

# **SAND DREDGING ACTIVITIES IN THE EXTRACTIVE INDUSTRY IN NIGERIA : IMPACT, REGULATION AND REMEDIES**

*Written by Ugochukwu Godspower Ehirim\*, Ufuoma Veronica Awhefeada\*\* & Andrew Ejovwo Abuza\*\*\**

*\*LLB. B.L., LLM. Barrister and Solicitor of the Supreme Court of Nigeria*

*\*\*Associate Professor, Department of Private Law, Faculty of Law (Oleh Campus), Delta State University, Abraka, Nigeria*

*\*\*\*Associate Professor, Department of Private Law, Faculty of Law (Oleh Campus), Delta State University, Abraka, Nigeria*

---

## **ABSTRACT**

Extractive activities have for a long time been visible in many parts of Nigeria. Artisanal sand mining has been carried out along the coast of the River Niger and the creeks of the Niger Delta for a fairly long period of time. However, the introduction of sand dredging machines (suction pumps) in sand mining enterprise has birthed great concerns for the environment and persons whose livelihood depend on such impacted environment. These dredging activities are oftentimes carried out without bureaucratic discipline and in sheer disregard of statutory governance. This has continued unabated as the host communities of these dredging activities appear helpless due to a lack of community ownership of land in Nigeria in line with the Land Use Act, 1978 (now Land Use Act Cap L 5 Laws of the Federation of Nigeria [LFN] 2004). Sand dredging cannot be isolated in this discourse but rather situate within the expansive scope of environmental law. The rascality with which sand dredging activities are persistently prosecuted has thrown up grievances by individuals and the public in general which must be contained by the legal system. Can the victims and aggrieved persons find justice?

This paper aims to engage access to justice and remedies for victims of sand dredging activities in Nigeria. The settled legal principle of *ubi jus ibi remedium* is revisited. It evaluates the basic principles which must all co-exist for the courts of justice or other judicial tribunals to validly entertain and determine issues arising from environmental violations. Thus, concepts like cause

of action, locus standi, the limitation of action, pre-action notice, judicial review and common law remedies are given critical attention.

The writer adopts the doctrinal research methodology and by applicable primary and secondary sources asserts that the common law remedies with the attendant traditional burden of proof in environmental (civil) cases have not adequately answered to the needs of justice in the present milieu, particularly in the area of sand dredging. The paper concludes by suggesting, among other things, the development and recognition of new heads of action at common law to cater for emerging industrial technologies in sand dredging, the codification of environmental obligations of operators in the sector, the adoption of the doctrine of 'implied warranties' to make violators much more accountable to the society and the liberalisation of the doctrine of locus standi to guarantee greater access by aggrieved persons to justice.

**Keywords:** Sand Dredging, Extractive Industry, Access to Justice, EIA, Environmental Litigation.

## INTRODUCTION

There is no wrong without a remedy.<sup>i</sup> Every civilisation has always evolved mechanisms for redress to enable aggrieved persons to ventilate their grievances. Without this window, the society would burn and individuals would be left to self-help. The continued violence on the environment, particularly in Delta State of Nigeria, resulting from sand mining activities has thrown up an inevitable quest to challenge the excesses of operators and their collaborators if the society must survive. Extractive activities have for a long time been visible in many parts of Nigeria. Artisanal sand mining has been carried out along the coast of the River Niger and the creeks of the Niger Delta for a fairly long period of time.

However, the introduction of sand dredging machines (suction pumps) in sand mining enterprise has birthed great concerns for the annihilation of the environment and persons whose livelihood depend on such impacted environment. These dredging activities are oftentimes carried out without bureaucratic discipline and in sheer disregard of statutory governance.

The rascality with which sand dredging activities are persistently prosecuted has thrown up grievances by individuals and the public in general which must be contained by the legal system. Can the victims and aggrieved persons find justice? Can the victims of sand dredging/environmental violence find shelter within the existing common law structure in this age of technological advancement? Although, there are mechanisms and institutions of state (such as the ordinary law courts) that engage citizens' grievances when their natural environment is defiled by non – natural uses/industrial operations by others as in cases of sand dredging, it does appear that certain principles and doctrines of common law inhibit citizens' desire to freely approach these institutions and obtain desirable reliefs. Besides, the remedies available at common law as applicable in Nigeria did not contemplate sand mining as presently being carried out in Nigeria. Most of the remedies were developed in tort for presentation of land owners' interest in his land. This raises the need for the development of new 'doctrines' to make violation of the environment and mining regulations less attractive.

This paper aims to engage access to justice and remedies for victims of sand dredging activities in Nigeria. The settled legal principle of *ubi jus ibi remedium* is revisited. It evaluates the basic principles which must all co-exist for the courts of justice or other judicial tribunals to validly entertain and determine issues arising from environmental violations, particularly, sand dredging. The writer asserts that the common law remedies with the attendant 'traditional *locus standi* and burden of proof' in environmental (civil) cases have not adequately answered to the needs of justice in the present milieu, especially in the area of sand dredging. The paper identifies the developing trends in other jurisdictions and commends them for adoption and assimilation into the Nigerian legal system. The discourse on sand dredging cannot be isolated but rather situate within the expansive scope of environmental law.

The established principles of law in other areas of law are called in aid as may be apposite. Thus, fundamental concepts that engage common law remedies are given critical attention.

This paper is divided into two broad segments besides the introduction. The first part deals with access to justice in sand dredging matters. The second part dwells on remedies available to victims of environmental/mining violations upon having obtained access to judicial tribunal. The first part (access to justice) is further broken up into the following six sub-heads: i) cause of action, ii) limitation of action, iii) pre-action notice, iv) *locus standi*, v) jurisdiction, and vi) judicial review. The second part (common law remedies/heads of action) is discussed under

four sub-heads as follows: (i) nuisance, (ii) negligence, (iii) trespass, and (iv) strict liability. The third segment reports the observation/finding of the writer. In the fourth segment, the writer makes far – reaching recommendations by suggesting among other things, the development and recognition of new heads of action at common law to cater for emerging industrial technologies in sand dredging, the adoption of the doctrine of ‘implied warranties’ to make violators much more accountable to the society and the liberalisation of the doctrine of *locus standi* to guarantee greater access by aggrieved persons to justice and concludes in the fifth segment with conclusion.

## ACCESS TO JUSTICE

The availability and accessibility of justice delivery system is a necessity in any civilised society.<sup>ii</sup> Nigeria has abundance of institutions and mechanism for justice delivery. The Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) is the *grundnorm* in Nigeria. The CFRN provides and grants access to judicial remedies in Nigeria.<sup>iii</sup> The right to access to justice/ judicial remedies is also available in other statutory instruments/ laws applicable in Nigeria.<sup>iv</sup>

The available access to judicial remedies is not peculiar to sand dredging victims. No matter how fundamental the need for access to judicial remedies may be in a civil society, such access has always been controlled and regulated.<sup>v</sup> These regulations/checks which may be intended to obviate the floodgate of abuse of the judicial process conversely work some hardships on genuine and deserving cases, particularly, in environmental/ sand dredging matters and operate to shut the gates of justice to deserving victims. For a victim to legally take advantage of the right to access justice/judicial remedies, certain huddles must be jumped and overcome.

Failure to successfully overcome these huddles or meet the conditions precedent to gaining access to the justice delivery system (in sand dredging and other environmental issues) may totally extinguish such rights and remedies deserving judicial enforcement or keep them in abeyance. Some of these conditions which are product of statute and common law are discussed below.

