Nnamdi Azikiwe University Journal of Private and Property Law Volume 2(2) Sept., 2025

JURISDICTION OF UK COURTS TO HEAR AND DETERMINE CLAIMS FOR OIL-RELATED ENVIRONMENTAL DAMAGE OCCURRING IN NIGERIA: REFLECTIONS ON THE CASE OF *OKPABI V. ROYAL DUTCH SHELL PLC*[1]*

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Abstract

In Okpabi v. Royal Dutch Shell PLC, the United Kingdom Supreme Court established that in appropriate cases, a parent company domiciled in the United Kingdom could be held vicariously responsible in a UK Court for the polluting activities of its Nigerian subsidiary occurring wholly within Nigeria. Through an analysis of the Okpabi case, this article examines the jurisdictional challenges that Nigerian litigants are bound to face should they seek redress in English courts for environmental damage caused by the oil operations of Multi-National Oil Companies (MNOCs) in Nigeria. The article finds that the Okpabi series of cases (including the recent English High Court ruling delivered on the 20th day of June 2025, that Royal Dutch Shell PLC and its now former Nigerian subsidiary can be held legally responsible for historic oil pollution in Nigeria) offers potential opportunities for Nigerian victims of oil-related environmental damage desirous of instituting their cases in England. Evidence from the cases indicates that the English courts are ready and willing to exercise jurisdiction to hear and determine claims for damages for the polluting activities of MNOCs in Nigeria, provided that there is an "anchor" defendant domiciled within the United Kingdom.

Key Words: Courts, United Kingdom, Oil-Related Environmental Damage, Jurisdiction.

1.0 Introduction

There is a growing tendency for victims of oil pollution in Nigeria to seek redress in the domestic courts of Western countries where the parent companies of the Multi-National Oil Companies (MNOCs) operating in Nigeria are registered. The idea is to hold the parent companies responsible for the polluting activities of their Nigerian subsidiaries. In a number of such cases, the issue has arisen whether the foreign court is an appropriate forum for litigation concerning the pollution complained of, when the entirety of the malfeasance occurred in Nigeria. This article focuses on one such case.

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That is the case of *Okpabi v. Royal Dutch Shell PLC,*[2] which was decided by the English courts. Through an analysis of the decisions of the English High Court, Court

of Appeal, and the United Kingdom Supreme Court in the case, the article examines the jurisdictional challenges that Nigerian litigants must overcome should they seek redress in English courts for environmental damage suffered as a result of the oil operations of MNOCs in Nigeria. The article finds that the *Okpabi* series of cases (including the recent English High Court ruling delivered on the 20th day of June 2025, that Royal Dutch Shell PLC and its now former Nigerian subsidiary can be held legally responsible for historic oil pollution in Nigeria) offers potential opportunities for Nigerian victims of oil-related environmental damage desirous of instituting their cases in England. Evidence from the cases indicates that the English courts are ready and willing to exercise jurisdiction to hear and determine claims for damages for the polluting activities of MNOCs in Nigeria, provided that there is an "anchor" defendant domiciled within the United Kingdom.

2.0 Background to the *Okpabi* Case

Okpabi v. Royal Dutch Shell PLC[3] was initiated in the Technology and Construction Court of the Queen's Bench Division of the High Court. It concerned two separate but similar claims filed in the English High Court by two sets of Nigerian claimants seeking "damages arising as a result of serious and ongoing pollution and environmental damage caused by oil spills emanating from the Defendants' oil pipelines and associated infrastructure in and around" the claimants' respective communities in Nigeria. The 1st Defendant, Royal Dutch Shell PLC (RDS), is a company registered and domiciled in England. RDS is the ultimate holding company of the Worldwide Shell Group, comprising numerous subsidiary companies in various countries. The 2nd Defendant, the Shell Petroleum Development Company of Nigeria LTD (SPDC), is one of such subsidiary companies. SPDC is registered and domiciled in Nigeria and is engaged in the business of oil exploration and exploitation in Nigeria

It was not in dispute that the acts and/or omissions leading to the environmental damage complained of by the claimants all occurred in Nigeria. It was also not in dispute that, although SPDC was at all times material to the case, a company directly engaged in oil operations in Nigeria, its parent company, RDS, was not engaged directly in oil operations in Nigeria.

