**ABIETO ALAGOMA AND OTHERS**

**V.**

**SHELL PETROLEUM DEVELOPMENT COMPANY LIMITED**

IN THE COURT OF APPEAL OF NIGERIA

THE 9TH DAY OF JULY, 2013

CA/C/136/2011

**LEX (2013) - CA/C/136/2011**

OTHER CITATIONS

2PLR/2013/2(CA)

(2013) LPELR-21394(CA)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LAWAL GARBA, JCA

JOSEPH TINE TUR, JCA

ONYEKACHI A. OTISI, JCA

**BETWEEN**

1. ABIETO ALAGOMA

(Suing as the Administrator of the Estate of Mr. Dagogo Alagoma of Ayaminina in Bonny Local Government Area of Rivers State)

2. DAGOGO JUMBO

3. SIMEON JUMBO (For themselves and representing the members Ayaminina in Bonny Local Government Area of Rivers State suing by the Lawful Attorney of the Community) Appellant(s)

AND

SHELL PETROLEUM DEVELOPMENT COMPANY LIMITED - Respondent(s)

**REPRESENTATION**

I. I. ONOVO, Esq. - For Appellant

AND

I. S. IWUOHA, Esq. - For Respondent

**ORIGINATING STATE**

FEDERAL HIGH COURT HOLDEN AT PORT-HARCOURT (A. O. Faji J., Presiding)

**OTHER ISSUES**

OIL AND GAS LAW - PAYMENT OF COMPENSATION:- Claim for damages to land and environment arising from oil-connected pipe-laying activities - Responsibility of the holder of an oil pipeline license - Whether the construction, operation and maintenance of oil pipeline by a holder of oil prospecting licence is an act pertaining to mining operation

OIL AND GAS LAW: **-** Mining operation – What it entails

ENVIRONMENTAL AND NATURAL RESOURCES LAW: - Multinational Oil Corporations and environmental accountability – Preliminary litigation hurdles to public interest litigations against environmental pollution – Preliminary objections against hearing of substantive suits – Relevant considerations

CONSTITUTIONAL LAW: INTERPRETATION - Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999. – Interpretation of

CHILDREN AND WOMEN LAW: - *Children/Women and the Environment* - Silent victims of environmental pollution – Frustrated litigations – Implications for environmental sustainability of communities

PRACTICE AND PROCEDURE ISSUES

ACTION - PRELIMINARY OBJECTION - JURISDICTION:– What determines jurisdiction of court- Jurisdiction over mining operations- Proper order to make when a court declines jurisdiction

APPEAL- GROUNDS OF APPEAL:- How Court determines an appeal

COURT:- What constitutes abuse of court process- When order for trial de novo is proper

INTERPRETATION OF STATUTE:- Order 18 rule 3(1) of the Court of Appeal Rules, 2011 – Interpretation of

WORDS AND PHRASES:-*"*ancillary*”* – Meaning of

**MAIN JUDGMENT**

**JOSEPH TINE TUR, J.C.A.** (DELIVERING THE LEADING JUDGMENT):

The substantive suit commenced before the Federal High Court Port-Harcourt, Rivers State before Honourable Justice A. O. Faji on 26th day of September, 2000. Objection to jurisdiction was raised but his Lordship dismissed same on 27th June, 2003. Faji J., was before hearing could commence transferred out of jurisdiction. Chukwu J., became seized of the proceedings. But when his Lordship was transferred to the Federal High Court, Uyo in Akwa Ibom State, the Chief Judge of the Federal High Court, by fiat, transferred same to be heard and determined by his Lordship at Uyo in Akwa Ibom State. On the 16th day of December, 2010 his Lordship on the application of the respondent struck out the suit for want of jurisdiction. The Notice of Appeal was filed on 17th day of January, 2011 having three grounds. The appellants' brief was filed on 2nd September, 2011. The appellant formulated the following issues for determination:

*"1. Whether the Federal High Court was right when it held that it has no jurisdiction over a claim of compensation arising from the defendant's acquisition of land in connection with the operation of oil pipeline pursuant to an oil pipeline licence.*

*2. Whether the application of the defendant in this case did not amount to an abuse of the process of the Court.*

*3. Whether the learned trial Judge did not err in law when assuming he was right to hold that the Federal High Court had no jurisdiction, he struck out the suit instead of transferring it to the High Court of Rivers State pursuant to the Federal High Court Act, Cap. F12, Laws of the Federation, 2004. (From the 2nd relief sought).*

*4. Whether this is not a proper case where the Court of Appeal can proceed to hear and determine the substantive claim rather send it back for trial before another Judge."*

The Respondent filed a brief of argument on 11th October, 2011 setting forth the same issues for determination. I need not reproduce them for argument.

The facts are that the respondent entered into what the appellants claimed to be their communal lands and laid oil pipelines causing various kinds of special and general damages without payment of compensation. The writ and statement of claim were filed on 26th September, 2000. The statement of defence was filed on 28th July, 2004. In the course of the proceedings the parties amended their respective pleadings. The amended writ of summons and amended statement of claim were filed on 4th July, 2008. The amended statement of defence was filed on 10th March, 2009.

