims of the plaintiff against the 1st and 2nd defendants jointly and severally must fail for lacking in substance and merit. D
E
F
G
H

The 13% derivation revenue on the 76 oil wells offshore between Akwa Ibom State and Cross River State must continue to be attributed to the State on whose maritime territory they are found to be located by the relevant government agencies; that is the National

Boundary Commission, the Revenue Mobilization, Allocation and Fiscal Commission relating with the office of the Surveyor-General of the Federation and the Accountant-General of the Federation.

The plaintiffs claim is accordingly dismissed with no order as to costs.

B

MUSDAPHER CJN

I have read before now the judgment just delivered by Adekeye JSC, with which I entirely agree. In the aforesaid judgment my Lady C has comprehensively and meticulously set out the relevant facts surrounding the Statement of Claim and the Statements of Defence in this action invoking the original jurisdiction of the Supreme Court. The central issue in this dispute is the 75 oil wells located offshore the D coast of Nigeria within the Nigerian territorial waters. The plaintiff, Cross River State of Nigeria, through its Attorney-General, claims the 76 oil wells for the purposes of the payment of 13% derivation revenue pursuant to section 162(2) of the Constitution. The 76 oil wells were attributed to the 2nd defendant, Akwa-Ibom State, when in E 2008 the National Boundaries Commission drew a map delineating the maritime boundaries of the littoral States. This Map was adopted and acted upon by the Revenue Mobilization and Fiscal Commission Inter-agency meeting held in Kano in August 2008. The plaintiff, F Cross River State was declared as a non littoral State and was no longer entitled to the 13% revenue derivable from the oil wells having lost its status as littoral state by the cession of Bakassi Peninsular to the Cameroon. A littoral State must be contiguous or abut the sea. It must have direct access to the sea through its own territory. There is G no doubt and that there was no dispute about it, that the plaintiff, Cross River State enjoyed the status of a littoral state and indeed enjoyed the 13% derivation revenue from the 76 oil wells before the final implementation and execution of the International Court of Justice Judgment which was found in favour of the Cameroon and which H judgment ceded the Bakassi Peninsula to the Cameroon in 2002. In the case of ATTORNEY- GENERAL CROSS RIVER STATE VS. ATTORNEY GENERAL OF THE FEDERATION AND ANOR. 15 NWLR (PT.947) 77. This Court described the effect of the ICJ Judgment on the plaintiff which had lost its maritime boundary. It is landlocked.

In my view, with the implementation of the ICJ Judgment in 2008 and when the National Boundaries Commission Map was prepared and ratified by the Revenue Mobilization And Fiscal Commission Inter-agency meeting, the plaintiff was no longer a littoral state to benefit from the provisions of Onshore/Offshore Dichotomy Act in respect of the 76 offshore oil wells the subject of this litigation. For the above and more detailed reasons contained in the aforesaid leading judgment, I too adjudge that the plaintiffs' claim be and are hereby dismissed. I made no order as to costs.

C

MOHAMMED JSC

I have been privileged before today to read the judgment of my learned brother Adekeye, JSC which has just been delivered. I completely agree with the lucid reasons therein advanced to arrive at the conclusion that the plaintiff's action against the Defendants is devoid of merit and certainly ought to be dismissed.

In support of its claim for the 76 oil wells in dispute between the parties in this case, the Plaintiff filed its statement of claim on 17th May, 2010 and supported it by deposition of witnesses of the same dated 17th May, 2010. There was also the Plaintiff's written address filed on 17th May, 2010. Additional, written statement on oath by the 2nd plaintiff witness was also filed on 21st March, 2012. From the evidence filed in support of the Plaintiff's statement of claim particularly the letter Exhibit 'A' written by the then Governor of the 2nd Defendant to the then Head of State requesting for the settlement of the dispute involving oil wells between the Plaintiff, the 2nd Defendant and the Rivers State politically rather than through Court processes, the case of the Plaintiff is quite clear. It is the claim of the Plaintiff that following the meeting between the parties and the then Head of State on 27th October, 2006, the dispute between the parties particularly affecting the rights over the 76 oil wells, was amicably settled between the Plaintiff and the 2nd Defendant resulting in the letter of 31st October, 2006 written by the then Head of State to the parties and the affected Government Agencies conveying the agreement reached on the said settlement which left the 76 oil wells to the Plaintiff. That based on the said agreement the Plaintiff continued to enjoy proceeds of revenue from the 76 oils wells from 2006 up to

2008 when the position was reversed by the National Boundaries Commission and the Revenue Mobilization, Allocation and Fiscal Commission following the final transfer of Bakassi Peninsula and Cross-River Estuary to the Cameroon Republic by Nigeria as part of the execution of the judgment of the International Court of the Justice
 B on the Boundary Dispute between the two neighbouring Countries.