## CAUSE OF ACTION

This is the very foundation, the reason to approach any court or tribunal for redress. It is the factual situation which gives a party access to judicial relief. Cause of action encapsulates everything necessary to give a right of action and must at all times be reasonable. In *Attorney General of Abia State and Thirty-Five Others v Attorney General of the Federation*, Uwais, CJN attempted to define a reasonable cause of action when he held thus:

...A cause of action is reasonable once the statement of claim in a case discloses some cause of action or some questions fit to be decided by a judge notwithstanding that the case is weak or not likely to succeed.... Therefore, the action is not premature and even if it is, that is not a ground on which the court would hold that there is no reasonable cause of action.<sup>vi</sup>

A Cause of Action properly so called must not be indefeasible; it only needs to be reasonable.<sup>vii</sup> Cause of Action arises and requires judicial intervention in Environmental law when persons take steps to seek redress for grievances flowing from environmental activities either in civil or criminal action. Where the wrong sought to be redressed is such that affects the general public or done by a public institution such as the Nigeria Extractive Industry Transparency Initiative (NEITI), National Oil Spill Detection and Response Agency (NOSDRA), National Environmental Standards and Regulations Enforcement Agency (NESREA), Nigerian Mining Cadastre Office (NMCO), Nigerian National Petroleum Corporation (NNPC), National Inland Waterways Authority (NIWA), and so on, while exercising or refusing to exercise statutory powers / duties, the alleged cause is in public law. Where the wrong complained of is done by a private person or firms, the cause of action is in private law.

In order to discover whether a suit discloses any reasonable cause of action or whether the cause of action is public or private, recourse must be had to the statement of claim.<sup>viii</sup> The causes of action in public law are *ultra vires*, natural justice and error of law with corresponding remedies of *certiorari*, prohibition, *mandamus* and declaration available by way of judicial review. The causes of action in private law are trespass, nuisance, strict liability rule and negligence. These are otherwise known as common law remedies with corresponding remedies



of damages, injunction and a declaratory judgment. Cause of action in both private and public law is regulated by law and public policy in terms of when and how to ventilate grievances.<sup>ix</sup>

The foregoing causes of action, most of which were developed at common law and pertain to enjoyment of land, have been generally extended to apply to cases of sand dredging. The law can donate;<sup>x</sup> the law can also extinguish cause of action.

## **LIMITATION OF ACTION**

A statute may limit a cause of action by prohibiting its ventilation. In this case, the action is said to be statute barred or simply put: the action is caught up by the Statute of Limitation. Such action must be struck out. Any law prescribing time within which a cause of action may be ventilated is a statute of limitation. The law may bar the prosecution of action against certain persons under certain circumstances. There are different factors which may act to limit an action. These include:

### **(a) *Constitutional Limitation***

The Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) is the supreme law of the land and has a binding power over all persons and authorities within the country.<sup>xi</sup> The Constitution provides for restriction or bar on legal proceedings against persons holding the office of the President or Vice President, Governor or Deputy Governor.<sup>xii</sup> This is called the immunity clause in the Nigerian constitutional jurisprudence.

The law limits the bar to the time the person so 'immuned' against litigation/ prosecution holds the office for which reason he is shielded from legal scrutiny. The section merely suspends/postpones the person's day in court. In *Dasuki v Mu'azu*,<sup>xiii</sup> the former military Governor of Sokoto State argued that because of the shield granted him by section 308 (1) of the CFRN, he could not be held liable for acts he did in his official capacity as Military Governor of Sokoto State. It was held by the Court of Appeal that the constitutional immunity inured only to shield him while in office and that he could be held liable for such acts and enjoys no further immunity after he had left office.

Section 308 has been held to be an absolute bar as it cannot be waived either by the party or the court.<sup>xiv</sup> The Court of Appeal has reasoned that even where the incumbent neglects to plead his immunity, the court will still decline jurisdiction to entertain the case.<sup>xv</sup> In *Tinubu v IMB Securities Public Limited Company (Plc)*,<sup>xvi</sup> the Supreme Court of Nigeria has held that even where there were competent proceedings (whether criminal or civil) against an incumbent prior to his coming within the ambit of section 308 (1) (a) of the CFRN, such proceedings shall not be continued because of the immunity. The holders of office covered by section 308 (3) of the CFRN cannot even pursue an appeal no matter how much they desire to so do.

The statutory bar or suspension of action against an incumbent under the constitution does not inure to the person in his official capacity or to a suit in which such a person is only a nominal party.<sup>xvii</sup> Where the Constitution therefore has barred legal proceedings against some persons, the implication is that the cause of action against them goes into abeyance until such a time when such a person would be out of office.<sup>xviii</sup> Thus, where a sand dredging operator violates operational trades practices in such a manner as to incur liability upon the suit of a plaintiff – victim, proceedings against such operator (in his personal capacity) would not be instituted and must be discontinued or suspended if already in progress where such operator comes within the purview of section 308 of the CFRN. The immunity granted in these circumstances against civil or criminal litigation in favour of such offending operator continues until he vacates the office (s) covered by section 308 of the CFRN.

(b) ***Statutory Limitation***

A statute may prescribe time within which any cause of action may be entertained by the court failing which the court may have no jurisdiction, that is, the doors of the courts may be permanently shut against such complaint. It is at this point of permanently shutting the doors that the cause of action is said to be statute barred.<sup>xix</sup> Also, in *Attorney - General of Adamawa State v Attorney - General of the Federation*,<sup>xx</sup> the Supreme Court of Nigeria held that, ‘when an action is statute barred, what it connotes is that the plaintiff may have an actionable cause of action but his recourse to judicial remedy is voided.’ In other words, when the statute of limitation prescribes a period within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period.

In considering whether a cause of action is caught by the law of limitation, the court confines itself to the averments in the writ of summons and statement of claim or originating summons as the case may be, which allege the facts giving rise to the complaint.<sup>xxi</sup>

Thus, a cause of action arises on a date from the time when a breach of any duty occurs which warrants the person adversely affected by such breach to take steps to assert his legal right which has been violated.<sup>xxii</sup> The period of limitation of an action is determined by looking at the writ of summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the writ of summons was filed.<sup>xxiii</sup> It could be gleaned from the foregoing Supreme Court decision that plaintiff's knowledge or awareness of the cause of action is material for the computation of time.

Accuracy is so important in computation of time, particularly, in environmental law cases where claimants may not be aware of the gradual but steady destruction of the environment by operators over time or where such awareness is only possible after a scientific enquiry or incontrovertible physical manifestation (which takes decades). In much earlier Supreme Court cases, knowledge or awareness of the plaintiff appears immaterial.<sup>xxiv</sup> This is so, particularly, where the words of the limitation law are clear and unambiguous and must be accorded their ordinary meaning.<sup>xxv</sup>

The Supreme Court has followed the foregoing reasoning in a number of subsequent cases. Thus, in *Akibu v Azeez*<sup>xxvi</sup>, it held that even though by reason of absence from the place where and when the trespass occurred, the plaintiff is unaware of the trespass, the plaintiff cannot use such lack of knowledge as reason to commence an action outside the limitation period allowed by law. In the light of the seemingly conflict of the authorities, the decision of the apex court in *Adejumo v Olawale*<sup>xxvii</sup> is a better way to go on environmental issues.