Under English law, the general principle is that a claimant cannot sue a non-domiciled company (such as SPDC) in the English courts for acts or omissions that occurred

[2] [2021] UKSC 3.

[3] [2021] UKSC 3.

outside the United Kingdom. However, where there is within jurisdiction "another person who is a necessary or proper party to the claim" against the foreign defendant, the claimant may proceed against both defendants in the English courts provided that "there is between the claimant and the defendant(s) a real issue which it is reasonable for the court to try."[4]

In that case, the domiciled defendant is regarded as an "anchor" defendant. The existence of an anchor defendant enables the claimant to pursue his claim against the defendants in the English courts for acts and/or omissions that occurred outside the territory of the United Kingdom. As has been indicated earlier, in the proceedings before the High Court, the claimants sought to pursue their respective claims against the defendants in the English court for acts and/or omissions that occurred in Nigeria, using RDS as the anchor defendant.

Both RDS and SPDC objected to the jurisdiction of the English court to try the case. Unless the claimants were able to show that there was a real issue between them and RDS, which it is reasonable for the court to try, in the sense that they (the claimants) had legitimate claims against RDS for the acts and/or omissions resulting in the environmental damage complained of, RDS could not be used as an anchor defendant. The resultant effect of this would be that the claimants would not be allowed to proceed against any of the defendants in the English court.

The contention of the defendants was that the claimants had no legitimate claims against RDS so as to enable the claimants to use RDS as an anchor defendant. The defendants argued that the claims ought to proceed in Nigeria rather than in the United Kingdom.

On the part of the claimants, they argued that both RDS and SPDC were legally liable for the environmental degradation caused by the oil operations directly carried out by SPDC in Nigeria.

It was common ground that for the claimants to validly pursue their claims in the English court, they must show that RDS owed them a duty of care in respect of the acts and/or omissions complained of, which led to the alleged environmental damage.

3. The High Court Decision

At the High Court, all counsel, and indeed the judge, agreed that the starting point for the resolution of the question whether RDS owed a duty of care to the claimants was *Caparo Industries PLC v. Dickson*,[5] where the UK Court of Appeal outlined the three ingredients of foreseeability, proximity and reasonableness that the claimants must

[4] See generally, para. 3.1(3) of the Civil Procedure Rules (CPR) Practice Direction 6B.
[5] [1990] 2 AC 605.

establish in order to make RDS liable for the acts and/or omissions complained of. This tripartite duty-of-care test is that:

1. the damage complained of should be such that it is foreseeable,
2. there should be proximity between the party allegedly owing the duty of care (in this case, RDS), and the party to whom the duty of care is owed (i.e., the claimants), and
3. the circumstances should be such that it is fair, just and reasonable to impose a duty of care upon one party for the benefit of another.

It would appear that the judge did not find it necessary to consider the first ingredient outlined above. The environmental damage caused by oil spills from SPDC's oil pipelines appeared to be undeniable and was accepted as foreseeable. The focus of the judge's consideration was mainly on the second leg of the tripartite test, which was the question of whether there was a relationship of proximity between RDS and the claimants in respect of the acts and/or omissions complained of.