It is therefore quite plain that the Plaintiff is relying very heavily on the 2006 agreement which conceded to it being a littoral State and consequently enjoying the benefits of revenue of 13% derivation from the 76 oil wells. This no doubt is the basis of the Plaintiff's
 C claim of declaratory and injunctive reliefs particularly those outlined in reliefs 7 and 8 which read -

*"7. A declaration that the historical method for determining the estuarine or maritime boundary between littoral States in Nigeria
 D is valid and that the application of the said method in the statement of the boundary dispute between the 1st Defendant and the Plaintiff in 2006 was lawful and valid.*

8. An order of perpetual injunction restraining the 1st Defendant (sic) himself or through any its agents from excluding the Plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral state"
 E

However, from the statements of defence of the Defendants, the depositions of their witnesses contained in their affidavits to which relevant documents comprising maps and the judgment of the International Court of Justice which resolved the lingering boundary dispute between Nigeria and the Cameroon Republic, the claim of the Plaintiff that it was one of the littoral States in Nigeria, is strongly denied by the Defendants. That following the outcome of the Revenue Mobilization, Allocation and Fiscal Commission Inter Agency meeting of 15th April, 2008, it was affirmed that the Plaintiff, the Cross-River State of Nigeria, was no longer a littoral State in Nigeria sequel to the judgment of the International Court of Justice delivered on 10th October, 2002, in the Cameroon/Nigeria boundary dispute.
 F
 G
 H The Defendants had contended that one of the consequences of the International Court of Justice judgment, was to deprive the Plaintiff of the status it had enjoyed since 2006 of being one of the littoral States in Nigeria. It was the case of the Defendants further that since the Plaintiff had no Maritime Boundary with 2nd Defendant beyond

the internal waters of Cross-River Estuary, it cannot enjoy the benefit of being a littoral State.

Although in its address, the Plaintiff had identified as many as three issues for determination in this action, all the issues were virtually based on the Plaintiff's stand of trying to hang on the agreement said to have been reached between the parties in 2006 allowing it to enjoy the benefit of being a littoral State. However as far as I can see it from the evidence placed before this Court by the parties, the real issues is whether from the combine effects of the judgment of the International Court of Justice and the judgment of this Court in the case of Attorney-General Cross River State v. Attorney-General of the Federation & Anor. (2005) 15 NWLR (Pt.947) 71, the Plaintiff has a seaward boundary, estuarine sector or maritime boundary to warrant it being described a littoral State in Nigeria to enable it enjoy the benefits of the 13% revenue derivation from the dispute 76 oil well located offshore of Nigerian Coast.

The answer to this real issue for determination is of course in the negative. This is because from the evidence brought by the Defendants particularly the evidence of the 2nd witness to the 1st Defendant that with effect from 14th August, 2008 when part of Western Bakassi was finally handed over to the Cameroon Republic as part of final implementation of the judgment of the International Court of Justice which resolved the Cameroon/Nigerian Boundary dispute, the Plaintiff had ceased to be a littoral State in Nigeria. The map exhibited to the affidavit of this witness which was prepared and produced by the Surveyor-General of the Federation had clearly confirmed this new status of the Plaintiff. Therefore, it is my view, that as all the reliefs claimed by the Plaintiff in this Court are based or predicated on its claim of being a littoral State in Nigeria, the Defendants having established by credible and cogent evidence that the Plaintiff had since 14th August, 2008, ceased to be a littoral State in Nigeria which Western Bakassi was ceded to the Republic Cameroon, the basis of the Plaintiff's claims had been swept away by these events including the 2006 agreement heavily relied upon to pave the way for this Court to dismiss the Plaintiff's action.

For the above reasons and most especially the elaborate reasons given by my learned brother Adekeye, JSC in the leading judgment, I too feel that the Plaintiff's action claiming declaratory and

injunctive reliefs which the Plaintiff, had woefully failed to prove or establish on the evidence brought by it, must fail and liable to be dismissed. Accordingly, I also dismiss this action with no order on costs.

B

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Adekeye, JSC. I agree with the reasons therein ably advanced to arrive at the conclusion that the plaintiff's suit lacks merit and should be dismissed. However, I desire to depict my views, albeit, briefly.

