

COMPENSATION FOR DAMAGE ARISING FROM SEISMIC OPERATIONS IN NIGERIA: CONSTRAINTS AND REMEDIES*

INTRODUCTION

No doubt, the importance of compensation to the victims of seismic operations¹ in Nigeria cannot be over-emphasized. This is because, in situations where damage results from such operations, nothing is spared – buildings, farmlands, roads, fish ponds, drinking water, etc. It is therefore awarded to them to balance or reduce the bad effect of damage, loss or any other injury which they have suffered as a result of such operations. Investigation has revealed that in most cases, the damage is caused by the negligent act of those carrying out the operations which expectedly should entitle the victims to adequate compensation.

Conversely, these victims hardly succeed in their suits for compensation in this country. It is the reasons behind their failures that we intend to examine in this paper. We shall as well proffer some solutions to these problems, but before we go into this proper, we have to first examine the terms “seismic activities” and “compensation”.

MEANING OF SEISMIC ACTIVITIES

Seismic activity is ordinarily associated with mining and mineral explorations. In the course of mining, some explosive substances are used which can easily cause an earthquake. An earthquake occurs when something causes the rocks of an earth crust to vibrate. During volcanic eruption, the gases dissolved in the magma expand with violence as the magma rises towards the surface, then, there will be an explosion which shakes the rocks thereby causing the earthquake.² Earthquakes occur around the Mediterranean sea, the Himalayas, the Pacific ocean and other unstable areas of the world³.

Seismic survey, on the other hand is a method of investigating subterranean structure particularly as related to exploration of oil, gas and ore deposits⁴. They make use of explosive substances in the process which can cause deaths, destroy the soil, farmland, crops or dislocate human settlement, and it is more common in the Niger Delta region of Nigeria.

Section 5(1) of the Oil Pipelines Act⁵ provides that:

A permit to survey shall entitle the holder, ... to enter together with his officers, agents, workmen or other servants and with any necessary equipments or vehicles, on any land upon the route specified in the permit or reasonably close to such route for the following purposes;

- (a) to survey and take levels of the land
- (b) to dig and bore into the soil and sub soil;
- (c) to cut and remove such trees and other vegetation as may impede the purposes specified in this subsection, and
- (d) to do all other acts necessary to ascertain the suitability of the land for the establishment of an oil pipeline or ancillary installations, and shall entitle the holder, with such persons, equipment or vehicles as aforesaid to pass over land adjacent to such

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1 Operations and activities will be used interchangeably in this paper

2 M.O. Umenweke, “Man and the Atmosphere” in Introduction to Natural Sciences for General Studies, V.I. Ajiwe and O.O Njoku (eds.) p. 81.

3 Ibid.

4 C.G.G. (Nig.) Ltd. v. Ogu (2005) 8 NWLR pt. 927 at 366.

5 Cap 07 LFN 2004).

route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified.

As this Act has conferred these rights on the holder, an inference can be drawn from paragraph (d) that an environmental impact assessment is a necessity in ensuring that such acts while carried out will not have any significant adverse effects on the environment. Where it does, the owner should be entitled to adequate compensation⁶. In the same vein, section 1(1) f the Explosives Act⁷ provides that;

The minister responsible for explosives may by regulations make such provision with respect to explosives as he considers expedient for the purpose of maintaining and securing public safety.

The scenario of massive and fast survey and the use of explosives in the course of oil exploration activities without regard to the regulatory provisions of our statutes have, no doubt, caused much harm to the citizens and the environment in this country. According to O. Adewale;⁸

At the initial stages when seismic activities are carried out ... explosives are short into the ground... This causes vibration and the houses nearby may be affected. During the prospecting and mining operations, oil spill may occur at any time.... Some practices which are standard and accepted in the oil industry are dangerous or harmful, for example, digging an oil pit to dispose of oil wastes will make the soil infertile, disposing by-products of oil refinery into the sea or river is also harmful and causes pollution. Gas flaring as a way of disposing the by-product of petroleum operation is also hazardous ... as oil producing states are usually riverine areas, oil spill contaminates their water which is their main source of survival and makes infertile the little land they have.