As a general principle, as Maurice Kay, J correctly stated in *Ngcobo & others v. Thor Chemicals Holdings Ltd*,[6] "… the law does not impose liabilities upon companies in respect of the acts or omissions of other companies in the same group simply by reason of their common membership of the same group…." Consequently, the fact that RDS was the parent company of SPDC would not, without more, make RDS liable for the acts or omissions of SPDC in its oil operation activities. Be that as it may, Maurice Kay, J. also made it clear that circumstances could arise "where in more than one company in the same group each incurs liabilities in respect of damage caused to a particular plaintiff."[7]

It would appear that circumstances which fit into the tripartite test outlined in ***Caparo***[8] could provide the basis for holding a parent company liable for the acts or omissions of its subsidiary company, despite the two companies retaining their distinct legal personalities.

In his consideration of the issue as to whether circumstances exist which would justify holding RDS liable for the acts or omissions of SPDC in relation to the harm caused to the claimants, the judge relied heavily on the 4-point test propounded by Arden, LJ, in the case of *Chandler v. Cape PLC*[9]:

[6] (CA 09 Oct 1995, unreported).
[7] *Ngcobo & others v. Thor Chemicals Holdings Ltd* (CA 09 Oct 1995, unreported).
[8] Supra. See p. … above.
[9] [2012] EWCA Civ 525; [2012] 1 WLR 3111

> "In summary, this case demonstrates that in appropriate circumstances the law may impose on a parent company responsibility for the health and safety of its subsidiary's employees. Those circumstances include a situation where, as in the present case, (1) the business of the parent and subsidiary are in a relevant respect the same; (2) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (3) the subsidiary's system of work is unsafe as the parent company knew, or ought to have known; and (4) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees' protection."

While the claimants contended that the facts and circumstances justify holding RDS liable for the acts or omissions of SPDC, the defendants argued that RDS owed no duty of care to the claimants in respect of the acts attributed to SPDC, which allegedly caused damage to the claimants.

The parties submitted copious documentary evidence and witness statements from a variety of witnesses with a view to providing factual pillars to support the contending arguments concerning the question of whether RDS owed the claimants a duty of care.

After rejecting some of the evidence presented by the claimants, and evaluating the remainder of the evidence (including disputed evidence) placed before the court, the judge made significant findings of fact and came to the conclusion that "not one of the four factors identified by Arden, LJ is present in these two sets of proceedings."[10] Thus, RDS owed no duty of care to the claimants. That meant that the claimants had no legitimate claims against RDS. Consequently, RDS could not be sued as an anchor defendant. The effect was that the court lacked the requisite jurisdiction to try the case.

In arriving at his conclusion, the judge relied on the following crucial findings of fact, which he had made:

1. RDS did not directly hold shares in SPDC. RDS held shares in another subsidiary company, which in turn held shares in SPDC.
2. Unlike SPDC, RDS was not engaged in oil operations.
3. The Executive Committee of the Shell Group had two officers of RDS; they constitute a minority of the Committee. Thus, RDS could not be said to have controlling powers over members of the Shell Group of Companies, including SPDC.
4. RDS had no licence to engage in oil operations in Nigeria and was therefore not permitted to conduct oil operations in Nigeria.

[10] See para. 116 of the judgment.

5. RDS was not a member of the Joint Venture within which SPDC carried out its oil operations. The membership of the Joint Venture comprises a Nigerian Government-owned Corporation and a number of Multi-National Oil Companies (MNOC).

6. There are 1,366 other subsidiary companies owned by RDS and spread across 101 countries. Consequently, "imposing a duty of care upon RDS would potentially impose 'liability in an indeterminate amount, for an indeterminate time, to an indeterminate class.'"[11]

The judge also used the findings of fact stated above to decide the question of whether it would be fair, just and reasonable to impose a duty of care on RDS. He concluded that it would not be fair, just and reasonable to impose such a duty, having regard to the facts stated. In addition, the judge expressed the opinion that since the Oil Pipelines Act (OPA) of Nigeria had stipulated a statutory strict liability on SPDC for oil spills from its oil pipelines (save for spills occurring as a result of the malicious acts of third parties), it was not necessary in the circumstances to apply the concept of a duty of care in relation to the same acts covered by the OPA. He tended to support the view that "the claimants are only entitled to claim compensation from SPDC under the OPA…." Thus, "it is difficult to see how the test of fairness, justice and reasonableness could justify the claimants in seeking further and far wider damages from RDS than those to which they are entitled from SPDC."[12]