The plaintiff's suit was initiated against the defendants to activate the original jurisdiction imbued in this court by the provision of section 232 of the Constitution of the Federal Republic of Nigeria, 1999. In paragraph 47 of the Statement of Claim, the plaintiff claimed jointly and severally against the defendants as follows:-

"1. A declaration that there was no boundary dispute between the plaintiff and the 2nd defendant to warrant the defendants to embark upon a purported boundary adjustment between the plaintiff and the 2nd defendant and accordingly no basis for the 1st defendant to act on the purported boundary adjustment to the detriment of the plaintiff.

2. Declaration that the defendant's are stopped from raising the issue of boundary adjustment as between the plaintiff and the 2nd defendant having regard to the conclusive and binding agreement/resolution reached between the plaintiff and the 2nd defendant since 2006 and upon which the parties acted since.

3. A declaration that the defendant cannot lawfully refuse to accept, act upon or comply with the determination of the boundary between the plaintiff and the 2nd defendant made by the 1st defendant in 2006 through its appropriate agency(s) that was vested with power and authorities over boundary issue.

4. A declaration that the plaintiff is entitled to derivation revenue from the seventy-six oil wells located within 200 meters water depth Isobath contiguous to its territory as contained in section 1 and 2 of the Allocation of the Principle of Derivation Act, 2004.

5. A perpetual injunction restraining the defendants by them-

selves, their agents and/or privies from interfering with the plaintiff's right to revenue from the 76 oil wells within its territory or lying contiguous thereto within 200 meters water depth Isobath.

6. *An order mandating the defendants to treat the maritime boundary determined by the 2nd defendant in 2006 as the recognized boundary between 1st defendant and the plaintiff and to share all derivation revenue from the area in accordance with that agreed boundary.* ^B

7. *A declaration that the historical method for determining the estuarine or maritime boundary between littoral states in Nigeria is valid and that the application of the said method in the settlement of the boundary dispute between the 1st defendant and the plaintiff in 2006 was lawful and valid.* ^C

8. *An order of perpetual injunction restraining the 1st defendant himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral state.* ^D

9. *The total 13% derivation entitlement of the plaintiff from the 76 oil wells within the territory of the plaintiff since November 2009 to 10th March, 2010 in the sum of N15,577,188,241.39 made up of N9,261,450,727.86 for Cross River State and N6,315,737,513.53 for the Local Government Councils of Cross River State respectively.* ^E

10. *An order for account between the parties as to any other amount due to the plaintiff from 76 oil wells from 11th March, 2010 until date of judgment and thereafter. Further order directing the payment of the sum found due with interest at 20% to the plaintiff.* ^F

The relevant facts of this matter have been clearly set out in the lead judgment. I wish to point it out at this moment that the essential reliefs claimed by the plaintiff against the defendants are declaratory in their purport. The real contention of the plaintiff is as contained in relief 4 which, for emphasis, I wish to reproduce again as the hegemony has to do with cash. It states as follows:

"4. A declaration that the plaintiff is entitled to a share of the 13% derivation revenue from the seventy-six oil wells located within the 200 meter water depth Isobath contiguous to its territory as contained in sections 1 and 2 of the Allocation of the Principle of Derivation Act, 2004." ^H

The above is clearly a declaratory relief sought by the plaintiff who has the burden to establish his claim on the strength of his case and cannot rely on the weakness of the defence, if any. See: *Ali Ucha v. Martins Elechi* (1012) MRSCJ (Vol. 1) 79 at 104. In *Dumez Nig. Ltd. v. Nwakhoba* (2008) 18 NWLR (Pt. 1119) 361 at 373 -374, this court pronounced that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlements to the declaration by his own evidence.

It is apt at this point to refer to the applicable law which is - The Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004. Section 1 provides as follows:-

“From the commencement of this Act two hundred meter water depth 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 from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment.”

To proviso to section 162(2) of the Constitution reads as follows:-

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

For a State to be entitled to derivation revenue in respect of offshore natural resources pursuant to the provision of the Act, it must be a littoral State which abuts the sea with 200 metre water depth Isobath contiguous to it. This has support from the decision of this court in the case of ‘Attorney-General of Adamawa State & 21 Others v. Attorney-General of the Federation & 8 Others (2005) 18 NWLR (Pt.958) 581 at 637-638. It is not in contention that the 76 oil wells are offshore. They are in the sea. For the plaintiff to be entitled to same, it has to show that it is a littoral State, The vital question is whether the plaintiff is a littoral State or not. This court, in the past, had occasion to pronounce on same in *Attorney-General, Cross River State v. Attorney-General of the federation & Anor. (2005) 15 / LR (Pt. 947) 71 at 108 per Edozie, JSC as follows;-*