The application of the bar cannot be without qualifications. Situations may arise whereby a person is hauled up before a court in a cause which creates rights which are limitable by law. The limitation law may therefore be interrupted.<sup>xxviii</sup> In *Nigerian Ports Authority (NPA) v Ajobi*,<sup>xxix</sup> the Supreme Court of Nigeria held that where an employee was charged to court on a matter connected to the one for which the limitation law is sought to be applied, the limitation period would start to run after the determination of the charge. By this decision, the Supreme



Court salvaged an action which ordinarily would have been caught up by the limitation provision of the Act.<sup>xxx</sup>

The Nigerian Court of Appeal has held that the limitation time would begin to run after the missing records were found in a situation where the record of proceedings and judgment of the trial court could not be found or accounted for.<sup>xxxi</sup> Where a matter is stayed pending arbitral proceedings in accordance with the Act,<sup>xxxii</sup> time computation for the purpose of limitation law will not run against a party as he returns to conclude his action after arbitral proceedings.<sup>xxxiii</sup>

A limitation law may scuttle a party's right of action to sue without actually obliterating same altogether. A party who is caught by limitation law may yet ventilate his grievances through another channel without seeking redress in court and this could be by way of lien. The statute may also provide for lien as a form of remedy.<sup>xxxiv</sup>

It takes a substantive law to out-rightly defeat a cause of action. In *Chigbu v Tonimas (Nigeria) Limited*,<sup>xxxv</sup> the plaintiff was caught by the limitation law of Imo State.<sup>xxxvi</sup> The Supreme Court of Nigeria surgically separated his reliefs ruined by the various limitation statutes and held that the plaintiff was entitled to enforce his right of action by way of lien even though it was statute-barred. In the case, Oguntade, JSC declared that the Imo State Limitation Edict of 1994 was only a procedural law. Apart from the Limitation Act,<sup>xxxvii</sup> there are limitation laws in force in States of the Nigerian Federation.<sup>xxxviii</sup> It is trite that where an action founded on contract, for payment of monies owed is caught in the web of the limitation law, part payment of the debt by the debtor to the creditor or the debtor's acknowledgement of the debt in writing to the creditor renews or revives the time within which the creditor may bring his action.<sup>xxxix</sup> Another exception is a continuing damage or injury. Where the action is for debt recovery, limitation period may begin to run from a later date of part – payment.<sup>xl</sup>

However, in acknowledging a debt for the purpose of escaping the consequences of the limitation law, the exact debt amount need not be stated. It suffices if the acknowledgment is in writing and signed by a party that is liable.<sup>xli</sup>

The limitation statute for which the courts are inundated with its interpretation on time-bar is the Public Officers Protection Act (POPA).<sup>xlii</sup> The courts have construed section 2 (a) of the POPA positively or negatively in a slew of cases.<sup>xliii</sup> The Court of Appeal has extended the scope of the Act to non – human public officers because of the clause “against any person for

any act.”<sup>xliv</sup> In essence, the word *public officer* now refers to both the individual employees in a public institution and the public institution itself. Limitation laws are not unconstitutional or illegal.<sup>xlv</sup>

## PRE – ACTION NOTICE

Another hurdle which a litigant must overcome in order to escape being barred or limited in access to justice is the requirement of notice of intention to sue on a proposed defendant where a law has prescribed it. In common practice, this is known as a pre-action notice. The number of days or periods of time which must be covered by the notice of intention to sue vary in their multiplicity as there are various and multiplicity of laws on the subject matter. It is not presumptuous. It must be clearly stated in the statute. The time varies from thirty days to twelve months.<sup>xlvi</sup>

A statute may prescribe a pre-action notice thereby making it a condition precedent to activate the jurisdiction of the court. In *Nigericare Development Company Limited v Adamawa State Water Board (A.S.W.B)*<sup>xlvii</sup> the Supreme Court of Nigeria interpreted section 5 (1) and (2) of Adamawa State Water Board Edict and upheld the decision the trial High Court in Yola which held the action of the plaintiff as incompetent for failure to comply with the statutory requirement for notice. The Supreme Court of Nigeria has hitherto held that a pre – action notice is a condition precedent to access to court.<sup>xlviii</sup>

The Court held that (30) thirty days or one month cannot be said to be an inordinate time or period. In *Nnonye v Anyichie*,<sup>xlix</sup> the Anambra State law<sup>1</sup> which provides for pre-action demand on the court bailiffs before bringing any action against them was not complied with. The appellant had disregarded the provisions and neglected to serve the notices as required on the court bailiffs (second and third respondents). The failure to serve stipulated notices cost the appellant the action at the Supreme Court. Similarly, in *F and F Farms (Nigeria) Limited v NNPC*,<sup>li</sup> the respondent constructed oil pipelines adjoining appellant’s factory premises. Appellant was aggrieved and made effort to have respondent remove or adjust their property to no avail. He filed an action and obtained judgment against the respondent without service of mandatory pre-action notice.<sup>lii</sup> In this case, the Court of Appeal upturned the judgment of the trial court for the reason that the jurisdiction of the High Court was not activated *abinitio*

because of non-service of the pre-action notice. The apex Court reversed the Court of Appeal and held that pre-action notice as enshrined in section 12 (2) of the NNPC Act was a domestic right which could be waived in law and the respondent waived it in the circumstances of this case.

In the case of *Texaco Panama Incorporation v Shell Petroleum*,<sup>liii</sup> the plaintiff/appellant claimed in negligence against the defendant/respondent for damages sustained by its oil tanker when berthing at the NNPC Bonny Inshore Oil Terminal. The action was filed on 26 January 1994, three years after the cause of action arose. The defendant raised objection and argued that the cause of action is caught in the web of Limitation Act<sup>liv</sup> and failure to give relevant notices.<sup>lv</sup>

Pre - action notice may be mandatory but the form it takes is directory.<sup>lvi</sup> In *Darlington UgoEhirim v FRSC*,<sup>lvii</sup> the claimant, a lawyer, had approached the Federal High Court to challenge the impunity of the defendant whose officers stopped claimant along Ajamimogha Road in Warri Township, impounded the vehicle particulars and issued him with a notice of offence allegedly for driving without putting on his seatbelt. Claimant wrote to the defendant and in the last paragraph of his solicitor's letter he stated, '...we hereby give you one-month notice of our intention to commence legal proceedings against FRSC and the officials involved.' At the hearing, the defendant raised a preliminary objection and asked the court to decline jurisdiction for failure to comply with the mandatory requirement to issue pre-action notice to it (in the standard/form) as statutorily provided.<sup>lviii</sup> The Federal High Court (Warri Division), in dismissing the preliminary objection, held that the requirement for pre-action notice is not meant to put hazards in the way of bringing litigation.<sup>lix</sup> The trial Federal High Court, in the foregoing case, further held that while the issuance of the notice by a prospective plaintiff is mandatory, the particulars to be included in the notice which are cause of action, particulars of claim, name and place of abode of intending plaintiff and the relief to be claimed are directory.<sup>lx</sup>

It is now trite that any suit commenced without compliance with service of pre-action notice as prescribed is incompetent as against the party who should have been served with the pre-action notice, provided such a party challenges the competence of the action.<sup>lxi</sup>

## LOCUS STANDI

*Locus standi* has been defined to mean the legal right of a party to be heard in litigation before a court of law or tribunal.<sup>lxii</sup> Fundamentally, on issues of environmental rights, jurisdiction and *locus standi* are intrinsically intertwined, interrelated and indispensable in securing successful private and public environmental litigation.<sup>lxiii</sup> *Locus Standi* defines the primary and initial hurdle to be overcome by any litigant desiring to ventilate environmental interest or to obtain an order for judicial review of actions of some public authorities in the implementation of domestic environmental law.<sup>lxiv</sup> In practice, *locus standi* is a rule of law which requires a claimant to show some pecuniary, proprietary interest in the suit/application or some injury or detriment either already sustained or imminent and most probable, which must not be remote or speculative.<sup>lxv</sup>

In the United States of America's case of *Baker v Car*,<sup>lxvi</sup> Brennan J., laid down the principles to determine whether an individual has *locus standi* or not. The test according to the learned jurist is whether: the appellant alleged such a personal stake in the outcome of the controversy.<sup>lxvii</sup> The doctrine of *locus standi* is of great antiquity and serves to weed off busybodies and professional litigants who may want to frustrate the smooth governmental policy implementation. It is of common law origin.