Preliminary objection was raised that the Court below had no jurisdiction to entertain the claim by virtue of the provisions of Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999. In upholding the objection his Lordship held at page 407 lines 16 to page 408 lines 1-9 of the printed record as follows:

*"So I will now ask does compensation fail under the provisions of Section 251 (n) of the 1999 Constitution. For avoidance of doubt it reads (251) (n) mines and minerals (including oil fields natural gas). I have seriously looked at the claim of the Plaintiffs and I have tried to stretch the interpretation of claim for compensation to see, if it can come under the afore reproduced definition, but am constrained by its elasticity which has reached a breaking point, and will not still accommodate same. Authorities are galore that claims for compensation come within the amplitude and jurisdiction of the State High Court.*

*On this proposition of the law, I will place reliance on the cases of Nkume vs. Odili (supra); Oloroama vs. Chief Christian Uba (supra); FMBAI vs. Lagos State Government (supra). With the above authorities in mind I am not in doubt to hold that the case of the Plaintiffs which is in respect of compensation can only be ventilated in the State High Court and I have no jurisdiction to entertain same. I so hold.*

*Let me for mura suurplussage state here equally that the assertion of the Defendant Counsel that by their pleadings and evidence before this Court, that title is in issue is of no moment as it is only the Plaintiffs' claim and statement of claim that I should beam my search light to discover if I had jurisdiction and I further hold.*

*In the end I hold that this suit as constituted cannot be ventilated in this Court and it is accordingly struck out as I have no jurisdiction to entertain same. I make no order as to cost."*

**The grounds of appeal are couched as follows:**

*"1. The learned trial Judge erred in law when he held that the Federal High Court has no jurisdiction over a claim of compensation arising from the defendant's acquisition of land in connection with the operation of oil pipeline pursuant to an oil pipeline licence.*

PARTICULARS OF ERROR

*(a) The defendant entered into the plaintiffs' land in Ayaminina in Bonny Local Government Area of Rivers State purporting to do so pursuant to an oil pipeline licence and laid pipes for the conveyance of oil mining products, installed oil flow lines and other related facilities thereon.*

*(b) By Section 251 (1)(n) of the Constitution of the Federal Republic of Nigeria, 1999 the jurisdiction of the Federal High Court extends to mines and minerals (including fields, oil mining, geological surveys and natural gas) and by Section 7(3) of the Federal High Court Act, Cap.F12 Laws of the Federation, 2004, the jurisdiction is to be construed to include jurisdiction to hear and determine all issues relating to, arising from or ancillary to such subject matter.*

*(c) Entry into the Plaintiffs' land by the defendant, laying of pipeline by it and payment of compensation to the occupiers of the land are all issues relating to, arising from or ancillary to oil fields, oil mining.*

*2. The learned trial Judge erred in law when he held that the defendant's application is not an abuse of the process of the Court because he was hearing the case de novo even though it is exactly in the same terms as earlier motions brought by the defendant before a court of co-ordinate jurisdiction which was dismissed by the Court and the defendant did not appeal against it.*

*(a) A valid decision of a Court subsists unless reversed by the judgment of a superior Court.*

*(b) A High Court has no jurisdiction to retry or sit on an issue like jurisdiction which has been determined by a Court of co-ordinate jurisdiction.*

*(c) The motion heard and determined by the lower court raised exactly the same issue and is on the same terms as an earlier motion moved by the defendants through the same Counsel and dismissed by another Judge.*

*The learned trial Judge in law when, assuming he was right to hold that the Federal High Court had no jurisdiction, he struck out the suit instead of transferring to the High Court of Rivers State pursuant to the Federal High Court Act, Cap.F12, Laws of the Federation, 2004.*

*(a) By the provision of Section 22(2) of the Federal High Court Act the trial Judge in the circumstance of the case ought to transfer the case to the High Court of Rivers State.*

*(b) The Federal High Court Act is explicit on the fact that the matter ought not to be struck out by the trial Judge in the circumstance of this case.*

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL

*(1) That the Court of Appeal should set aside the decision of the Federal High Court contained in the ruling of December 16, 2010 striking out the suit for want of jurisdiction.*

*(2) That the Court of Appeal proceed to determine the case on its merit pursuant to section 16 of the Court of Appeal Act evidence in the case having been concluded and the matter adjourned for address before the defendant brought up the motion."*

Notice of Preliminary Objection to the hearing of this appeal on ground 3 issues 3 and 4 was filed by the learned Counsel to the Respondent on 1 1th October, 2011 as follows:

*"****TAKE NOTICE*** *that the Respondent shall, by way of preliminary objection pray this Honourable Court to strike out Appellants' issue four (4) and ground 3 of the grounds of appeal and the issue thereon (i.e issue 3), because the said issue four (4) does not relate to any of the grounds of appeal, while ground 3 of the grounds of appeal and issue three (3) thereon, is a ground not canvassed at the Court below.*

*The grounds upon which the objection is founded are that:*

*(1) Issue four (4) purportedly formulated does not relate to any of the grounds of appeal.*

*(2) Ground 3 of the grounds of appeal and issue three (3) formulated thereon relate to an issue not canvassed by the parties at the Court below, but was introduced for the first time in this Court without leave of this Honourable Court.*

*AND TAKE FURTHER NOTICE that the Respondent shall at the hearing rely on arguments on preliminary objection in the respondent's brief of argument."*

Argument was adumbrated at page 6 paragraph 3.04 to page 8 paragraph 3.10 of the respondent's brief of argument. The appellant's reply to the preliminary objection was deemed filed on 27th November, 2012. When the appeal came up for hearing on 17th April, 2013 the applicant's/respondent's Counsel argued the preliminary objection and the appellants'/respondents' Counsel replied. Thereafter Counsel adopted their respective brief of argument. I shall start with a consideration of the preliminary objection.

Counsel to the respondent drew attention to the fact that four issues for determination were formulated from the three grounds of appeal. While issues one, two and three are distilled from grounds one, two and three, issue four is said to have arisen "from the 2nd relief sought" in the Notice of Appeal. Counsel argued that this was not related to any of the three grounds of appeal and should be struck out, citing Okwuagbala & Ors. vs. Ikwueme & Ors. (2010) 19 NWLR (Pt.1226) 54 at 62-63 and Alli vs. Alesinloye (2000) 6 NWLR (pt.660) 177 at 190. That ground 3 did not arise from the decision appealed against. It is a ground on an issue not canvassed in the Court below. It was argued that the ground was being raised in the Court of Appeal for the first time without leave and should be struck out, citing Olakekan vs. Wema Bank Plc (2000) 13 NWLR (Pt.683) 59 at 66 and Tukur vs. Government of Taraba State (1997) 6 NWLR (Pt.510) 549 at 669.