With due respect, Fraser, J was wrong to suggest that the OPA made it difficult to apply the concept of a duty of care. First, it must be pointed out that the OPA has not prohibited a claimant from seeking available common law remedies for damages caused by oil spills from pipelines. Thus, a claimant reserves the right to choose whether to pursue his claim under OPA or to utilise common law remedies. A claimant has a right to choose a route that would offer him better results.

Secondly, the assumption that Nigerian litigants seek to proceed against SPDC in England because they seek "further and far wider damages from RDS than those to which they are entitled from SPDC" is not quite correct.[13] OPA places no monetary cap on the sum recoverable for damage caused by oil spills. Besides, it is to be noted that SPDC itself is a company with huge resources of its own. It is doubtful that the reason Nigerian litigants seek to sue SPDC in the English courts is that SPDC lacks the financial resources to pay damages that may be awarded by the Nigerian courts. Rather, issues of access to justice, efficiency of legal systems, and independence of the

[11] See para. 114 of the judgment.

[12] Ibid.

[13] For a detailed view on this issue see Elena Blanco and Ben Pontin, 'Litigating Extraterritorial Nuisances under English Common Law and UK Statute' (2017) Transnational Environmental Law 6(2) 285.

judiciary are more likely factors that appear to stimulate claimants' interests in the English courts.

4. The Court of Appeal Decision

On appeal to the Court of Appeal[14], Simon, LJ, who delivered the majority judgment, appeared to criticise the approach of Fraser, J, in determining the case on the basis of the tripartite test set out in ***Caparo***. According to him:

> "It is clear that the three-part test set out in ***Caparo Industries plc v Dickson*** [1990] 2 AC 605 is not a forensic equation to which values may be attached that yield the answer to whether or not a duty is owed."

Yet, ironically, Simon LJ went ahead to determine the appeal on the basis of the same "three-part" test of foreseeability, proximity and whether it was fair, just and reasonable to impose a duty of care (albeit in a slightly different way). On the issue of foreseeability, Simon, LJ, accepted that:

> "There is at least sufficient information in the documents about the frequency, location and scale of oil spills from the pipeline and infrastructure operated by SPDC on behalf of the joint venture to establish the foreseeability of harm to the claimants."

On proximity, Simon, LJ's approach was to focus on the question of **operational control**, and to determine whether the evidence establishes a sufficient degree of control of the operations of SPDC by RDS as to justify imposing a duty of care in relation to the acts and/or omissions of SPDC. Simon, LJ sought to make an important distinction:

> "… between a parent company which controls, or shares control of, the material operations on the one hand, and parent company which issues mandatory policies and standards which are intended to apply throughout a group of companies in order to ensure conformity with particular standards."

Simon, LJ (with whom Sir Geoffrey agreed) was of the view that in order to justify the imposition of a duty of care on RDS, the claimants ought to establish that RDS controlled the oil operations of SPDC, or shares control of those operations with SPDC. According to him, the available evidence showed only that RDS issued "high-level guidance" to its subsidiaries (including SPDC), but there was no indication of "the exercise of any degree of control" over SPDC's oil operations.[15] Thus, the majority of the Court of Appeal concluded that the imposition of a duty of care could not be justified.

[14] *Okpabi v. Royal Dutch Shell PLC* [2018] EWCA Civ 191.
[15] See para. 124 of the judgment of the Court of Appeal.

It is observed that the approach adopted by Simon, LJ was somewhat different from that of Fraser, J. Certain facts relied on by Fraser J, such as the fact that RDS was not a direct parent of SPDC, or the fact that only two officers of RDS sat on the Executive Committee of the Shell Group and they were in the minority, did not play a significant part in the judgment of Simon, LJ. Simon, LJ, appeared to have been concerned only with the question of material control of the oil operations of SPDC.