The law is now settled that only a person in imminent peril of conflict with a law, or whose normal business or activities are directly interfered with by or under the law, is clothed with *standing* to claim that the law is unconstitutional.<sup>lxviii</sup> Where a litigant had no common-law interest at stake, if it was not the object of the regulation to grant him access to the tribunal, courts saw no breach of any legal duty suitable for redress.<sup>lxix</sup> The question of *locus standi* is a threshold issue which may be raised *suo motu* by the court at any time, even on appeal.<sup>lxx</sup>

In *Abraham Adesanya v President of the Federal Republic of Nigeria and Another*<sup>lxxi</sup> the plaintiff had challenged the appointment by the Nigerian President of the Chairman of the Federal Electoral Commission (FEDECO). Plaintiff, a senator, had voted against the appointee on the floor of the senate but majority of the senators voted in favour of the appointee and he was thus appointed. The Court of Appeal raised the issue of plaintiff's standing *suo motu* and held that plaintiff lacked the requisite *locus standi* to institute the suit. The Supreme Court agreed with the Court of Appeal since the plaintiff was unable to establish any personal interest

of his that would immediately be or has been adversely affected by the President's action neither did he show that he would suffer an injury over and above other citizens of Nigeria in the circumstances.<sup>lxxii</sup> To this end, it is posited that section 6 (6) (b) of the CFRN does not prescribe or donate *locus standi* to litigants. It only prescribes the extent of the judicial powers of the courts.

*Locus standi* depends on the circumstances of a given case and merges with a plaintiff's cause of action to give the court the requisite jurisdiction. In private law, for example, a plaintiff without 'privity' cannot establish a cause of action in contract. A plaintiff's suit may be dismissed for lack of standing to sue because plaintiff claimed no relief for his own personal benefit.<sup>lxxiii</sup>

The influence of *locus standi* on environmental law must be emphasised. Abuza argues that the lack of any mechanism for private enforcement is the norm in Nigerian environmental legislations.<sup>lxxiv</sup> He, however, admitted two notable exceptions.<sup>lxxv</sup>

Apart from the foregoing exceptions, a few other statutes have provided strength for private persons and non-governmental organisations (NGOs) to engage in public interest litigation in the realm of environmental law.<sup>lxxvi</sup> The position in Nigeria contrasts sharply with what obtains in the United States of America (US) where nearly all Federal Environmental Legislations have mechanism for citizen suits.<sup>lxxvii</sup> The law in the US enables private citizens to institute actions in court against violators and more importantly, to compel enforcement agencies to carry out their non-discretionary statutory duties in deliberate attempt to widen the access gate to the courts. The US courts and their English counterparts have encouraged these 'new' brands of citizens' rights.<sup>lxxviii</sup>

Prior to this development and in spite of same, the Nigerian courts perceived NGOs as mere busybodies. Thus, in the most recent case of *Centre for Oil Pollution Watch v NNPC*,<sup>lxxix</sup> the appellant is an NGO with bias for environmental protection and preservation. It had approached the Federal High Court Lagos seeking restoration and remediation of the pristine environment of Acha Community in Abia State whose streams and only source of drinkable water has been contaminated by oil spill from defendant's facility.

The trial court and the Court of Appeal dismissed the suit on the ground of appellant's lack of standing to sue. This decision has been roundly criticised for elevating the common law



doctrine of *locus standi* over and above the citizens' right of action.<sup>lxxx</sup> The right of citizens to participate in environmental matters is guaranteed under the Rio Declaration.<sup>lxxxii</sup> Nigeria is a member of the United Nations (UN) and a State Party to the United Nations Conference on Environment and Development (UNCED) and so under obligation to apply the Rio Declaration.<sup>lxxxii</sup> This is more apposite as even the English courts that originated the 'prohibitive' doctrine of *locus standi* have now moved in the direction of citizens' right.<sup>lxxxiii</sup>

In other jurisdictions, the concept of *locus standi* has been liberalised to encourage social engineering which the law owes the society as a duty. Thus, in the *United States v Students Challenging Regulatory Agency Procedures (SCRAP)*,<sup>lxxxiv</sup> individual plaintiffs, as a group, met the requirement to sue where they generally showed an imminent or real injury to their aesthetic, conservational and recreational interest. In that case the District Court rejected arguments of defendants against the standing of the plaintiff and issued injunction against the Commission. Also, in South Africa the approach has been decisively liberal. Thus, in *Van Huyssteen and Others v Minister of Environmental Affairs, Tourism and Others*,<sup>lxxxv</sup> the respondent had proposed a steel mill project near a national park and a lagoon owned by a board of trustees. The expert opinion was conflicting on the environmental desirability of the project. The trustees of the Park sought injunction against the defendants pending further environmental investigations. The High Court of Eastern Cape Provincial Division granted the reliefs sought by plaintiffs. Similarly, in a situation where statute has imposed an obligation on anybody or State authorities to take measures to protect the environment in the interest of the public, an NGO with the main object to maintain and promote environmental conservation in South Africa, should have *locus standi* to compel the State to comply with its obligations under the statute.<sup>lxxxvi</sup>

In *Mohiuddin Farooque v Bangladesh*,<sup>lxxxvii</sup> the *locus standi* of the applicant to initiate environmental rights public interest litigation was challenged. The applicant was the Secretary-General of the Bangladesh Environmental Lawyer Association (BELA) which has great bias in the environment and ecology. The Court of Appeal (Bangladesh) held that because of the cause espoused by the plaintiff, which was in respect of public interest, the applicant had *locus standi*.<sup>lxxxviii</sup>

In *KajingTubek v EkranBiid and Others*,<sup>lxxxix</sup> plaintiffs had sought an order of court directing the defendants to comply with the Environmental Quality Act of 1974 which requires an

Environmental Impact Assessment (EIA) for certain projects. The plaintiffs were residents of Saranvak who might be affected by the proposed hydroelectric project. The court asserted that plaintiffs' claim was sufficient to have them clothed with the requisite standing to seek legal reliefs.

When a party's standing is challenged, it ought to be determined at the earliest stage of the proceedings to save legal expenses, time and entire outcome of the process on the merits. In *ET and EC (Nigeria) Limited v Nevico*,<sup>xc</sup> it was held by the National Industrial Court of Nigeria that where a plaintiff's *locus standi* is challenged, the determination of whether or not the plaintiff has the requisite standing to sue would require the court to scrutinise the statement of claim.<sup>xc<sup>i</sup></sup> The doctrine has been deployed to cut down on the plethora of cases being instituted on a daily basis in the courts. By upholding this doctrine, the courts appear to be shying away from their statutory responsibilities.<sup>xc<sup>ii</sup></sup> It becomes more worrisome where the common law doctrine is used to defeat the clear purpose of Statute.<sup>xc<sup>iii</sup></sup>

The law is dynamic and so must develop to meet demands of the society. Apart from inundating the courts with environmental cases, liberalising the principle of *locus standi* would grant unhindered access to justice by aggrieved persons.<sup>xc<sup>iv</sup></sup> This may stem violence and self- help, particularly, in places like the Niger Delta, Nigeria. *Locus standi* is here to stay and anyone seeking judicial remedy must deal with it.<sup>xc<sup>v</sup></sup>

## JURISDICTION

The one and only gate through which the court or any tribunal must pass, to meet the needs of litigants seeking one environmental relief or another, is the gate of jurisdiction. If this gate is shut against a court, though litigants find their own way into the courtroom, they would labour in vain for competent remedies. Jurisdiction is a question of law and requires strict compliance. Every step prescribed by law to be taken either by a party or the tribunal must be religiously taken for the tribunal/court to competently assume jurisdiction.<sup>xc<sup>vi</sup></sup> Preliminary steps that must be taken in compliance with the law for court to properly assume jurisdiction includes proper forum, payment of appropriate filing fees<sup>xc<sup>vii</sup></sup> and service of originating process on defendant.<sup>xc<sup>viii</sup></sup>

Payment of appropriate filing fees is the key that unlocks claimant's standing to sue and so activates the cause of action before a competent tribunal. In Nigeria, the filing fee (cost of filing an action in court) is prohibitory, particularly, at the Federal High Court.<sup>xcix</sup> Indigent litigants who live in areas mostly impacted by environmental violence/sand dredging activities could hardly fund litigations.