The learned Counsel to the appellants' response was to refer to Order 18 rule 3(1) of the Court of Appeal Rules, 2011. Counsel argued that rules of the Court must be obeyed provided they are consistent with fundamental principles of justice, citing Agip Nigeria Ltd. vs. Agip Petroli Int'l. (2010) All FWLR (pt.420) 1195 at 1228. It was contended that issues can be formulated from any other part of the Notice of Appeal apart from the grounds of Appeal. An appellant can urge the Court to hear the appeal under Section 16 of the Court of Appeal Rules, 2011 based on the record. Counsel argued that the Courts have evolved the attitude of not allowing technicalities to defeat the attainment of justice but to consider each matter on its merit, citing Mbadiwe v. INEC (2010) All FWLR (pt.745) 745 at 767. The appellants did not breach the cardinal principle that not more than one issue can be formulated from a ground of appeal as stated in Okwuagbala vs. Ikwueme (supra). Rather the appellants stated that issue four arose from "2nd relief sought" in the Notice of Appeal. If the Court of Appeal determines the appeal in favour of the appellant the reliefs will be granted. Besides, the respondent has not been misled. The objection is to form of actions, merely technical in nature, argued learned Counsel to the appellants.

On the objection to the competence of ground three and issue three, learned Counsel referred to Order 6 rules 2 to 5 of the Court of Appeal Rules (supra). Counsel submitted that they do not define what a ground of appeal is. However a ground of appeal should state whether the appeal is against the whole or part of the decision and should indicate whether it pertains to a misdirection or error with particulars. That a Court of Appeal is not confined or restricted to the grounds set out by the appellant in the Notice of Appeal. But if the appeal is allowed, its decision should not be based on any ground unless the respondent has had sufficient opportunity of contesting the case on that ground. Counsel submitted that in Ugboaja vs. Akintoye-Sowemimo (2008) All FWLR (Pt.439) 407 at 418 and Minister of Petroleum Resources vs. Expro-Shipping (Nig.) Ltd. (2010) All FWLR (Pt.530) 1236 and 1259-1260 the two Courts have defined what is a ground of appeal. That the appellants can challenge the decision of the learned trial Judge for declining jurisdiction to entertain the claim since this could be raised at any stage of the proceedings, even in the Supreme Court. Learned Counsel urged that the preliminary objection should be dismissed.

I shall take the two grounds of objection together for purposes of convenience. A Notice of Appeal usually contains the grounds or reasons why the appellant(s) are not satisfied with the decision of the lower Court. See Ugboaja vs. Akintoye-Sowemimo and Minister of Petroleum Resources vs. Expro-Shipping (Nig.) Ltd. (supra) cited by learned Counsel to the appellants in argument. If the appeal succeeds the Court grants the reliefs or remedies sought by the appellant or refuses same. The Court determines an appeal based on the grounds of appeal and the issues formulated from those grounds as provided in Order 18 rule 3(1) of the Court of Appeal Rules, 2011 which reads as follows:

"3(1) The brief, which may be settled by Counsel, shall contain an address or addresses for service and shall contain what are in the Appellant's view, the issues arising in the appeal as well as amended or additional grounds of appeal."

The intention of the law maker is that issues for determination shall arise from the original notice and grounds of appeal, amended or additional grounds of appeal. They shall also arise from issues canvassed before the trial Court. See the authorities cited by learned Counsel to the respondent and the further authorities of Akinlagun vs. Oshobajo (2006) 12 NWLR (Pt.993) 60 at 80; Atanda & Ors. vs. Akanji & Ors. (1989) 2 NSCC (Pt.2) 511 at 537 and Idahosa vs. Oronsaye (1959) 4 FSC 166.

Order 18 rule 3(1) of the Court of Appeal Rules, 2011 does not provide that issues for determination should arise from the relief sought in the Notice of Appeal as argued by learned Counsel to the appellant. No authority has been cited in support of such an argument. The express mention of one thing or things in a statutory provision or rule of Court excludes others not so mentioned. See Udoh vs. Othopaedic Hospital Management (1993) 7 SCNJ (Pt.2) 436 at 444; Attorney-General of Bendel State vs. Aideyan (1989) 4 NWLR (Pt.118) 646 and Attorney-General, Abia State vs. Attorney-General of the Federation (2005) All FWLR (Pt.275) 414. In my humble opinion what the learned Counsel set out as issue four is not related to any ground of appeal; neither is it an issue arising from the three grounds of appeal. Rather it is what remedy the learned trial Judge should have considered upon declining jurisdiction to entertain the claim. The respondent challenged the competency of this suit in the lower Court. The lower Court ruled in favour of the respondent and struck out the claim thereby declining jurisdiction. Issue three was thus raised, argued and ruled upon in the lower Court. The issue relates to Ground 3. Ground three and issue three are competent. Issue four being incompetent is struck out. On the whole the preliminary objection succeeds partly. I shall now consider this appeal on the merit by giving consideration to the issues raised by learned Counsel to the appellants.