“In considering the merit of the plaintiffs Case, it is important to bear in mind that the effect of the judgment of ICJ dated 10/10/2002 on the land and maritime boundary case between Nigeria and Cameroon is that, it has wiped off what used to be the estuarine sector of Cross River State as a result of which the State is hemmed in by the new international boundary between Nigeria and Cameroon. B That being the case, there seems to be no longer any estuarine boundary between Akwa Ibom State and Cross River State. If the ‘median line principle or the ‘thalweg’ principle is adopted in drawing the boundary line along the Cross River State CRA and AKS the line must intersect the new maritime boundary line (narrow line) between C Nigeria and Cameroon with the result that Cross River no longer has a seaward boundary. For the foregoing reason, it seems to me unnecessary to consider the question about the applicable principle in determining the maritime boundary between the two States.” D

The above says it all. It has been pronounced in an emphatic fashion without any shred of equivocation that the plaintiff therein which is the plaintiff herein is not a littoral State. The parties are the same. The subject matter relates to the same littoral status of the plaintiff. The law canvassed is the effect of the ICJ judgment of 2002 E on the status of the plaintiff as a littoral State. I seriously feel that the doctrine of res judicata can rightly be invoked. The crux of the matter, having been adjudged by this court in the recent past, should be allowed to have a quiet rest for all times.

Apart from the above, a clear reading of Exhibit NBC 1 which F set out littoral states in Nigeria did not depict the plaintiff as a littoral State. The plaintiff is shown therein as a landlocked State. It should be stressed again that the plaintiff must substantiate its declaratory reliefs. The plaintiff appears to place reliance on the decision of this G court in Attorney-General, River State v. Attorney-General, Akwa Ibom State & Anr (2011) 8 NWLR (Pt. 1248) 31 in a bid to support its right to attribution and derivation of revenue in respect of the 76 oil wells. The plaintiff further relies right to attribution and derivation of revenue in respect of the 76 oil wells. The plaintiff further relies on H its Exhibit C which ceded the attribution of the derivation of revenue in respect of the 76 oil wells to it. The plaintiff argues that the 2nd defendant should not be allowed to resile from the agreement in Exhibit C. The above case relied upon by the plaintiff was essentially

between Rivers State and Akwa Ibom State. The two States are bound by the decision therein as both of them are littoral States. The plaintiff herein cannot take umbrage under that decision since it has ceased to be a littoral State and cannot stake any claim to the benefits of the onshore/offshore Dichotomy Abolition Act which formed the basis
B for making the agreement contained in Exhibit C.

On behalf of the 2nd defendant senior counsel submitted that the agreement in Exhibit C, if applicable, has been discharged by frustration. Reliance was placed on the decision of this court in the
C case of *Mazin Engineering Ltd. v. Tower Aluminium (Nigeria) Ltd.* (1993) 5 NWLR (Pt. 295) 526 at 534. In the English case of *Cricklewood Property & Investment Trust Ltd. v. Leighton Investment Trust Ltd.* (1945) 1 All E.R 252 at page 255, frustration was defined by Viscount Simon, LJ as follows:-

D *“Frustration may be defined as the premature determination of an agreement between parties lawfully entered into and in course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstance so fundamental as to be regarded by law both as striking at the root of*
E *the agreement, and as entirely beyond what was contemplated by the parties when they entered into the agreement.”*

It is basic that the complete implementation of the ICJ judgment in 2008 and the physical hand-over of the entirety of Bakassi Peninsula by Nigeria to Cameroon constitutes such an occurrence of
F an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement, and as entirely beyond what was contemplated by the parties when they entered into the agreement. As at the time when Exhibit C was
G made in 2006, parties hoped that Nigeria would be able to negotiate successfully and retain the Bakassi Peninsula. But that was not to be to the chagrin of the plaintiff whose littoral status got extinguished. Exhibit C got frustrated as a result of changed realities. It is a pity that the plaintiff, as a result of the full implementation of the ICJ Judgment in 2008, lost its littoral status. That is the reality on ground
H presently. It is the truth that states both parties in the face. There is nothing that can be done about it. It is unfortunate that the plaintiff failed to sustain its claims.

For the above, which is just like a tip of the iceberg, and the

fuller reasons adumbrated in the lead judgment, I too, hereby dismiss the plaintiff's claims. Each party should bear its own costs.