Sales, LJ (who delivered the dissenting judgment) agreed with Simon, LJ's focus on the question of operational control in determining the appropriateness of the imposition of a duty of care. According to Sales, LJ:

> "The issue in this case is whether … RDS did involve itself in the management of the operation and security of the pipeline and facilities in such a direct and substantial way, exercising a degree of real control in relation to those matters going significantly beyond the mere setting of group-wide standards by the Shell Group's central management teams."

On the basis of the same evidence available to the Court of Appeal, Sales, LJ came to the conclusion that:

> "… the claimants have a good arguable case that RDS gave directions to SPDC regarding important aspects of the management of the pipeline and facilities, specifically in relation to controlling the risk of oil spill, which RDS sought to implement and enforce. It is well arguable that the claimants, or some of them, are in a proximate relationship with whoever controlled the operation of the pipeline and facilities."

On the basis of the same evidence, and applying the same principle, the majority and the minority of the Court of Appeal arrived at different conclusions! Perhaps, this can be explained. The majority appeared to have dealt with the available evidence as if a full trial had been conducted. Like the lower Court judge, the majority evaluated the evidence (including disputed evidence), made conclusive findings of fact and proceeded to apply the law to those facts supposedly *proved* in evidence. On the other hand, Sales, LJ seemed to have given due consideration to the fact that the case was at a preliminary stage and more evidence might come up in the course of discoveries and the cross-examination of potential witnesses during trial. Thus, his principal focus at the preliminary stage was the *case* as pleaded by the claimants and supported by documents and statements of potential witnesses. For Sales, LJ, the dominant question was whether the claimants had an "arguable" case, not whether they had "proved" their case by the evidence available at the interlocutory stage.

5. The Supreme Court Decision

On appeal to the Supreme Court,[16] Lord Hamblen (with whom Lord Hodge, Lady Black and Lord Briggs agreed[17]) disapproved of the approach taken by both the High Court and the majority of the Court of Appeal in conducting what amounted to a mini-trial on documents, without the benefit of discovery and oral evidence, including the cross-examination of witnesses. Lord Hamblen was quite clear that in resolving a jurisdictional issue at a preliminary stage, "the analytical focus should be on the particulars of claim and whether, on the basis that the facts there alleged are true, the cause of action asserted has a real prospect of success."

It is erroneous, as the High Court and the majority of the Court of Appeal did, to evaluate disputed evidence at the interlocutory stage, decide on the weight of contending pieces of evidence and thereon determine that the claimants had no reasonable cause of action against the defendants. In order to dismiss a claim *in limine*, without a full trial, the court ought to be satisfied "that the factual basis for the claim is fanciful because it is entirely without substance."[18] A dismissal without trial "is designed to deal with cases that are **not fit for trial at all.**"[19] As quite rightly observed by Lord Hamblen,

> "… instead of focusing on the pleaded case and whether that discloses an arguable claim, the court is drawn into an evaluation of the weight of evidence and the exercise of a judgment based on that evidence. That is not its task at this interlocutory stage. The factual averments made in support of the claim should be accepted unless, exceptionally, they are demonstrably untrue or unsupportable."[20]

The sea of disputed but potentially credible evidence on factors relevant to the decision of whether the imposition of a duty of care could be justified is a pointer to the fact that the claimants' case is arguable, or at least, not fanciful.

Having rightly focused its attention on the claimants' pleaded case, the Supreme Court concluded that the pleaded case and the documents presented in support thereof were

[16] *Okpabi v. Royal Dutch Shell* [2021] UKSC 3.

[17] It is to be noted that Lord Kitchin took part in the hearing of the appeal, but due to ill health, could not take part in the judgment.

[18] Per Lord Hope in *Three Rivers District Council v Governor and Company of the Bank of England (No. 3)* [2003] 2 AC 1. See para.95 of the judgment.