**ISSUE ONE:**

The learned Counsel referred to paragraph 5 of the amended statement of claim and submitted that it is the facts in the statement of claim that ought to be scrutinized to determine whether the lower Court had the jurisdiction to entertain the claim or not. Counsel referred to Section 251(1) and (n) of the Constitution of the Federal Republic of Nigeria, 1999 read together with Section 7(3) of the Court of Appeal Act Cap.F12, Laws of the Federation of Nigeria, 2004 to contend that a claim for compensation for entering into a person's land pursuant to a licence to lay pipelines for oil exploitation, exploration or as transportation is one relating to, arising from or ancillary to mines and minerals including oil fields, oil mining, geographical surveys and exploitation of natural gas. Counsel referred to the meaning of *"ancillary"* defined in Green vs. Britten (1904) 1K.B.356 by Mathew L.J. and Advanced Law Lexicon, 3rd edition book 1 by Aiyar. It was contended that the learned trial Judge should not have declined jurisdiction to entertain this claim. Counsel referred to the ruling of Faji J., delivered on 27th June, 2003 on the same subject to be found at pages 37-45 of the printed record. The lower Court should have looked at the ruling before determining to strike out the substantive suit. Counsel cited the case of Shell Petroleum Development Co. Ltd. vs. Isaiah (2001) FWLR (Pt.56) 608 where the Supreme Court held that in claims for compensation arising from the construction and maintenance of an oil pipeline with resultant environmental damages to the land it is the Federal High Court that has exclusive jurisdiction to determine the issue. This is distinguishable from a situation where like in Nkwume vs. Odili (2006) 6 NWLR (Pt.972) 592 the matter involved simply a land dispute. In that situation the jurisdiction to determine such question vests in a State High Court. Counsel argued that in this appeal the respondent was not contesting title to the land with the appellants hence the authorities cited by the learned trial Judge did not apply. Counsel urged that issue one should be resolved in favour of the appellants.

The learned Counsel to the respondent conceded that jurisdiction to determine the appellants' claim was by considering the writ of summons and the statement of claim, citing Tukur vs. Governor of Gongola State (1989) 4 NWLR (pt.117) 517. Counsel referred to some paragraphs of the Amended Statement of Claim to argue that they did not show that the activities of the respondent on the land were in connection with oil prospecting or mining. Nevertheless the appellants took it for granted that because the respondent is described as carrying on the business of oil exploration and exploitation in Nigeria, every of her activity must be construed as pertaining to or be in connection with mines and minerals, etc, within the ambit of Section 251(n) of the 1999 Federal Constitution. That the averments in paragraphs 7 and 13 of the Amended Statement of Claim do not clothe the lower Court with jurisdiction. The issue was purely one of trespass coupled with special and general damages, citing the case of Dr. Okoroma vs. Chief Christian Uba & Ors. (1999) 1 NWLR (Pt.587) 359 at 378. It was argued that at times when the defendant may affect the jurisdiction of a Court. When the reliefs claimed are juxtaposed with the defence put up by the respondent in paragraphs 7-14 of the Amended Statement of Defence, it can be seen that title to the land is in issue. Title must be considered before the issue of payment of compensation can be inquired into. The case of the appellant therefore is whether they are entitled to compensation over Ogbonga and Fuakpa lands having regard to the respondent's pleading. Counsel cited Section 39(1) of the Land Use Act No.6 of 1978; Achebe vs. Nwosu (2003) 7 NWLR (Pt.818) 103 at 129 and Oladipo vs. N.C.S.B. (2009) 12 NWLR (pt.1156) 563 at 587. It was further argued that in Shell Petroleum Development Company Limited vs. Isaiah (supra) there was no dispute as to the ownership of the land over which compensation was claimed. The company already had her equipment on the land for oil exploration purposes. But in this case it was the entry of the respondent on the land that ignited the suit. Counsel contended that the averments in paragraph 13 of the Amended Statement of Claim did not indicate that the pipes, tanks and other reservoirs were for oil exploration purposes. The contention in paragraph 3 page 15 of the appellants' brief to the effect that neither the respondent nor any third party is contesting title to the land with the appellants was not true in the face of the averments in the Amended Statement of Defence. The instant case was not the same with those cited by learned Counsel to the appellants. The Court should resolve issue one against the appellants. The appellants' reply on points of law was filed on 27th November, 2012. For what I shall say in due course I do not see the need to repeat the submissions in the reply.

**ISSUE ONE:**

It is settled law that it is the facts pleaded in the statement of claim or in this case the Amended Statement of Claim that determines the jurisdiction of the Court of trial. See Adeyemi vs. Opeyori (1976) 1 FWLR 149 at 157; Bronik Motors vs. Wema Bank (1983) 6 SC 158. This will enable the Court to also determine what is a party's cause of action. See Ogbimi vs. Ololo (1993) 7 SCNJ (Pt.2) 447; Bello vs. Attorney-General of Oyo State & Ors. (1986) 5 NWLR (Pt.5) 828; Attorney-General of Kwara State vs. Olawale (1993) 1 SCNJ 208 and Osigwe vs. PSPLS Management Consortium Ltd. & 13 Ors. (2009) NMLR 58 at 68. Having determined the cause of action the Court looks at the reliefs claimed to see whether they fall within the powers or competence of the Court to award. The amended statement of claim and the reliefs claimed must all come within the jurisdiction of the trial Court to enable her adjudicate over the dispute. They must not be considered in isolation. The whole tenor of the averments in the pleadings should be considered. See Umesie vs. Onuaguluchi (1995) 12 SCNJ 120 at 131. The Court may then assume that the facts pleaded in the statement of claim are true but nevertheless it is not competent to adjudicate over the subject matter having not been empowered under a constitutional or statutory provision to adjudicate. Paragraphs 1-17 of the Amended Statement of Claim plead as follows.