RHODES-VIVOUR JSC

The main claim of the Plaintiff seeks a determination by this court of the ownership of 76 Oil wells located in the Atlantic Ocean, and not Oil wells located on Bakassi Peninsula. The plaintiff claims to own the 76 Oil wells by virtue of an Agreement. This defendants' dispute that claim. Before 2002 Bakassi Peninsula formed the southern part of Cross River State. A peninsula is an area of land that is almost surrounded by water but is joined a larger piece of land. In this case the larger piece of land that Bakassi Peninsula was joined to is the present day Cross River State, while the water that almost surrounded the peninsula was the Atlantic Ocean. Now, a littoral state is a state adjacent to the shore, or lying along the shore, adjoining or bordering the shore, and that shore is the most southerly part of the Bakassi peninsula. That made Cross River State a Littoral State. Now, on the 10th day of October 2002 the International Court of Justice (ICJ) ruled that Bakassi Peninsula was no longer Nigerian territory. It was now Cameroonian territory. Cameroon thus has complete sovereignty over Bakassi Peninsula in accordance with the judgment of the International Court of Justice. The complete hand-over of Bakassi Peninsula to Cameroon was made in October, 2008.

WHAT IS THE EFFECT OF THE INTERNATIONAL COURT'S JUDGMENT DELIVERED ON 10/10/2002?

The judgment of the International Court of Justice (ICJ) took away Bakassi Peninsula from Nigeria (i.e. the Southern part of Cross River State) and gave it to Cameroon. Bakassi is now Cameroonian territory. With that judgment Cross River State is no longer a Littoral State. Cross River State is now hemmed in. It is landlocked. It has no shoreline with the Atlantic Ocean.

CAN A LANDLOCKED STATE OWN MINERALS (OIL WELLS) IN THE SEA OR OFFSHORE?

A State that has a coastal boundary is a littoral state and it also possesses certain areas of the sea. Sovereignty over bodies of water is regulated by four separate 1958 Conventions. They are.

1. The Convention of the High Seas,

2. The Convention on the territorial Sea and continuous zone.
3. The Convention on the Continental Shelf,
4. The Geneva Convention on Fishing and Conservation of the living resources of the High Seas.

B Rights over the sea within 200 meter water isobaths are under the exclusive control of littoral states. A landlocked state such as Cross River State has no rights, neither can it own Oil wells offshore.

WHY WAS THE AGREEMENT ENTERED INTO BY CROSS RIVER STATE, AKWA IBOM STATE AND RIVERS STATE ENFORCED IN FAVOUR OF RIVERS STATE BUT NOW, NOT IN FAVOUR OF CROSS RIVER STATE?

E After the International Court of Justice ICJ judgment the former President of Nigeria, Chief O. Obasanjo decided to negotiate with Cameroon. The purpose of the negotiation was for Cameroon to agree to allow Nigeria continue to have sovereignty over the Western part of the Bakassi Peninsula, thereby allowing Cross River State to retain its status as a littoral state. While negotiations with Cameroon were ongoing the former President decided to go into an agreement with Cross River State, Akwa Ibom State and Rivers State for sharing of these Oil wells. The contents of the agreement were embodied in a letter, christened Political Solution. See A.G. Rivers State v. A.G. Akwa Ibom State 2011 8 NWLR Pt. 1248 P31.

F A consensus was reached and the meeting agreed on the formula for the affected Oil wells with effect from 11/2/2006.

(i) CROSS RIVER/AKWA IBOM STATES

(a) CROSS RIVER - 70 WELLS

(b) AKWA IBOM - 14 WELLS

(ii) AKWA IBOM/RIVERS STATES

G (a) AKWA IBOM - 86 WELLS

(b) RIVERS - 86 WELLS

Total CROSS RIVER - 70 WELLS

AKWA IBOM - 100 WELLS

RIVERS - 86 WELLS

H Former President Olusegun Obasanjo brokered the agreement above in the hope that Cameroon would agree to cede Western Bakassi to Nigeria. Cameroon refused, and so the whole of Bakassi Peninsula is Cameroon territory. What then becomes of the agreement. The agreement cannot be enforced in favour of Cross River

State because it is no longer a littoral state. Frustration sets in. Frustration occurs where it is established to the satisfaction of the court that due to a subsequent change in circumstances, the contract has become impossible to perform. Frustration arises where the supervening event destroys a fundamental assumption. Or as Lord Radcliffe put it in *Davis Contractors Ltd v. Fareham U.D.C.* 1956 AC p.696 ^B