To this end, the most deserving cases are unable to gain access to the courts and when they do, the delay in the justice delivery system complicates the burden of the litigants. It is argued that since the rights to life and human dignity<sup>c</sup> have been given expansive interpretation to include the right to clean, healthy and 'pristine' environment,<sup>ci</sup> environmental causes should be allowed at minimal filing fees. This approach which has proved effective in guaranteeing greater access to courts in fundamental rights enforcement causes is highly commendable.<sup>cii</sup> Jurisdiction is so sacrosanct that when once it is raised in a matter, it divests the court of all other powers except the power to determine whether or not it has jurisdiction.<sup>ciii</sup> The jurisdiction of State High Courts is unlimited, except as may be circumscribed by statute.<sup>civ</sup> Their jurisdiction is however unimpeachable in actions founded on common - law heads of action. Where the suit is against an agency of the Federal Government of Nigeria, the appropriate forum is the Federal High Court.<sup>cv</sup> Thus, any trial in disregard of statutory stipulation in respect of forum is a nullity at law.

In *Menakaya v Menakaya*,<sup>cvi</sup> the Nigerian apex Court held that the competence of a court and of its proceedings is of a fundamental essence. In *7Up v Abiola*,<sup>cvi</sup> the Supreme Court of Nigeria further decided that in all matters before the court, the issue of jurisdiction must be determined before any further steps may be taken in the matter. In *Shell Petroleum Development Company (Nigeria) Limited (SPDC) v Abel Isaiah*,<sup>cvi</sup> crude oil spilled into the surrounding lands, polluted the swampland, farmland, streams, fish ponds and devastated the crops in the course of the replacement of disuse oil pipes.

The claim succeeded against the defendant/appellant at the River State High Court. On final appeal, the Supreme Court allowed the appeal and held that the construction, operation and maintenance of oil pipeline by a holder of oil prospecting licence is an act which pertains to mining operations and so falls squarely within the exclusive jurisdiction of the Federal High Court. Thus, the River State High Court had no jurisdiction to entertain the matter.

Similarly, in *SPDC v Hallelujah Buguma (H.B) Fishermen*,<sup>cix</sup> and its twin case of *SPDC v Maxon*,<sup>cx</sup> the plaintiffs/respondents instituted their suits against the defendant/appellant at the Rivers State High Court to challenge the oil spillages that devastated their environment and livelihood. They got judgment but the Court of Appeal relied on the *Isaiah case* to allow the appeals. The Court held and confirmed the exclusive jurisdiction of Federal High Court on mining, ecological and geological surveys.<sup>cxii</sup>

The law is now settled. The decision in the *Isaiah case* is the law in force in Nigeria today.<sup>cxiii</sup> It is doubtful on the authority of *Isaiah case* whether any State High Court in Nigeria is competent to hear suits emanating from dredging activities given that sand dredging is a mining activity. However, since jurisdiction is a question of law, it is the law in force on the day cause of action arose that empanels jurisdiction and not otherwise.<sup>cxiii</sup> Jurisdictional issues may arise as a result of the claim before the court, parties before the court, preliminary or procedural steps which ought to be taken and complied with or in respect of the forum. By the forum, it is meant the particular choice of court where a litigant elects to ventilate his grievances. It may be local or trans-national. This is more necessary where the litigant has the luxury of choice. In Nigeria, the law has defined the exclusive jurisdiction of the Federal High Court.<sup>cxiv</sup>

However, experience has shown that litigants who ventured to litigate abroad against the multi-nationals return with good results. The experience of indigenous peoples in Nigeria, South Africa, South and Central America and so on have shown how social and economic injustices often precede environmental degradation and in turn create a problematic access to environmental justice.<sup>cxv</sup> One of the known problems in accessing justice in Nigeria is inordinate delays of cases. Corporate multi-national polluters frustrate litigants by delaying hearings. In *SPDC v Anaro*,<sup>cxvi</sup> the abuse to which the corporate polluters put the judicial process in Nigeria is highlighted. In the case, it took 32 years for litigants to have reprieve for the destruction of their livelihood. The corporate polluters/violators appear to have mastered the Nigerian legal system so well as to have unhealthy influence over the system.

Nigerian litigants have made frantic efforts to obviate the rigours of ‘uneasy’ and ‘unpredictable’ access to environmental justice. This has resulted in *forum shopping* outside Nigeria. Thus, where Nigerian courts lacked boldness to decree, foreign or regional courts have made their voices loud enough. In *Social and Economic Right Action Centre (SERAC) and the Center for Economic and Social Rights (ESR) v The Federal Republic of Nigeria*,<sup>cxvii</sup> the Africa

Commission on Human and People's Rights (a regional court) held that Nigerians have the right to a healthy environment. Foreign courts have in similar situations held corporations, which ordinarily would have been difficult to handle locally, accountable to their actions. Thus, in *Saro Wiwa v Royal Dutch Shell Petroleum Company*,<sup>cxviii</sup> the plaintiff, a Nigerian Environmentalist, had charged Shell with complicity in human rights abuses in Ogoni land. The US affords another forum to Nigerians wishing to challenge multi-nationals unleashing violence on the Nigerian environment. However, environmental rights activists across the world were jolted from inertia by the United States Supreme Court decision in *Kiobel v Royal Dutch Petroleum*.<sup>cxix</sup>

The Second Circuit Court of Appeals in the Netherlands upheld its jurisdiction over the defendant and the entire claim emanating from the destructive activities of Shell Company in Nigeria. Shell settled amicably with plaintiffs. This case demonstrated the fact that foreign jurisdictional gates are open to domestic litigators. Similarly, in *Bodo Community and Others v SPDC Nigeria Limited*,<sup>cxx</sup> the Bodo Community of Ogoni land sued Shell again in 2015 over the two oil spills which took place in 2008 and 2009. The London High Court entertained the suit and entered judgment for claimants. The decision was upheld by the United Kingdom Supreme Court. *Wiwa* and *Bodo Community* cases are European cases.

In the foregoing case, the plaintiff, Esther Kiobel, wife of late Bevinem Kiobel who was one of the 'Ogoni Nine' and a resident in the US filed an action jointly with other Ogonis on political asylum in the US against Shell Corporation. The suit was brought under the Alien Tort Statute (ATS) 1789, a law in antiquity which allows lawsuits to be filed in the US against multi-national corporations with residence or base in US for legal infringements in countries of their operation outside the US.<sup>cxxi</sup> The defendant raised a preliminary objection to the jurisdiction of the US Court to try it for alleged acts committed in Nigeria. The court was, therefore, invited to declare whether the ATS imposed any form of liabilities or obligations on multi-national corporations. The Supreme Court of the US has the opportunity to clarify the law with *Kiobel case*.

The Court in dismissing the case held in simple terms that except where the claims touch and concern the US territory with sufficient force, the ATS could not be used to confer jurisdiction on a US Court over a dispute/or conduct arising on a foreign ground and between foreign nationals. This implies that the cause of action must necessarily have a nexus with the US. It is



posited that *Kiobel case* is a win for multi-nationals who have mastered the art of muzzling the Nigerian judiciary and are now released from the authority of the courts in the US which expectedly has the stamina to hold them to account. It is a huge loss to international environmental law and litigants who have the muscle to call the transnational corporations to order. *Kiobel case* is now the law as it has been applied in several cases thereafter.<sup>cxxii</sup> *Kiobel case* is a call to environmentalists to look inwards and not hope on foreign intervention. Thus, obstacles to environmental justice and access to justice cut across borders and require everyone's participation. In the light of *Kiobel* and *Isaiah cases*, access to environmental justice is only possible if the claim is filed in the right court/forum. The consideration of the choice forum depends on the inter play of some factors such as the residence of the litigant at the time and available finance. The prohibitive cost of foreign litigation against multi – nationals (which have indubitable financial vault) reduces the attraction of foreign *fora* to average Nigerian litigant. The choices are the lawyers' to advice.