[19] ibid. Bold type supplied for emphasis.

[20] *Okpabi*, supra, at para. 107 of the judgment.

"sufficient to raise a real issue to be tried" between RDS and the claimants.[21] The result is that the claimants had a legitimate case against RDS and could therefore proceed

against RDS and SPDC in the English courts. Consequently, the Supreme Court remitted the case back to the High Court to be dealt with appropriately. After overruling a series of other jurisdictional objections raised by the defendants at the High Court, aimed at having the case struck out or the trial limited in scope, the High Court finally held, in a ruling delivered on the 20th day of June 2025, that Royal Dutch Shell PLC and its now former Nigerian subsidiary can be held legally responsible for historic oil pollution in Nigeria. A full trial has now been scheduled to take place in early 2027.

6. What Prospects for Nigerian Litigants?

There is no doubt that the United Kingdom Supreme Court case of *Okpabi v. Royal Dutch Shell PLC*[22] has provided guidance for UK courts on the approach to be adopted when deciding the jurisdictional issue as to whether the courts in England can be an appropriate forum for Nigerian litigants seeking to pursue claims against MNOCs operating in Nigeria for their acts and/or omissions occasioning damage to the local environment. The guidance provided by *Okpabi*, and the similar decision in *Lungowe v Vedanta Resources PLC*[23] (which was delivered shortly before *Okpabi*), have offered potentially huge opportunities for Nigerian litigants who may want to seek redress in English courts for environmental damage suffered as a result of the oil operations of SPDC in Nigeria. As indicated by all three courts, the issue of foreseeability is almost taken for granted. Also, going by the decision of the UK Supreme Court, the hurdle of proximity may not be too high for any serious Nigerian litigant to jump over, at least at the preliminary stage. The Supreme Court has made it clear that in determining the question whether there is a real issue to be tried between RDS and claimants who have suffered loss as a result of the oil operations of SPDC in Nigeria, the court's focus must be mainly on the pleaded case of the claimants. In other words, all that a claimant needs to do for his case to proceed to trial in the English courts is to make out an arguable case, *prima facie*. This can be achieved by pleading facts and frontloading supporting evidence showing, *prima facie*, that the parent company registered in the UK has been significantly involved in the management of relevant matters in its Nigerian subsidiary to such an extent as to justify the imposition of a duty of care in favour of persons who suffer damage resulting from relevant acts or omissions of the Nigerian subsidiary. Certainly, ***Okpabi*** seems to have provided for Nigerian litigants a pathway to the English courts.

[21] Ibid. See para. 154 of the judgment.
[22] [2021] UKSC 3.
[23] [2019] UKSC 20; [2020] AC 1045

7. Conclusion

This article has examined the jurisdictional hurdles which must be overcome by Nigerian litigants seeking to obtain redress in English courts for oil-related environmental damage occurring in Nigeria. As demonstrated, *Okpabi v. Royal Dutch Shell PLC* has provided clear guidance on how the preliminary jurisdictional hurdle could be crossed by Nigerian litigants seeking to hold accountable foreign parent companies of Nigerian subsidiaries causing environmental pollution in Nigeria. So far as a claimant presents pleaded facts showing that the parent company registered in the

UK has been significantly involved in the management of relevant matters in its Nigerian subsidiary to such an extent as to justify the imposition of a duty of care in favour of the claimant, the requirement of proximity would have been fulfilled, thus enabling the UK court to assume jurisdiction to hear the claim. The recent English High Court ruling delivered on the 20th day of June 2025, that Royal Dutch Shell PLC and its now former Nigerian subsidiary can be held legally responsible for historic oil pollution in Nigeria is an indication that the English courts are ready and willing to exercise jurisdiction to hear and determine claims for damages for the polluting activities of MNOCs in Nigeria, provided that there is an "anchor" defendant domiciled within the United Kingdom.