“....Frustration occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from what was undertaken by the contract”. See also *Mazin Eng Ltd v. Tower Aluminum* 1993 5 NWLR Pt. 295 p.526. The agreement was entered into with the view that Cross River State would remain a Littoral State. A subsequent change in circumstances occurred when Cross River State was no longer a Littoral State by virtue of the International Court of Justice judgment of 10/10/2002, and the refusal of Cameroon to cede the Western part of Bakassi Peninsula to Nigeria. The agreement became impossible to perform due to the fact that a landlocked state, which Cross River State had becomes can never own Oil Wells, Offshore. Frustration set in to make the agreement unenforceable. The agreement can be enforced in favour of Rivers State because that state is a Littoral State. The agreement cannot be enforced in favour of Cross River State because it is not a Littoral State, it is landlocked. The Littoral States in Nigeria after the International Court of Justice ICJ judgment of 10/10/2002 are Lagos, Ogun, Ondo, Delta, Bayelsa, Rivers and Akwa Ibom. These states open directly to and have contiguity with the Atlantic Ocean. They are accorded Littoral status in relation to offshore Oil wells. States that are not littoral have no rights whatsoever over offshore Oil wells. See *A.G. Federation v. A.G. Abia State & Ors (No.2)* 2002 6 NWLR Pt. 764 P542. I must observe that if a state is not a littoral state it cannot be paid derivation fund. Cross River State was qualified until the International Court of Justice, ICJ judgment on 10/10/2002, but now it is no longer qualified since by that judgment it became a landlocked state. This court has no jurisdiction to decide ownership of Oil wells located on oil rich Bakassi Peninsula for the simple reason that Bakassi Peninsula is foreign territory. It is Cameroon land. Supreme Court jurisdiction is restricted to Nigeria land. Once again this case has nothing ^H

to do with the ownership of Oil wells located on Bakassi Peninsula, rather it is to determine the ownership of 76 Oil wells located in the Atlantic Ocean. The plaintiff's case crumbles due to the wrong assumption that it is a littoral state, and so the agreement is enforceable in its favour in that the 76 Oil wells given to the plaintiff should remain with the Cross River State. That reasoning is strange and unfortunate. It is wrong.

For this, and the more detailed reasoning in the leading judgment delivered by my learned brother Adekeye, JSC, which I had the opportunity of reading in draft, I am in complete agreement that the plaintiff's claims should be dismissed. Each party to bear its own costs.

D **NGWUTA JSC**

I read in draft the lead judgment of My Lord, Adekeye, JSC and I agree with the reasoning and conclusion therein. I will make a few comments by way of contribution to the judgment.

In paragraph 47 of the Statement of Claim dated 15th May, 2010 and filed on 17/5/2010, the plaintiff claimed against the defendants as follows:

'47. Whereof the plaintiff claims jointly and severally against the defendants as follows:

1. A declaration that there was no boundary dispute between the plaintiff and the 2nd defendant to warrant the defendants to embark upon a purported boundary adjustment between the plaintiff and the 2nd defendant and accordingly no basis for the 1st defendant to act on the purported boundary adjustment to the detriment of the plaintiff.

2. A declaration that the defendants are Estopped (sic) raising the issue of boundary adjustment as between the plaintiff and the 2nd defendant having regard to the conclusive and binding agreement/resolution reached between the plaintiff and the 2nd defendant under the supervision of the 1st defendant since 2006 and upon which the parties had acted since; the 2nd defendant has received and continue to receive allocation from the 14 oil wells in Cross River which were attributed to it as a result of the agreement between the Parties.

3. A declaration that the defendants cannot lawfully refuse to accept, act upon or comply with the determination of the boundary between the plaintiff and the 2nd defendant made by the 1st defendant in 2006 through its appropriate agency(s) that was vested with power and authorities over boundary issue. 4. A declaration that the plaintiff is entitled to a share of the 13% derivation revenue from the seventy-six oil wells located within the 200 meter water depth Isobath contiguous to its territory as contained in Sections 1 and 2 of the Allocation of the Principle of Derivation Act, 2004. B

5. A perpetuate injunction restraining the defendants by themselves, their agents and or privies from interfering with the plaintiffs right to revenue from the 76 oil wells within its territory and, or tying contiguous thereto within 200 meter water depth Isobath. C

6. An order mandating the defendants to treat the maritime boundary determined by the 1st defendant in 2006 as the recognized boundary between 2nd defendant and plaintiff and to share all derivation revenue from the area in accordance with the agreed boundary between the parties. D

7. A declaration that the historical method for determining the estuaries or maritime boundary between littoral States in Nigeria is valid and that the application of the said method in the settlement of the boundary dispute between the 1st defendant and the plaintiff in 2006 was lawful and valid. E

8. An order of perpetual injunction restraining the 1st defendant by himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral State, based on the 76 oil wells attributed to is (sic) as a result of the agreement between the Parties. F

9. The total of 13% derivation entitlement of the plaintiff from the 76 oil wells within the territory of the plaintiff since November 2009 to 10th March, 2010 in the sum of N15,577,188,241.39k made up of N9,267,450,727.80k for Cross River State and N6,315,737,515.53k for the Local Government Councils of Cross River State respectively. G

10. An order for account between the parties as to any other amount due to the plaintiff from the 76 oil wells from 11th March, 2010 until the date of judgment and thereafter. Further order direct- H

ing the payment of the sum found due with interest at 20% to the plaintiff.”