## JUDICIAL REVIEW

An aggrieved person under environmental laws may appeal to higher administrative bodies to review the decisions or actions of a defaulting tribunal or administrative authority. A person may, however, apply to court to review any issues of finding of fact, or of law or both concerning implementation of the provisions of a statute. Where a civil law process is deployed to challenge the legality of the decisions and actions of public authorities or institutions with statutory duties and responsibilities under the law, such a process is known as judicial review.<sup>cxxiii</sup>

Most statutes now provide internal mechanisms for grievance ventilation.<sup>cxxiv</sup> Judicial review has proved to be effective in securing the legal control of an administrative process. It is the most potent medium of imposing, enforcing and enhancing the demands of the rule of law and justice on the administration.<sup>cxxv</sup> The various rules of court make provisions for the procedure for initiating the process of judicial review.<sup>cxxvi</sup>

Judicial review is rooted in the ancient philosophy that power should be used to check power if man must enjoy his liberties in the society. Thus, in *Padfield v Minister of Agriculture, Food and Fisheries*,<sup>cxxvii</sup> it has been shown that there is no such thing as unbridled power. The

foregoing implies that where a statute purports to vest power or discretion on a body or authority in absolute term, such as the Minister to take action if he is satisfied, the courts have held that he must be satisfied upon reasonable grounds.<sup>cxxviii</sup>

Where there are no reasonable grounds upon which the Minister may anchor his discretion/findings, Lord Denning (Master of the Rolls), had held in *Breen v Amalgamated Engineering Union*,<sup>cxxix</sup> that such findings by the Minister must be reviewed. In *Gani Fawehinmi v Abacha*,<sup>cxxx</sup> the Court of Appeal was called upon to consider the discretionary powers exercised by the Inspector General of Police.<sup>cxxxi</sup> Under the law, the security operatives may have unfettered discretion to arrest anybody. Gani Fawehinmi was arrested and kept in custody for several weeks without any warrant of arrest or any reason whatsoever proffered. An application was therefore filed against the respondents who raised a preliminary objection to the effect that they were 'immuned' to legal liabilities and scrutiny howsoever under the law.

They challenged the court's jurisdiction to entertain the case. The trial court agreed with respondents and struck out the matter but the Court of Appeal allowed the appeal. Pats - Acholonu, JCA held as follows:

The new trend in this area of law now imposes on the detaining authority the duty he owes to Nigerian citizens to be ready to explain his actions, if not, an order of mandamus might lie. In such a case, he should be precluded from taking any protection under the ouster clause, if it is found that the detention order is not in compliance with the statute.<sup>cxxxii</sup>

However, the Supreme Court overturned the decision of the Court of Appeal which was founded upon best contemporary reasoning. Thus, a golden opportunity to hold administrative agencies strictly accountable was lost!

In judicial review, the courts are restricted to the consideration of the decision complained about and not the merit of the matter. The court can declare an action illegal but would not impose or interpose its views as that would be tantamount to usurpation of the discretion of the administrative body.<sup>cxxxiii</sup> An applicant for judicial review may therefore seek any one or more of the following remedies/reliefs: (i) Certiorari,<sup>cxxxiv</sup> (ii) Prohibition,<sup>cxxxv</sup> (iii) Mandamus,<sup>cxxxvi</sup> (iv) Declaration,<sup>cxxxvii</sup> (v) Injunction,<sup>cxxxviii</sup> and (vi) Monetary Compensation.<sup>cxxxix</sup>

From the foregoing, the law is settled that in environmental cases or any situation where a person's right or interest is subject to the decision of a public authority, judicial review as a mechanism may be activated.

The circumstances in which judicial review may be deployed include where the tribunal or public authority: (a) went beyond its powers ;(b) acted without powers;<sup>cxl</sup> (c) proceeded on a mistaken perception of the law;(d) failed or neglected to comply with relevant rules of equity and fair hearing;<sup>cxli</sup> and (e) arrived at an unreasonable decision in such a manner and magnitude that no reasonable tribunal could, given the law and the facts of the case.<sup>cxlii</sup>

Judicial review is not an appeal and so does not usurp cases ordinarily meant for appeal. The singular objective of judicial review is to ensure fair treatment of persons by the authority to which they are subjected or their interests are subjected.<sup>cxliii</sup> Equity helps the vigilant and so an applicant for judicial review must act *timeously* in order not to be barred as the rules of court do not admit of extension of time except in the case of a person incarcerated.<sup>cxliv</sup>

## COMMON LAW REMEDIES/HEADS OF ACTION

The difficulties encountered by claimants in cases involving sand dredging are not peculiar. They are the same as are encountered in all cases of extractive activities and environmental degradation within the Commonwealth jurisdiction. The major difficulties in respect of remedies are in the claim and proof of the cause of action.<sup>cxlv</sup> These are further aggravated by the attitude of the courts and the limited number of knowledgeable judges in environmental litigation. These challenges are not specific to environmental law but litigations generally. However, since sand dredging complaints arise mainly from its impact on the environment, this work aligns more with cases on environmental law.

Thus, in environmental litigations, where the claim is damage to property, ownership of the damaged property must be proved by claimant.<sup>cxlvi</sup> In *Uhunmwangbo v Uhunmwangbo*,<sup>cxlvii</sup> the trial High Court of Bendel State (Benin Division) held that claimant must establish by evidence the name, nature and number of economic trees allegedly destroyed in a claim for loss or destruction of farm crops, farm land and economic trees. Claims in special damages must be itemised and specifically proved. The Nigerian Court of Appeal, Benin Division has held that

a claim for loss of earning is a claim in special damages which requires full particulars to be given and proved.<sup>cxlviii</sup>

The claimant is under obligation to plead every fact that will enable the court to determine the claim with arithmetical calculation. Claims pertaining to sand dredging are highly technical and professional in nature. Courts may not ordinarily appreciate the claimant's case without the testimonies of expert witnesses.<sup>cxlix</sup> For matters of sand dredging, claimant may require documents such as soil tests certificate, EIA report, and so on, to prove the claim. These requirements come at a prohibitive cost on victims in communities thereby limiting access to justice against operators who are persons of means. The law requires all ingredients constituting the tort/ action to be proved in actions in negligence and nuisance.<sup>cl</sup> The courts are saddled with the responsibilities to interpret the laws and resolve disputes. The common law has provided mechanisms for enforcement of personal rights.<sup>cli</sup> Thus, victims of environmental infraction may seek judicial redress to abate any environmental violence (and be compensated for same) either under the statute regulating such activities or under the common law. The common law on environmental violation in the area of tort is categorised under nuisance, trespass, negligence and strict liability.<sup>clii</sup>

## NUISANCE

Nuisance could be private or public depending on the impact of the act complained of. Private nuisance may arise in cases of substantial or unreasonable interference with a person's use and enjoyment of his land or some right over or in connection with it.<sup>cliii</sup> It is actionable at the instance of the person who has suffered such interference. To this end, title is of the essence and the courts do not encourage busy-bodies. Sand dredging activities negatively impact enjoyment of land when done without recourse to best practices thereby causing nuisance. Public nuisance is an act which materially affects the enjoyment of a right jointly enjoyed by members of the public.<sup>cliv</sup>

An individual claimant can naturally maintain an action in private nuisance and in public nuisance only where he can establish damage or injury over and above that suffered by members of the general public. In *Amos v Shell British Petroleum Development Company of Nigeria Limited (Shell BP)*,<sup>clv</sup> the plaintiff's claim for damages was in public nuisance. The

defendant in the above case had made a large earth dam across their (Kolo) Creek to enhance its oil mining operations. The dam resulted in flooding and damage to farms. It endangered the entire commercial and agricultural life of the plaintiff's community. There was however no evidence establishing the fact that plaintiff has suffered specific damages over and above the general public. The Supreme Court dismissed the action for failure by plaintiff to prove peculiar damages suffered by him. Also, in *LawanXons v West African Portland Cement Company Limited*,<sup>clvi</sup> the plaintiff brought an application for injunction to restrain the defendant from committing further damages by discharge of fumes, dust, slurry, sewage and other industrial pollutants into the adjoining lands and stream which was the source of drinking water for the community.