Once these victims suffer any damage resulting from these activities, they rush to courts for compensation and other reliefs that may be available to them. It now remains to examine what compensation means from this perspective and how available it is made to these victims.

COMPENSATION

Compensation is one of the means employed to enforce or redress an injury. It is founded on the legal maximum "restitutio in integrum" which means to restore the injured party to the position he was prior to the incident. Compensation can be paid in various forms as damages, reparation, restitution, rehabilitation or restoration provided it serves as an adequate recompense for the victims and the damaged areas of their environment.

Apart from the 1999 Constitution of Nigeria which guarantees our fundamental right to compensation⁹, there are three main statutes with provisions for the payment of compensation to persons who suffer damage as a result of oil operations¹⁰. These are the Oil Pipelines Act¹¹, Minerals and Mining Act¹², and the Land Use Act, 1978¹³. Section

6 See section 44 of the 1999 Constitution.

7 Cap. E 18 LFN 2004.

8 "Rylands v. Fletcher and the Nigerian Petroleum Industry, 1987, & 1988. vols. 8 & 9, pp. 42 – 43.

9 See Section 44(2) (m).

10 See J.A. Omotola, "The Quantum of Compensation for Oil Pollution" in Environmental Laws in Nigeria, J.A. Omotola (ed.) 1990, pp. 285 – 306.

11 Cap. 07 LFN 2004, section 6.

12 Cap. M12 LFN 2004, section 95.

13 Now Cap. L5 LFN 2004, section 29.

6(3) of the Oil Pipelines Act, for instance, provides that the holder of a permit to survey land for the purpose of mining shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, and shall pay compensation to the owners or occupiers for any damage resulting therefrom.

In addendum, the victims can even resort to the common law remedies of nuisance, negligence, trespass, etc.

As it concerns seismic operations in Nigeria, this over-emphasized compensation has been a mirage. One of the recent decisions of the Supreme Court that confirms this is the case of *C.G.G. (Nig). Ltd. v. Ogu*¹⁴. Here, the respondent at the High Court of Rivers State claimed against the appellant the sum of N3,120,000.00 as special and general damages resulting from alleged wrongful and reckless acts of the appellant in breaking and entering into the respondent's farmland by cutting several seismic lines resulting in wanton destruction of the respondent's cash and economic crops and trees, fish ponds, juju shrines and a farm house.

By an application filed on 14th August, 1997, the appellant at the High Court sought an order striking out the action for want of jurisdiction on the ground that the cause of action as pleaded arose from shooting of explosives and other geological survey activities in the oil field and so only the Federal High Court has the competence to decide the matter. The trial court dismissed the application and awarded the damages sought for. Being dissatisfied, the appellant appealed to the Court of Appeal. The Court of Appeal allowed the appeal, but remitted the case to the trial court for hearing and determination of the issue of jurisdiction. The appellant further appealed to the Supreme Court contending that the Court of Appeal, instead of remitting the case to the trial court, should have determined the issue of jurisdiction.

THE SUPREME COURT DECISION

While unanimously allowing the appeal, the Supreme Court first referred to section 230(1)(0) of the 1979 Constitution¹⁵ which provides that;

230(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 ...

(o) Mines and minerals (including oil fields, oil mining, geological surveys and natural gas).

In view of this provision therefore, the Supreme Court held that the State High Court does not have the jurisdiction to entertain such matter.

With this decision, the victims of the seismic operations went home without any redress because they went to a wrong court. With due respect, why this decision attracts a plethora of criticisms is that these litigants are so wretched and their means of livelihood have been destroyed, but perhaps on the mistake of their counsel, they lost completely. This, in some cases, leads to frustrations and violence.

We also have a lot of cases where the victims of seismic operations lost their cases on a similar ground even when it is glaring that they have genuine claims. One of those cases is *C.G.G. (Nig.) Ltd. V. Amaewhile*¹⁶. Here, the extensive damage to the respondent's houses resulted from the negligence of the appellant in carrying out its

14 (2005) 8 NWLR pt. 927 at 386

15 Now section 251 (1)(n) of the 1999 Constitution.

16 (2006) 3 NWLR pt. 967 at 284.

seismic survey works and operations. The court also stated point black that the respondents should go home remediless because the High Court where they instituted the action lacked the jurisdiction to entertain the suit.