The relevant facts, issues slated for determination by learned Counsel for the parties as well as argument proffered have been adequately dealt with in the lead judgment. I will restrict my comments to the two issues presented for determination by the learned Silk for the 2nd Defendant, Chief Bayo Ojo, SAN. The two issues are hereunder reproduced:

“1. *At all times material to this suit, was and is Cross River State a Nigerian Littoral State and entitled thereby to attribution and derivation revenue in respect of the 76 oil wells pursuant to the provisions of Section 162(2) of the 1999 Constitution and Section 1 of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act Cap A 27 Laws of the Federation of Nigeria, 2004?*

2. *Does the judgment of this Honourable Court in Attorney-General, Rivers State v. Attorney-General, Akwa Ibom State & 1 Or (2011) 8 NWLR (Pt. 1248) Pg. 31 apply to this case and can that judgment be relied upon to entitle Cross River State howsoever to attribution and derivation of revenues in respect of the 76 oil wells?*”

In my humble view, the two issues capture the essence of the matter before us.

Issue 1:

“At all times material to this suit, was and is Cross River State a Nigerian Littoral State and entitled thereby to attribution and derivation revenue in respect of the 76 oil wells pursuant to the provisions of Section 162(2) of the 1999 Constitution and Section 1 of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act Cap A 27 Laws of the Federation of Nigeria, 2004?”

This suit was commenced by way of Originating Summons filed 14th September, 2009. The International Court of Justice (ICJ) delivered its judgment in the dispute between Nigeria and Cameroon over the oil rich Bakassi in 2002. The judgment divested Nigeria of the entire Bakassi Peninsular and ceded same to Cameroon. It is the Western Bakassi or the maritime portion of the Bakassi peninsular and the Cross River Estuary that conferred on the Cross River State the status of Littoral State by which the State was entitled to, and did

enjoy, a share of the 13% derivation fund. Cross River State did not automatically cease to be or enjoy the status of a Littoral State on the pronouncement of the ICJ judgment. Though the Bakassi Peninsular was handed over to Cameroon in partial compliance with ICJ judgment in 2006 all hope was not lost. Nigeria entered into negotiation with Cameroon in an attempt to retain the Maritime Portion or Western Bakassi. The attempt to retain Western Bakassi failed in 2008. The completion of the transfer of the entire Bakassi Peninsular to the Republic of Cameroon is evidenced in Exhibit MBC8, a document titled: *"CAMEROON-NIGERIA MIXED COMMISSION WITHDRAWAL AND TRANSFER OF AUTHORITY FORM"*. It reads:

"In conformance with the judgment of 10 October 2002 by the International Court of Justice. In accordance with the Greentree Agreement of 12 June 2006 it is hereby recognized that (a) the withdrawal of the Civil Administration and the Police forces of the Federal Republic of Nigeria in the Zone (Annex 1(1) and Annex II, Greentree Agreement) and (b) the transfer of authority to the Republic of Cameroon have been completed for the entire Bakassi Peninsular on this day. Thursday 14 August 2008"

The signatories to the document (Republic of Cameroon, Federal Republic of Nigeria, Chairman of the Follow-up Committee, Republic of Germany, the United States of America, the French Republic and the United Kingdom of Great Britain and Northern Ireland) underscore its importance in the domestic realm in Nigeria as well as the international community. The resultant effect of the full implementation of the ICJ judgment was a redefinition of the land and Maritime International Boundary between Nigeria and Cameroon and by the said boundary, Nigeria in general and Cross River State in particular, lost the oil rich Bakassi. The estuary of Cross River was no longer part of Cross River State. The effect of the ICJ judgment on the erstwhile Littoral State of Cross River State was captured by this Court in *A-G Cross River State v. A.G Federation & Anor* (2005) 15 NWLR (Pt. 947) P.71 thus:

"The effect of the judgment of the International Court of Justice dated 10/10/2002 on the land and maritime boundary between Nigeria and Cameroon is that it has wiped off what used to be the estuarine sector of Cross River State as a result of which the State is hemmed in by the new international boundary between Nigeria' and

Cameroon. That being the case, there seems to be no longer any estuarine boundary between Akwa Ibom State and Cross River State with the result that Cross River no longer has a seaward boundary...”