*"1. The 1st plaintiff on record brings this action as Administrator of the Estate of late Mr. Dogogo Alagoma of Ayaminima in Bonny Local Government Area of Rivers State while the 2nd set of plaintiffs are suing for themselves and on behalf of the members of the Ayaminima Community in Bonny Local Government Area of Rivers State through their lawful Attorney Chief Loveday Akari. The letters of Administration to the Estate of late Dagogo Jumbo and the Power of Attorney appointing the said Chief Loveday Akari are hereby pleaded and shall be relied upon at the trial of this suit.*

*2. The 1st plaintiff on record is the current Secretary while the 2nd plaintiff is the current Chairman of the Ayaminima Community.*

*3. That 1st Defendant is a limited liability company incorporated in Nigeria and ordinarily carries on business of oil exploration and exploitation in several parts of Nigeria including the Plaintiffs' Bonny Local Government Area of Rivers State.*

*4. The Ayaminima Community is the absolute owner of all those pieces or parcels of land, creeks, fish ponds, swamps, mangrove, etc, constituting the area known as Ayaminima Community and have owned same from time immemorial. The community has always exercised lawful rights of ownership over the said lands, which are well acknowledged by all.*

*4a. The Ayaminima Development Council decided some years ago to develop the land as a multipurpose estate to which Dagogo Alagoma, a one time Commissioner for Establishment in Rivers State applied for a Certificate of Occupancy (C of O) on behalf of the community and obtained same in his name in 1989 with the knowledge and consent of the community.*

*4b. The C of O was in his name because in his capacity as a one time Commissioner, action would be faster and was indeed faster in the processing of the C of O which the community needed urgently at the time to boost the confidence of prospective investors. The Certificate was held by him in trust for the entire community and he so held out himself and made it clear to his children including 1st plaintiff.*

*4c. The late Dagogo Alagoma himself by letters dated 7th March, 1979 and another letter dated to the 10th July, 1990 with Reference No. Ref: DAP/FDP/18 acknowledged this ownership by the community before his demise. The said letters are hereby pleaded and shall be relied upon at the trial. The Defendant is hereby given notice to produce letter Ref: DAP/FDP/18 dated 10th July, 1990.*

*4d. The plaintiffs shall at the trial contend that by virtue of paragraphs 4(a) to*

*4(c) above the late Dagogo Alagoma (and his estate) was the trustee of the land for the benefit of the Ayaminima Community.*

*5. The Ayaminima Community is made of two main houses, namely, Jumbo and Hart Houses.*

*6. The areas of the community's land known as Ogbonga and Fuakpa were affected by the activities of the defendant that gave rise to this action before the Court.*

*7. Sometime on or about 15/11/1995, the plaintiff's community suddenly noticed the defendant by her agents, contractors and servants with very heavy equipments move into the Ogbonga and Fuakpa Community lands of Ayaminima and commenced excavation and construction works. This was without Ayaminima Community's prior knowledge, leave or consent.*

*8. On noticing this sudden interference the members of the community present confronted the Defendant's workers and stopped them from proceeding with their unlawful and unauthorized activities.*

*9. One of the workers at the scene who identified himself as the Public Relations Officer of Wilbros Nigeria Limited told the members of the community that they were working as contractors for the Defendant. He also promised that his company and the Defendant would very quickly get in touch with the community for proper negotiations and compensation which he expressed surprise that it had not been done.*

*10. The Community then engaged the services of an experienced claims Agent, Chief Loveday Akari Express Claims Agency, a division of Eli Akari Express Limited for the realization of their compensation claim from the Defendant.*

*11. Soon after that, the defendant without any attempt to negotiate with the community and/or their Attorney, Chief Akari, suddenly resumed the excavation and construction works on the community's land. When they were confronted again they claimed that they were operating under statutory authority and had no duty to pay any compensation to the community since it said the land belonged to the Government.*

*12. All efforts made by the community, its Agent or his Solicitor by means of visits and letters including a suit at the Port-Harcourt High Courts, PHC/1162/1995. Elder Reginald Jumbo & Ors. vs. Shell Petroleum Development Co- (Nig.) Ltd. & Anor, were rebuffed by the Defendant who went ahead with their activities and completed their work sometime in 1996. The Plaintiffs shall at the trial rely on processes filed and served them in the said suit.*

*13. The Defendant's construction works in plaintiffs' Fuakpa and Ogbonga land involved bulldozing of economic trees and entire vegetation, destruction of flora and fauna, excavation of earth for the purpose of laying pipes, tanks and other reservoirs. It also involved dumping of the excavated earth and other materials on other parts of the community land. The defendant's agents dug up and destroyed several parts of the community land.*

*14. The community through its claims Agent engaged the services of an Estate Valuer who did a detailed report of the injury caused. The Valuation Report was handed over to plaintiff's claim Agent, Chief Loveday E. Akari. The plaintiffs shall at the trial rely on the said valuation report which is hereby pleaded.*

*15. The plaintiffs later engaged another Estate Valuer who re-appraised and reconfirmed the valuation.*

*16. The valuation re-appraisal report is hereby pleaded and shall be relied upon at the trial of this matter. The Defendant's construction work as pleaded above was over the plaintiffs Ogbonga and Fuakpa lands where they destroyed the community's entire vegetation and source of livelihood and also injuriously affected the community's neighbouring land.*

*16. The community and its inhabitants being farmers and fishers depend on the land, creeks, ponds, mangrove, etc, belonging to the community for subsistence."*

The appellants have pleaded a Certificate of Occupancy over the lands they are laying claim to. This constitutes prima facie evidence of title to the land. See Section 9(1)(c) of the Land Use Act No.6 of 1978. The appellants are not claiming that the respondent is a trespasser on their communal lands. All they are saying is that having entered their communal lands and caused the kind of injuries described in paragraphs 18-20 of the Amended Statement of Claim, they are in law entitled to compensation. This issue was answered in Shell Petroleum Development Company of Nigeria Ltd. vs. Abel Isaiah & 2 Ors. (2001) FWLR (Pt.56) 608 per Muhammed, JSC at 621-622 as follows:

"The question which should be answered, in this appeal is whether the facts of this case fall within the definition of matters connected with or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas. The State High Court would have no jurisdiction to adjudicate in the matter. The picture of what happened which led to the institution of this case has been given by the respondents in their statement of claim, which reads:-

"6. Sometimes (sic) about July, 1986, an old tree from the swampland fell on the oil pipelines indenting or bending the said pipes. Apart from indenting or bending the said pipes, there was no other damage to the pipes by reason of the falling of the tree. However, the said indentation hindered the free flow of crude oil through the said pipes and it became necessary for the defendant to maintain the indented section of the pipeline by cutting off the said section and installing a new section.