In the foregoing case, the defendant contended that the suit constituted in public nuisance and so, the plaintiff lacked standing to sue, not being the Attorney General. The case was dismissed on the merit of the defendant's argument. Conversely, in *Airoboyi v Nigeria Pipelines Limited*,<sup>clvii</sup> the plaintiff sued in nuisance. The consultant conducted pipe coating and sand blasting operation within 300 feet to the plaintiff's house during the operations. Dust and smoke escaped from defendant's yard in large quantity thereby causing discomfort, danger of health and remarkable damage to plaintiff's house. The High Court of Bendel State sitting at Warri entered judgment for the plaintiff. Also, where the defendant kept (a poultry) 400 chicks in pens constructed on the boundary wall about 5 feet from plaintiff's residence The plaintiff's claim was to the effect that the noise made by the chicks disturbed his sleep, noxious smell from the pens interfered with his comfort and that the poultry attracts rats that infest his residence. The Lagos High Court found for the plaintiff.<sup>clviii</sup>

The plaintiff has succeeded in private nuisance where noxious industrial waste water from defendant's factory flowed into plaintiff's premises.<sup>clix</sup> A private legal practitioner also succeeded with his claim. He had his law office next to the defendant on the same street. Defendant's business was boat building and services which deployed heavy machines that emit noxious fumes and noise for several hours daily thereby interfering with plaintiff's enjoyment of his own premises.<sup>clx</sup> The House of Lords, in *Sedleigh - Denfield v O'Callaghan*,<sup>clxi</sup> put out the consideration of locality and utility of the defendants' conduct as part of the elements the court must consider in determining actions in private nuisance.



Nigerian courts have taken the locality of the nuisance into consideration. What may be a nuisance in Ikoyi area of Lagos may not be a nuisance in Iyara area of Warri, Delta State. *St. Helen Smelting Company v Tipping*,<sup>clxii</sup> may have met the needs in its time given its antiquity. It is argued that the court may decide differently or rather qualify its decision in these dispensations of technological advancement in sand mining activities. The courts must at all times consider best practices and hold any operator accountable, who dredges sand in a manner that constitutes nuisance, the locality notwithstanding. Again, the Nigerian court has considered the utility principle to refuse injunctions.<sup>clxiii</sup> In *AllarIrou v Shell BP*,<sup>clxiv</sup> the plaintiff sought an injunction to restrain defendant from continuing the pollution of their land, creek and fish pond. The Warri High Court refused the relief as to do so would cause stoppage of trade or throw a large number of people out of job. The Court anchored its reasoning on utility and public policy as the defendant had pleaded statutory authority in defence. It is argued that the decision defeats equity and should not apply with equal force in sand dredging cases.

Sand dredging, where it goes wrong, can sack communities and render them homeless. In such a situation as in the above case, where defendant cannot operate without nuisance to the plaintiff (if he is unwilling to re-locate the plaintiff), the plaintiff should be compensated with award of monetary damages. Other factors which the court may consider include: plaintiffs' idiosyncrasies,<sup>clxv</sup> malice,<sup>clxvi</sup> and duration of the harm.<sup>clxvii</sup> For a plaintiff to succeed in environmental litigation, whether in nuisance or other actions in tort, he must show that the defendant "in fact" caused the damage or injury complained about. Thus, in *Dymond v Pearce*,<sup>clxviii</sup> a lorry driver packed his vehicle in a very visible corner off a highway.

A reckless motorcyclist collided with the packed lorry and sustained injuries. The English Court of Appeal found that, although the lorry constituted a public nuisance, the plaintiffs must fail because his injury was traceable to his own lack of care (conduct). Applying the foregoing reasoning, it follows that for a plaintiff to succeed against a defaulting sand dredging operator, he needs to demonstrate that he had taken due diligence to obviate or mitigate the nuisance. The common law has however not left a defendant in an action in nuisance (whether private or public) without defences. These defences include: consent of the plaintiff,<sup>clxix</sup> defendant's statutory authority,<sup>clxx</sup> limitation of action,<sup>clxxi</sup> contributory negligence, plaintiff's lack of standing to sue<sup>clxxii</sup> and so on.

## NEGLIGENCE

Negligence is the breach of the duty of care imposed by common law or statute which results in damages or injuries to the claimants. This legal principle otherwise known as the “neighbour principle” was famously expounded by the House of Lords in the case of *Donoghue v Stevenson*.<sup>clxxiii</sup> Negligence means more than heedless or careless *conduct* whether in omission or commission. It is a complex concept of duty, breach and damage suffered in the process by the person to whom the duty was owed.<sup>clxxiv</sup> A claim may be brought in negligence where a sand dredging operator is in breach of a legal duty (owed to the host community or owners of the adjoining land) to exercise care and this results in injuries which are actually foreseeable.<sup>clxxv</sup> Consequently, a claimant in an action for negligence must prove that: (i) the defendant owed him a duty of care – this may imply the deployment of prevailing technology in the enterprise, (ii) the defendant breached the said duty of care, and (iii) the breach has caused foreseeable injuries to the said claimant.

The foregoing (three) ingredients must co - exist for an act or omission to constitute the tort of negligence. To this end, it is a herculean task for claimant to obtain a remedy in negligence. In the absence of admissions of critical facts by the defendant, the burden of proof placed on claimant by law is prohibitory.<sup>clxxvi</sup> The standard required by law is objective.<sup>clxxvii</sup> It is the standard of a reasonable man, one free from over confidence or over apprehension.<sup>clxxviii</sup> In *Makwe v Nwukor*,<sup>clxxix</sup> the Supreme Court of Nigeria showed the path to follow in cases of negligence. The apex Court opined that there can be no action in negligence unless there is damage. Consequently, defendant’s negligence without more does not donate a cause of action in negligence to the plaintiff. Damages or injuries suffered by plaintiff and caused by defendant do not suffice for success in an action in negligence. Negligence and damage must co - exist.<sup>clxxx</sup> Negligence as a head of action has advantages over nuisance at common law. Wolf and White<sup>clxxxi</sup> note that unlike in nuisance there is no requirement to prove any interest in land, which is affected. The shortcoming in the action founded in negligence is that pure economic losses are not recoverable in negligence.<sup>clxxxii</sup> In *Miller v Jackson*,<sup>clxxxiii</sup> it was held that an injunction is not an available remedy in an action based on negligence. The difficulty associated with the burden of proof in cases founded on negligence affords claimant the privilege to rely on the common law doctrine/maxim of *res-ipsa loquitur*.<sup>clxxxiv</sup> The foregoing ‘ancient’ doctrine does not seek to prove negligence but to shift the burden of proof unto the defendant to show that the thing complained of did not arise from want of care.<sup>clxxxv</sup>

In environmental litigations, the doctrine does not need to be specifically pleaded. This has proved to be a relevant and lethal weapon against the highhandedness of multi-national corporations. The doctrine is, however, inapplicable where plaintiff has evidence of how the act complained of took place.<sup>clxxxvi</sup> Thus, in *SPDC v Anaro*,<sup>clxxxvii</sup> the plaintiffs sued for compensation for damages done to their farmland/crops and rivers impacted by oil spilled from defendant's facility. Plaintiffs did not specifically plead the maxim but provided sufficient facts upon which the maxim may be inferred. The Nigerian Supreme Court upheld the maxim as applicable against the defendant. A successful claim in negligence entitles the claimant to compensation in damages. In *Edgson v Vickers Plc*,<sup>188</sup> a man died after contracting mesothelioma (an industrial disease associated with contacts with asbestos dust) during his employment with the defendant (asbestos company). The defendants in this suit failed to provide the deceased with regulation kits in breach of its duty of care. The widow recovered against the employers of her deceased husband in negligence. The court similarly found the defendant, a regional water body, negligent for failing to advise a farmer professionally.<sup>189</sup> It was found that the water abstracted from a stream (based on defendant's advice) to irrigate the farmer's crops was strongly chlorinated. As a consultant, the defendant owed a duty of care to plaintiff to give proper professional advice.