To come to terms with reality, the National Boundaries Commission carried out in 2008 littoral States maritime boundaries delin-
 B eation by which the 76 oil wells in dispute were attributed to Akwa
 Ibom State. The resulting map was adopted and acted upon by the
 Revenue Mobilization and Fiscal Commission inter-Agency meeting
 in Kano held in August, 2008. As a result of the Kano August, 2008
 C meeting, the RMAFC forwarded to the Accountant-General of the
 Federation the 2009 revised 13% derivation indices by which the
 Cross River State, the plaintiff herein, was excluded from the list of
 Nigeria’s littoral States. The Allocation of Revenue (Abolition of Di-
 chotomy in the Application of the Principle of Derivation) Act 2004,
 D section 1, provides:

*“From the commencement of this Act two hundred metre water
 depth contiguous to a State of the Federation shall be deemed to be
 a part of that State for the purposes of computing the Revenue ac-
 cruing to the Federation from the State pursuant to the provisions of
 E the constitution of the Federal Republic of Nigeria 1999 or any other
 enactment”*

The proviso to s.162 (2) of the constitution (supra) reads:

*“Provided that the principle of derivation shall be constantly
 F 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.”*

From what I have stated above, as at the time this suit was
 commenced on 14th September 2009, the plaintiff, having lost its
 G status as a littoral State, did not have “two hundred metre water
 depth Isobath contiguous” to it. There was no “two hundred metre
 water depth isobaths contiguous” to it and to be deemed to be part
 of the State for the purposes of computing the revenue accruing to
 the Federation Account from the State pursuant to the provisions of
 H the Constitution of the Federal Republic of Nigeria 1999 or any other
 statute.

My Lords, the judgment delivered by the International Court
 of Justice on 10/10/2002 in the dispute between Nigeria and
 Cameroon dealt a serious political and economic blow on former. As

it is, the plaintiff, by no fault of its own, feels and bears the full impact of the said blow. Much as I empathize with the plaintiff, I am constrained to resolve the 2nd defendant's first issue against the plaintiff.

Issue 2

Does the judgment of this Honourable Court in *Attorney-General Rivers State v. Attorney-General Akwa Ibom State & 1 Or* (2011) 8 NWLR (Pt.1248) p.31, apply to this case and can that judgment be relied upon to entitle Cross River State howsoever to attribution and derivation of revenue in respect of the 76 oil wells? The plaintiff in Suit No. SC.27/2010 reported as (2011) 8 NWLR (Pt. 1248) Pg. 31 was the Attorney-General of Rivers State while the defendants were Attorney-General of Akwa Ibom State and Attorney-General of the Federation. The 2nd defendant, was, in my humble view, a nominal defendant.

The real contestants in the dispute involving the 172 oil wells claimed by the plaintiff but ceded with the help of the 2nd defendant to the 1st defendant were the plaintiff - Rivers State and the 1st defendant - Akwa Ibom State. Each of the two States has "two hundred metre water depth isobaths contiguous" to it. See Section 1 of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act Cap A 27 Laws of the Federation of Nigeria, 2004). Each is a littoral State and this constitutes a crucial difference in the facts of that case and the present case. A precedent is a decided case that furnishes a basis for determining later cases involving similar facts or issues. See *Advanced Law Lexicon*, 3rd Edition Reprint 2007, p.3671. Since the facts in (2011) 8 NWLR (Pt. 1248) are not the same or similar to the facts in Suit No. SC.250/2009, the former cannot be relied on as a precedent for the latter.

Furthermore, the political solution agreement referred to as Exhibit AMB1 in the earlier case and as Exhibit C in this case has been discharged by frustration. The said agreement was predicated on the assumption that the judgment of the ICJ would not be fully executed and that in the negotiation between Nigeria and Cameroon, Nigeria would succeed in its efforts to retain the Western Bakassi. This in turn would have meant the continued status of the plaintiff as a littoral State with "*two hundred metre water depth isobaths contiguous*" to it. By the doctrine of frustration of contract, the failure of Nigeria to retain the maritime portion of the Bakassi Peninsular has

effectively destroyed or wiped out the bases of Exhibit C. See Taylor v. Caldwell (1863) 3 B & S 826.

It is my view that the plaintiff cannot rely on the case reported in (2011) 8 NWLR (Pt. 1248) p.31 in this case nor can any of the parties enforce the political - solution agreement in Exhibit C. The plaintiff's entire case is built on the erroneous assumption that the plaintiff is still a Nigerian littoral State and that the Political Solution Agreement Exhibit C by which the 76 oil wells in dispute were attributed to the plaintiff is still enforceable by the plaintiff.

Based on the above and the fuller reasons in the lead judgment, I also dismiss the plaintiffs claim. I order that parties bear their respective costs. Case dismissed.

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