7. In the course of the said repairs, which was carried out by the Engineering Department of the defendant, the defendant neglected to construct what technically is termed an oil trap. An oil trap is a device constructed in the soil which is supposed to trap crude oil in the course of such repairs so that crude oil will not spill and pollute the surrounding environment.

8. Because of the defendant's neglect to construct an oil trap, as they disconnected the damaged section of the said oil pipes for replacement, noxious crude oil commenced massive spillage onto the plaintiffs' swampland. The defendant's employees could not immediately control the spillage and crude oil continued to spill for several hours until they were able to fix the new section of the oil pipes."

In establishing whether the construction and maintenance of an oil pipeline is part of mining operations, it is relevant to refer to the practice of the oil prospecting licence holders during mining operations. These have been described in the Petroleum Act, 1960 and Oil Pipeline Act, 1956. If petroleum is discovered through the approved mining operations, arrangement is made by the oil prospecting licence holder, which struck the oil, to evacuate the oil from the oil well to an oil terminal. This is done either through a pipeline or a tanker. The pipeline is constructed and maintained by the Oil Company which transports the oil from the oil-well to the oil terminal. Thus, the most important aspect of oil mining operation is the construction of oil pipelines for the evacuation of the crude oil to the oil terminal through an oil pipeline.

The holder of an oil pipeline licence has been made responsible under the law to pay compensation to any person whose land or interest in land or who suffers any damage in connection with the operation of the pipeline.

For the foregoing reasons, the construction, operation and maintenance of an oil pipeline by a holder of oil prospecting licence is an act pertaining to mining operation.

It is clear from the pleadings that the spillage and pollution occurred when the appellant was trying to repair the indented pipeline by cutting off the said section and installing a new section. I think it cannot be disputed if I say that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks are part of Petroleum Mining Operations. Therefore, if an incident happens during the transmission of petroleum to the storage tanks, it can be explained as having arisen from or connected with or pertaining to mines, and minerals, including oil fields, and oil mining. I, therefore, agree that the subject matter of the respondents' claim falls within the exclusive jurisdiction of the Federal High Court as is provided under Section 230(1)(a) of Constitution (Suspension and Modification) Decree No. 107. Similar opinions concerning claims pertaining to oil spillage have been held by the Court of Appeal in Barry and 2 Ors. vs. Obi A. Eric and 3 Ors. (1998) 8 NWLR (Pt.562) 404 at 416 and The Shell Petroleum Development Company of Nigeria Limited vs. Otelamaba Maxon & Ors. (2001) FWLR (Pt.47) 1030. It was decided on 29th January, 2001 by Port-Harcourt Division of the Court of appeal."

Wali, JSC held at Page 624 that:

"From the pleadings and the relevant statutory laws cited and relied on, the State High Court lacked jurisdiction to entertain the case as it is a matter covered by the Petroleum Act, 1960 and the Oil Pipeline Act, 1956. By the Constitution (Suspension and Modification) Decree No. 107 of 1993, particularly Section 230(1)(g) thereof, jurisdiction in such matters has been made exclusive to the Federal High Court.

The same Division of the Court of Appeal i.e. Port-Harcourt Division in Barry and 2 Ors. vs. Obi A. Eric and 3 Ors. (1998) 8 NWLR (Pt.562) held that the State High Court lacks jurisdiction to entertain claims involving Oil Spillage.  
For the avoidance of doubt as regards the exclusive jurisdiction of the Federal High court in matters pertaining to mines and minerals, I quote hereunder the provision of section 230(1)(9) of Decree No. 107 of 1993 and which specifically provides as follows:

"251(1) Notwithstanding anything to the contrary contained in this constitution, and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters arising from mines and minerals, including oil fields, oil mining, geographical surveys and natural gas."

The proceedings before the Rivers State High Court sitting at Isiokpo is hereby declared a nullity for want of jurisdiction. The case instituted before that Court is hereby struck out. See Uwaifo vs. Attorney-General of Bendel State (1982) 7 SC 124; (1983) 4 NCLR 1; Din vs. Attorney-General of the Federal (1988) 4 NWLR (Pt.87) 147; Attorney-General of Lagos State v. Dosunmu (1989) All NLR 504."

Ogwuegbu, JSC held at page 629 paragraphs "A"-"D" as follows:

"Having regard to the state of the law and the facts of this case, oil spillage from the defendant's dented oil pipeline is a thing associated with, related to, arising from or ancillary to mines and minerals, including oil fields, oil mining, geological surveys and natural gas as provided in Section 7(1) and (2) of Decree No.60 of 1991 . From the facts established, there is close affinity between oil spillage which is the cause of action and Section 7(1)(p) of the 1991 Decree. The words of Section 7(1) of the aforesaid Decree are plain and unambiguous and I have no hesitation in giving them their natural and ordinary meaning in the context in which I find them. See Allen vs. Thorn Electrical Industries Ltd. (1967) 2 All E.R. 1137 at 1141.