This particular reason has generated much problems in this country more than what one can imagine. In the first place, the few federal High Courts are inadequate to cope with the volumes of litigations from oil mining and seismic activities in this country. The after effect is congestion and overstay of these cases in courts. Again, it has started to dawn on us as of recent that these explorers prefer litigation to any other means of settlement outside the court because of the overstay of these cases in the courts and the certainty that the victims will lose at the end. This is what the courts should be conscious of, so that instead of dismissing the cases entirely because of jurisdictional problems, it is better remitted to the proper courts vested with such jurisdictions. After all, it is acknowledged worldwide that "all mortals are fallible". In some cases, the Supreme Court overrules itself after the discovery that the judgement was passed *per incuriam*. If this is so, the same court, with due respect, should not allow a poor litigant who has exhausted himself on litigation to go home empty handed only because he went to a wrong court, more especially when the court is convinced that his shelter, food and water have been destroyed by the multinational oil companies. One notes with delight what the same Supreme Court stated in the case of *Bello v. A.G. of Oyo State*¹⁷ that;

It is not necessary that the provisions of a statute be met strictly to the letter... The court is more interested in the substance than in mere form, as justice can only be done if the substance of the matter is examined, rather than relying on mere technicalities.

Also in *Akpan v. The State*¹⁸, the same court restated that;

*It is of fundamental importance in the administration of justice that the court should not allow its judicial role as an impartial and unbiased arbiter to be diverted to by the ineptitude of counsel. The court has as its primary role the doing of justice between the parties before it.*¹⁹

In view of this therefore, the courts should not allow these victims to lose completely because of the mistakes, ignorance or inadvertence of their counsels.

Again, as already pointed out, rehabilitation is one aspect of compensation and it means the process of restoring a disabled person to a condition in which he is able to resume normal life as early as possible. It is an essential function which ensures that a person who loses his sight or a limb due to an accident is reintegrated into a normal social working life. This involves medical treatment, educational and vocational training, and resettlement in an employment as well as helping the person to adjust socially and emotionally to his or her present state.²⁰

Investigations have revealed that from the word "go", the innumerable Nigerians who have suffered different physical incapacitations in the course of seismic operations have also been turned back from the courts either on jurisdictional or on other technical grounds. In the case of *C.G.G. (Nig.) Ltd. v. Asaagbara*,²¹ for instance, the respondent as plaintiff sued the appellant as defendant at the Rivers State High Court, Isiokpo. The respondent was employed as a casing clerk by the appellant, a company engaged in oil exploration. His duty involved the carrying of heavy pipes in the field. In the course of his work, he has to put an overall. It was the duty of the company to clear the bushes along

17 (1985) 5 NWLR pt. 45, 828 at 830.

18 (1992) 6 NWLR pt. 248 at 439.

19 See also Kaniye Ebeku, "Compensation for Damage Arising from Oil Operations: Shell Pet. Dev. Coy. v. Ambah Revisited" in Nigerian Law and Practice Journal, vol. 6 No. 1 March, 2002 p. 13.

20 B.F. Oluwagbemi, Basic Occupational Health Safety, 1991, p. 144.

21 (2001) 1 NWLR pt. 693 at 156.

the lines where the workers did their work in order to keep it safe. This duty, he alleged, the company failed to perform by negligently leaving a piece of sharp stick standing dangerously in the field where he was working. The sharp stick tore through his overall garment, his penis and pierced his scrotum and stomach. He was hospitalized in Port Harcourt Teaching Hospital where he was treated and confirmed impotent. He instantly sued the appellant claiming the sum of ten million naira (N10,000,000.00) as special and general damages.

The appellant sought an order of court striking out the suit on the ground of want of jurisdiction. It was the appellant's argument that the respondent's claim was based on the tort of negligence, since the injuries complained of had risen from the activities connected with oil exploration. Therefore, only the Federal High Court has jurisdiction to entertain the matter. The trial court considered the situation so pathetic and turned down the argument of the appellant thereby granting the prayers of the plaintiff.

