

## JUDGMENT

(Delivered by M. E. Ogundare, JSC.)

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

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

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

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

The proviso to the sub-section entrenches, with respect to natural resources, the principle of derivation in any formula the National Assembly may come up with. By this principle "not less than thirteen per cent" of the revenue accruing to the Federation Account directly from any natural resources shall be payable to a State of the Federation from which such natural resources are derived. For a State to qualify for this allocation of funds from the Federation Account, the natural resources must have come from within the boundaries of the State, that is, the resources must be located within that State.

There arose a dispute between the Federal Government, on the one hand, and the eight littoral States of Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States on the other hand as to the Southern (or seaward) boundary of each of these States. The Federal Government contends

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

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

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

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

#### THE SUMMARY

In summary, I **adjudge** as follows:

1. Plaintiff's case succeeds and I hereby **determine and declare that the the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, is the *low-water mark* of the land surface thereof or (if the case so requires as in the Cross-River State with an archipelago of islands) *the seaward limits of inland waters within the State.***
2. Claim 1 of 3<sup>rd</sup> Defendant's counterclaim is **dismissed**. But his claims 2 and 3 are **struck-out**.
3. the 6<sup>th</sup> Defendant succeeds in his **claim (a)** and, accordingly, I **determine and declare**

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

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

4. Claims (a) and (c) of the 8<sup>th</sup> Defendant's counterclaim are *struck-out*; claim (b) is *dismissed*.
5. The 9<sup>th</sup> Defendant fails on her claims 1, 2, 3 and 7 which claims are hereby *dismissed*; claims 4, 5 and 6 are however *struck out*.
6. Claims (a), (b), (c) and (d) of the 10<sup>th</sup> Defendant's counterclaim are hereby *dismissed*; claims (e) and (g) are, however, *struck out*. The 10<sup>th</sup> Defendant succeeds on his claims (f) and (h). It is hereby *declared* that the underlisted policies and/or practices of the plaintiff are unconstitutional, being in conflict with the 1999 Consti-

- (i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.
- (ii) Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital gains taxation and stamp duties.
- (iii) Funding of the judiciary as a first line charge on the Federation Account.
- (iv) Servicing of external debts via first line charge on the Federation Account.
- (v) Funding of Joint Venture Contracts and the Nigeria National Petroleum Corporation (NNPC) Priority Projects as first line charge on the Federation Account.
- (vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.

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


7. The Counter-claims of the 15<sup>th</sup> and 17<sup>th</sup> Defendants are *struck out* as they did not file any brief in support of their claims.
8. The Counter-claims of the 20<sup>th</sup> and 27<sup>th</sup> Defendants, having been withdrawn, are hereby *struck out*.
9. The 24<sup>th</sup> Defendant's claims (a), (e), (f), (g), (h) and (i) are

*incompetent* and are accordingly, *struck out*. His claims (b), (c) (d), and (j) and (m) fail and are hereby *dismissed*. Claims (k) and (l) are, however, *struck out*.

10. The 28<sup>th</sup> Defendant fails on his **claims (1) and (2)** which claims are hereby *dismissed*. **Claims (3) and (4)** are, however, *struck out*.
11. **Claims (A), (C), (F), (G), (H), (I) and (K)** of the 32<sup>nd</sup> Defendant's counterclaim are *struck out*. *Claims (B), (D) (E) and (J) are dismissed*.
12. The 33<sup>rd</sup> Defendant's **claims (a), (b), (c), (d) and (f)** are *struck out*; claim (e) is *dismissed*.

I make no order as to costs.

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

*offered*  
  
**REGISTERED TRUE COPY**  
**J. O. OKOSUN**  
**REGISTRAR**  
**SUPREME COURT OF NIGERIA ABUJA**

M. E. Ogundare,  
Justice, Supreme Courts

- Chief F. R. A. Williams, S.A.N. {with him -
1. Alhaji Abdullahi Ibrahim, S.A.N.,
  2. Mrs. T. A. A. Osinuga (Solicitor-Gen. of the Fed),
  3. Prof. I. A. Ayua,
  4. Chief O. Kumuyi - D.D.C.L.,
  5. Dr. M. Gidado,
  6. T. e. Williams,
  7. B. A. Odugbesan - P.L.O.,
  8. E. O. Omonowa P.L.O.,
  9. Mrs. F. Gambari-Mohammed &
  10. O. Falade } for the Plaintiff.

ABIA STATE

- Awa Kalu, S.A.N Attorney-General {with him
1. Chief C. O. Akpangbo, S.A.N.,

agreement, arbitration, force, or judicial action. The case principally relied upon by California, United States v. State of West Virginia, 295 U.S. 463, 55 S.Ct. 789, 79 L.Ed. 1546, does not support its contention. For here there is a claim by the United States, admitted by California, that California has invaded the title or paramount right asserted by the United States to a large area of land and that California has converted to its own use oil which was extracted from that land. Cf. United States v. State of West Virginia, supra, 295, U.S. at page 471, 55 S.Ct at page 792, 79 L.Ed. 1546. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under Article III. The justiciability of this controversy rests therefor on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorise its use."

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

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

The parties (except, again, some of the Defendants) filed and exchanged their briefs of arguments as well. At the hearing of the case, learned counsel proffered oral submissions. The defendants, who, however, failed to file briefs were not heard in oral arguments.

#### PLAINTIFF'S CLAIM

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