I, therefore, entertain no doubt that by the provisions of Decree No.60 of 1991, the Rivers State High Court lacked jurisdiction to hear and determine the suit giving rise to this appeal and the Court below equally lacked jurisdiction to hear the appeal. See Madukolu vs. Nkemdilim (1962) 1 All NLR (Pt.562) 404 and Barry & Ors. vs. Eric & Ors. (1988) 8 NWLR (Pt.562) 404 CA."

I also hold that attractive and ingenious as the learned Counsel to the respondent's argument may be, the subject matter of the appellants' claims is within the exclusive jurisdiction of the Federal High Court as is provided under Section 251(n) of the Constitution of the Federal Republic of Nigeria, 1999.

Accordingly, I hold that his Lordship in the Court below erred to have declined jurisdiction to entertain this suit. I resolve issue one in favour of the appellants.

**ISSUE TWO:**

The argument by the appellants' learned Counsel is that when this suit came before Faji J., of the Federal High Court Port-Harcourt, Rivers State the issue of jurisdiction was raised but dismissed. The suit though struck out was subsequently relisted. It came before Chukwu J., who commenced hearing *denovo*. In the course of hearing the respondent brought the same application challenging the jurisdiction of the lower Court to entertain the claim. The objection was upheld and the suit was struck out. This is now the subject-matter of this appeal. The argument by learned Counsel to the appellants is that the respondent was estopped from raising the same issue of lack of jurisdiction in view of the ruling by Faji J. Learned Counsel referred to principles on estoppel, citing, Ikotun vs. Oyekanmi (2008) All FWLR (Pt.433) 1271 at 1281-1282; Ogbogu vs. Ugwuegbu (2003) 1 FWLR (Pt.161) 18 25 at 1840; Ranking Udo vs. Obot (1989) 1 SC 67 at 76 and 81 ; Thoday vs. Thoday (1964) 1 All E.R. 341; Bwacha vs. Ikenya (2011) All FWLR (Pt.572) 1674; D.T.T. Enterprises (Nig.) Co. Ltd. vs. Busari (201 1) All FWLR (Pt.563) 1818 at 1846; Ito vs. Ekpe (2000) 2 SC 116; Oloba vs. Akereja (1988) 7 SC (Pt.1) 1 at 12; Senate President vs. Nzeribe (2004) All FWLR (Pt.214) 359 at 374; Tiamiyu vs. Olaogun (2009) All FWLR 960 and Akanbi vs. Oyewale (2001) All FWLR (Pt.45) 1922 at 1923. It was argued that raising the same issue before Chukwu J., constituted an abuse of Court process. The learned Judge in the Court below should have declined jurisdiction to entertain the second application. Counsel urged that issue two should be resolved in favour of the appellants.

Learned Counsel to the respondent replied that Faji J., had not concluded the trial when he was transferred and the entire case had to start *denovo* hence there was no abuse of Court processes. It was argued that the principles for the application of the doctrine of issue *estoppel* did not apply to the facts of this case. Counsel referred to the following authorities in support of his argument, namely, P.T.T. Ent. (Nig.) Co. Ltd. vs. Busari (2011) 8 NWLR (Pt.1249) 387 at 410 paragraphs "F"-"H"; NNPC vs. S.L.B. Consortium Ltd. (2008) 16 NWLR (Pt. 1113) 297 at 322; F.B.N. Plc vs. Tsokwa (2005) 5 NWLR (Pt.866) 271 at 306 paragraphs "C"-"E", Fadiora vs. Gbadebo & Anor (1978) All NLR 42 at 54 to urge this court to resolve issue two against the appellants.

The answer to the question raised in issue two has been decided in a plethora of judgments of the superior Courts of record and in this Court. I shall start by quoting the judgment of Idigbe, JSC in Fadiora vs. Gbadebo (1978) 1 LRN 97 at 104 where his Lordship held that:

"What exactly is the implication and effect of an unconditional or unqualified order for trial de novo by the Court of Appeal on a case on appeal before that Court? We think that in trials de novo the case must be proved anew or rather reproved de novo, and therefore, the evidence and verdict given as well as the judge's findings, at the first trial are completely inadmissible on the basis that prima facie they have been discarded or got rid of. The Court of second trial, therefore, is entitled to and, indeed, must look at the pleadings before it in order to ascertain and decide the issues joined by the parties before it on their pleadings. This is the reason why it is a fundamental principle of the doctrine of res judicata that:

No finding of the Court or of a jury which has proved abortive, a new trial having been directed, will give rise to a valid plea of estoppel' and over the years this principle has been hallowed by a number of important decisions, and we mention a few in chronological order and also refer to important observations in some of them. In Gipps vs. Gipps & Hume (1864) 11 HL Cas l, it was held that whereby consent a jury has been dispensed with on the trial of a petition for divorce, if a new trial should be ordered, the consent previously given would no longer be binding and the petitioner might demands to have his case tried before a jury (per Lord Wensleydale). In Roe vs. R.A. Naylor Ltd. (1918) 87 LJKB 958, the Court of second trial refused to admit in evidence some finding made by the Court of first trial as if was of the view that it was inadmissible and dealing with the point in the Court of Appeal, Swinfen Eady MR observed at page 963:

"Counsel for the appellants sought to rely upon some finding of the judge in the first trial of the action. In my opinion he is not entitled to do that. This action was sent for a new trial, and the second trial superseded the first, and any finding in the first action was got rid of when the action was sent for new trial..."

If a learned trial Judge is transferred from the jurisdiction and the case has to start de novo before another learned trial Judge the effect of trial de novo is clearly set out in the judgment of the Court of Appeal in Bakule vs. Tanerewa (Nig.) Ltd. (1995) 2 NWLR (Pt.380) 728 at 738 paragraph "G" per Mohammed, JCA (as he then was) as follows.