Dissatisfied with this decision, the appellant appealed to the Court of Appeal which unanimously allowed the appeal. Consequently the plaintiff/respondent went home without any redress.

The problem of jurisdiction has been flogged to death in this paper that it does not require further emphasis, but the appellate court, with due respect, would not have turned its blind eye to such a man who has a family and has sustained a permanent injury in the course of his job after years of service to the company. Out of sympathy, the matter would have been remitted to a court that has jurisdiction over the matter. After all, it is one of the legal principles that "circumstances alter cases", and that law is for justice and not the other way round.

OTHER IMPEDIMENTS TO THE COMPENSATION CLAIMS

Outside the jurisdictional problems as we have examined above, the victims of seismic activities have lost their cases on so many other grounds which we feel are insufficient to disentitle them their rights to compensation. One of such grounds is their inability to procure the services of expert witnesses to prove their cases. An instance is the case of *George Ngor v. Compagnie Generale De Geophysique (Nig.) Ltd & anor.*²² Here, the plaintiff claimed that his sound factory was damaged by the defendant's seismic activities. The plaintiff could not afford the cost of an expert witness in the industrial noise and vibration control in and outside Nigeria at the cost of one million naira (N1m) to testify that the dynamite shot which allegedly caused the damage was fired at a distance which was not safe. The defendant was able to call a witness who testified that the dynamite was shot at a distance which was considered safe by seismic standard. Such evidence was not contradicted. So, the court relied on it and the plaintiff lost.

An issue worthy of comment in this case is the destruction of the plaintiff's sound factory which might be the only source of sustenance to the plaintiff and his family. Again, the courts are aware that seismologists are too expensive to procure. One therefore wonders how such a plaintiff whose means of livelihood has been destroyed could be asked to procure such an expert at the cost of one million naira then. No doubt, about 80% of the Nigerian population today cannot afford one million naira. The decision of the court in this case is more of a euphemism for telling the plaintiff that he should not be granted access to the legal and administrative institutions to vindicate his rights. In the same vein, the plaintiff/respondent in *Seismograph Services (Nig.) Ltd. V Ogbeni*²³

22 Suit No. BHC/30/93.

23 (1976) 4 S.C. 85.

was frustrated out of the court for want of expert witness to prove that the vibration radiating from the seismic explosions caused damage to his buildings²⁴.

In fact, no society can survive and prosper where justice is available only to those who can afford it, rather it breeds violence and resort to self-help.²⁵

LOCUS STANDI

Another reason often used to deny the victims of seismic operations access to their claims in Nigeria is the concept of *locus standi*. This doctrine normally requires that a plaintiff should have a personal or special interest in the matter being the subject of litigation²⁶. This interest must not be one generally shared with other citizens²⁷. In *Seismograph Services (Nig.) Ltd. v. Eyuafe*,²⁸ for instance, the respondent claimed from the appellant damages for trespass to several roads which ran through a large area of land which belonged to his community (Oghera community). The trial judge granted the damages as claimed by the respondent, but when the matter finally got to the Supreme Court, the court held *inter alia* that the respondent, although a member of the Oghera Community, has failed to prove exclusive possession of those roads or that he has an easement over the said roads. Therefore, his claim for damages for trespass from the appellants who had even admitted using the roads must fail, and that ended the matter.

It is irritating that in spite of numerous academic writings and public opinion seeking to facilitate access to courts by litigants, the rule of *locus standi* is still used against many environmental justice litigants.²⁹ Against this background, it is worthy of note that some of our statutes have made provisions for community compensations³⁰. If, in the instant case, the respondent should not be granted the damages he sought for, the court would have instead awarded the damages to the entire Oghera community instead of exonerating the appellants completely.