"The effect of starting the case afresh before Adamu, J., is to sweep clean all previous proceedings in the case before Abdullahi, J. See Odi vs. Osafile (supra). Any of the parties therefore, is free to bring afresh any application including the type the subject of this appeal. For this reason, the ruling of Abdullahi, J., of 5th March, 1991 having been given in a previous proceedings before the case between the parties started afresh before Adamu, J., is not a necessary record for the purpose of this appeal."

This has been extended to criminal trials. Where a learned trial Judge who granted bail to a suspect is no longer in a position to continue the hearing and the case had to start de novo the Court of Appeal held in Iyiola Omisore vs. The State (2005) 12 NWLR (Pt.940) 591 at 606 paragraphs "A"-"B" per Okunola, JCA that:

"The law in the country today is that the effect of starting a case de novo before another Judge is to render null all pending orders including orders on bait. In such circumstances of fresh arraignments and trials, fresh application for bail has to be made. See Bakule vs. Tanerewa (1995) 2 NWLR (Pt.380) 728 at 738; Adefulu vs. Oyesile (1989) 5 NWLR (Pt.122) 377 at 407 cited by both leading Counsel to the parties."

At page 606 paragraph "G" to page 607 paragraphs "A"-"B" Adeleke, JCA (as she then was) held that:

"The matter before Justice Abass at the time was started de novo and not a continuation of the matter before Justice Ige who had earlier granted the appellant bail. I succumb to the conclusion - which is legally viable in the circumstance that Justice Abass was not bound to continue the order of bail granted in another Court - and there was no fresh application for bail made in his Court. It is trite and a cardinal principle of our Criminal Procedure that when a matter was commenced before another Court de novo and a plea taken, the appellant's Counsel ought to have asked for a fresh bail. In this instance he urged the Court to allow the bail granted by Justice Ige to continue. There was no application for a fresh bail before Justice Ige particularly when the order for bail made by Justice Ige had lapsed and became non-existent. Since there was no proper application before Abass J., he was right to have remanded the accused in prison custody. It is trite that an order of a High cannot easily be set aside by another High Court because of their co-ordinate jurisdiction but one of the exception is when a matter is started de novo before the co-ordinate Court. The order of Justice Ige remained valid until the appellant was re-arraigned and the matter started before another Judge de novo. Ukpai v. Okoro (1983) 2 SCNLR 380; Okafor v. Attorney-General, Anambra (1991) 6 NWLR (Pt.200) 659; Oladele v. State (1993) 1 NWLR (Pt.269) 294."

I resolve issue two against the appellants.

**ISSUE THREE:**

The argument by learned Counsel to the appellants is that having declined jurisdiction the learned trial Judge should have transferred the suit to the State High Court for hearing and determination. Counsel cited Section 22(2) of the Federal High Court Act (supra). Learned Counsel to the respondent contended on the other hand that the valid order to make when the Court declined jurisdiction was to strike out the suit, citing KLM Airlines vs. Kumzhi (2000) 8 NWLR (pt.875) 233 at 262; NEPA vs. Edegbenro & Ors. (2002) 18 NWLR (pt.798) 295; Crown Star & Co. Ltd. vs. The Vessel Mv Vali (2000) 1 NWLR (pt.639) 37 at 59-60. That the court below was right to have struck out the suit. Issue three should be resolved against the appellant.

My humble opinion is that in view of my holding in respect of issues one in favour of the appellants, there was no need to have struck out the suit for want of jurisdiction. His Lordship should have heard the suit on the merit. I resolve issue three in favour of the appellants.

Accordingly, issues one and three are resolved in favour of the appellants. I invoke Section 15 of the Court of Appeal Act, 2004 and restore this suit to the cause list of the Court below to be heard by another Federal Judge. I award N50, 000.00 cost to the appellants against the respondent.

**MOHAMMED LAWAL GARBA, J.C.A.:**

My learned brother Joseph Tine Tur, JCA, had availed me of a copy of the draft of the lead judgment written by him in this appeal. As usual, his lordship has comprehensively considered and ably resolved the issues that require decisions and all the views expressed and conclusions reached thereon are the same with mine.

I adopt the reasonings adumbrated in the lead judgment and join in allowing the appeal in all the terms thereof.

**ONYEKACHI A. OTISI, J.C.A.:**

I had a preview of the judgment just delivered by my learned brother, **Joseph Tine Tur JCA**; and I entirely agree with his reasoning and conclusions.

It is settled law that the jurisdiction of the court is determined by the plaintiff's claim as disclosed in the writ of summons; and/or the statement of claim, where it has been filed: this being because the statement of claim supersedes the writ of summons. And, the entire content and claim of the statement of claim is the material to be examined in determining whether or not a court has jurisdiction. See: Tukur v. Govt. of Gondola State (No.2) (1989) 4 NWLR (Pt.117) 517; NV Scheep v. MV "Araz" (2000) 15 NWLR (Pt. 681) 668; Ayorinde v. Oni (2000) 3 NWLR (Pt. 649) 348, Nnadi v. Okoro (1998) 1 NWLR (Pt.535) 573; Omnia Nigeria Ltd v Dyktrade Ltd (2007) 12 MJSC 115.

An examination of the Amended Statement of Claim of the Appellants will reveal that the Appellants are contending that they are entitled to compensation as a result of the injuries or damages caused to their communal lands occasioned by the operations of the Respondents on their said lands. See: Paragraphs 13, 16, 17 and 19 of the Amended Statement of Claim.

Having regard to the provisions of Section 251 (n) of the Constitution of the Federal Republic of Nigeria 1999, as amended, the subject matter of the Appellants' claims are within the exclusive jurisdiction of the Federal High Court. The learned trial Judge therefore had jurisdiction to entertain the claims.

For these and for the fuller reasons given in the lead Judgment, I allow this appeal, and abide by the Orders made including the Order as to costs.