Today, we see in every page of a newspaper the numerous problems we encounter in the Niger Delta region of Nigeria ranging from oil bunkering, violence and armed conflicts. People wonder why it is so and the likely solutions. No doubt, the solution lies in our hands because it is frustrations consequent upon courts' persistent unfavourable decisions, governments' sabotage, overstay of cases in courts, poverty, and the likes, that contribute immensely to these problems. According to Sunny Ofehe,³¹

The patience of the people has been tried to the limit. Their mild protests and agitations for compensation and better environmental

24 See also *Seismograph Services Ltd v. Esiso Akporovo* (1974) N. SCC 308, where the plaintiff whose buildings and household goods were destroyed by the seismic operations of the appellant. The claim for compensation for the goods was refused by the court because the goods were not exhibited in the court. For damage to buildings, the plaintiff was unable to procure the services of a seismologist to contradict that called by the defendant company. He therefore lost at the Supreme Court and went home without redress. Even the \$3,942.85 od earlier awarded to him by the trial court was quashed at the Supreme Court on these grounds.

25 Ese Malemi, "The Challenges in Providing Legal Aid in Nigeria" in *Benin Journal of Public Law*, vol. 3 Dec. 2004 – Dec. 2005, p. 112.

26 See *Emezi v. Osuagwu* (2005) 12 NWLR pt. 339. 340 at 361 SC.

27 Wale Ajayi, "Achieving Environmental Protection through the Vehicle of Human Rights. Some Conceptual Legal and Third World Problems" in *University of Benin Law Journal*, vol 2 No. 1 (1995) p. 52.

28 (1976) NSCC 434.

29 See O.G. Amokeye "Procedural Aspects of Environmental Litigation in Nigeria" in the *Nigerian Journal of Private and Commercial Law*, 2001, vol. 2 p. 185

30 See for instance section 29 (3) of the Land Use Act, section 21 of the Oil Pipelines Act. See also *N.N.P.C v. Sele* (2004) 5 NWLR Pt. 866 at 383.

31 Sunny Ofehe, "Ten Years After Saro- Wiwa: Environmental Justice Still Far in the Niger Delta" in the *Daily Independent Newspaper*, November 11, 2005, p. ix

management have often been rebuffed while opinion leaders are hounded and clamped into jail. Some have also been murdered, with the implicit support of the major operators who should have shown understanding of their plight.

In the United States of America, this kind of problem has become more than a field for academic research and has manifested itself in a number of administrative and legal measures aimed at giving effect to what is today called “Environmental Justice Movement”³².

CONCLUSION AND RECOMMENDATIONS

We have discovered in this paper that almost all the victims of seismic operations in Nigeria have lost their cases. Where it irritates most is that;

- i) the damage done to the plaintiffs is glaring,
- ii) the defendant companies do not have substantive defences to the suits rather they craftily escape on procedural or technical grounds, and
- iii) the courts are convinced that such damage is done.

We have examined up to seven cases in this paper as instances. None of them was awarded any debris of compensation, and even where the trial courts had done that, it was quashed on appeal. These decisions ought to be re-examined. We therefore call on the courts to give such claims for compensation more than a second thought particularly when victims of seismic operations are concerned. If strict adherence to the law should breed injustice, the courts should use their own ingenuity in addressing the matter.

The legislature should also assist in this situation by enacting a specific law regulating seismic operations in Nigeria. This law, if enacted, should contain provisions on compensation of the victims of such operations.

Another factor which should be a prerequisite for carrying out any seismic activity in Nigeria is environmental impact assessment. Apart from the provision for environmental impact assessment for mining under the EIA Act of 1992³³, there should be a specific provision making the impact assessment a pre-requisite for seismic operations in Nigeria. It should be specifically made part of the Mandatory Projects under the Environmental Impact Assessment Act of 1992. The one provided under the Oil pipelines Act³⁴ is insufficient. With this, the likely effects of such operations on the environment should be pre-examined before carrying them out.

32 See Davy, *Essential Injustice* (Springer, 1997) p. 216.

33 Now, Cap. E12 LFN 2004, section 12.

34 Section 5(1)(d) of the Act provides inter alia that a permit to survey shall entitle the holder to do every thing necessary to ascertain the suitability of the land for the establishment of an oil pipeline or ancillary installations.