The law has provided for EIA Report before commencement of sand dredging in Nigeria.<sup>190</sup> The EIA report which must include a scientific soil test certificate is usually done by consultants/experts. The law has prescribed a robust public participation<sup>191</sup> in the EIA process which includes critique of the process and unhindered access to the final report.<sup>192</sup>

The right of the prospective victims of sand dredging to comment and be consulted during an EIA report as provided in section 7 of the EIA Act has received judicial flavour. In *Oronto Douglas v SPDC*<sup>193</sup> the point was canvassed that the right to comment is statutory, mandatory and inherently loaded with the standing to sue.<sup>194</sup> An aggrieved person may sue<sup>195</sup> or join the consultant/expert as a necessary party where such dredging operations were allowed based on such consultant's professional advice (wrongly given) and which has resulted in some injuries to the plaintiff. In *Bridges Brothers Limited v Forest Protection Limited*,<sup>196</sup> the plaintiffs recovered against the defendant in negligence for failing in its duty of care when it sprayed fenitrothion pesticide on defendant's land. The pesticide spray drifted onto plaintiff's land causing the massive death of bees which drastically reduced the pollination of plaintiff's blueberry plants. Defendant knew, as a consultant, that fenitrothion was highly toxic to bees.

A plaintiff in an action in negligence must further prove a reasonable determinable connection between the defendant and the injury complained of. This is a most daunting challenge for a plaintiff as defendant would always avoid liability. In the case of *Abusomwan v Merchantile Bank of Nigeria Limited*,<sup>clxxxviii</sup> Karibi - Whyte, JSC endorsed the causation and proximity principles as conditions precedent for liability in negligence. Fekumo<sup>clxxxix</sup> posits that the law has now developed to the stage of causation,<sup>exc</sup> proximity and strict liability in negligence. Proximity has replaced 'privity of contracts.' Thus, in *SPDC v Otoko*,<sup>xcxi</sup> the Nigerian Court of Appeal allowed the appeal. The Court found that the spillage (cause of action) was caused by sabotage by third parties.

## TRESPASS

The common law action of trespass is available to a sand dredging victim where wrongful physical act is done directly and intentional to his property. A trespass may be committed where a defendant enters upon a plaintiff's land without permission. This includes where the dredger/operator exceeds the area covered by the mining lease granted by the Minister or where the act of the dredger has weakened the water banks/ river shores as to cause such a collapse that may impact the land of the plaintiff. This head of action underscores the necessity for mining leases/dredging operational areas to be granted with proper delineation before commencement of sand dredging operations.

A trespass may further include where a defendant throws/dumps something unto plaintiff's land; where a defendant wrongfully fails to remove an object from plaintiff's land, or fails to leave when permission to enter the land has been revoked.<sup>excii</sup> Trespass as an action protects 'possession' of land whereas nuisance protects the 'quality' of that possession. Trespass is actionable *per se*.<sup>exciii</sup> Plaintiff in an action for trespass must establish: (i) that the trespass was direct,<sup>exciv</sup> (ii) that the act was intentional or negligent, and (iii) a causal link between the act and its inevitable consequences.<sup>exciv</sup> Where the act is indirect, remedy may lie in nuisance and negligence. In *Gregory v Piper*,<sup>excvi</sup> the defendant disposed of his rubbish using it to block a right of way. Some of the rubbish rolled and settled on plaintiff's wall. The trespass was held to be direct.<sup>excvi</sup> The courts have held deposit of fluoride particles on a property as trespass even when such particles are invisible and incapable of direct invasion.<sup>excviii</sup> Thus, where the

aerial fumigation by defendant resulted in deposits of insecticides on plaintiff's premises causing plaintiff to suffer irritation and injuries. The plaintiff recovered against the defendant in trespass and nuisance.<sup>ccix</sup> A plaintiff must show that he is in actual possession of the property trespassed upon.<sup>cc</sup>

Trespass as a head of action affords plaintiff the easiest opportunity to obtain an injunction than any other common law remedy in tort.<sup>cci</sup> It may be combined with other common law remedies in one action. This implies that plaintiff in addition to showing the causal nexus between his injuries and the defendant, must go further to show that: 'but for' the act or omission of the defendant, plaintiff would not have suffered the injuries or damage. However, this test is satisfied where defendant's act 'materially contributed' to plaintiff's injuries.<sup>ccii</sup>

The 'but for' test acts to eliminate irrelevant causes.<sup>cciii</sup> The 'reasonable fore-see-ability test' is a twin test with the 'but for' test which imposes liability on defendant where the damage complained of ought to have been foreseen by a reasonable man acting in the circumstances.<sup>cciv</sup> It is argued that the trial High Court should have found for the plaintiff had it applied the foreseeability test in *Magege v DOFE (The Scholars' Case)*.<sup>ccv</sup> In the case, it was stated in evidence that the defendant did not conduct the mandatory EIA report as required by law before commencement of dredging operations.<sup>ccvi</sup> It was also shown that the defendant operated in breach of dredging regulations by dredging within a distance of less than thirty metres to the plaintiff's brick wall fence.<sup>ccvii</sup> The eventual collapse of the plaintiff's wall fence under the dredging vibrations was therefore foreseeable and inexcusable. Thus, in *Cambridge Water Company v Eastern Counties Leather Plc*,<sup>ccviii</sup> the House of Lords held that plaintiff cannot recover damages of an unforeseeable kind even in private nuisance.<sup>ccix</sup>

In this case, it was held that the damage caused to the acquifer by the defendant's operation was not reasonably foreseeable at the time the pollution occurred. Wolf and White<sup>ccx</sup> argue that *Cambridge Water Company case* has made a considerable impact on the interpretation and application of the common law to environmental problems. It may be challenging to sustain the rationale behind this case and apply same to current environmental cases such as sand dredging where the negative impact of the offensive act is not readily foreseeable.



## STRICT LIABILITY

A person is at liberty to bring into his own land and keep there anything capable of escape. If such thing which might be dangerous escapes into the land of his neighbours, the person who brought the thing on his own land cannot escape liability of the consequence of escape of the substance unto his neighbour's land. The rule is one of strict liability and it is inconsequential whether the person is at fault or not. Under this rule a person is at liberty to act but he acts at his own peril. This rule is popularly known as the rule in *Rylands v Fletcher*.<sup>ccxi</sup>

The House of Lords, through the cases, view the rule essentially as an extension of the remedy of nuisance to isolated escapes from land.<sup>ccxii</sup> Ehighelua argues, however, that nuisance and the rule in *Rylands v Fletcher* are different and distinguishable.<sup>ccxiii</sup> For the strict liability rule to apply, there must be an escape, the use to which the defendant's land was subjected must be non-natural and things kept on the land capable of escape (which did in fact escape) must be dangerous.<sup>ccxiv</sup>

Considering what constitute 'a non-natural user', the House of Lords held in *Reads v Lyons*,<sup>ccxv</sup> that the storage of substantial quantities of chemicals on industrial premises should be regarded as an almost classic case of non-natural use. It is posited that commercial sand dredging which may involve the use of heavy-duty earth-moving equipment falls within the non-natural user definition. The rule in *Rylands v Fletcher* is often employed by plaintiffs in environmental litigations. It relieves the claimant of the onerous burden of proof where it is successfully invoked. In *Umudje v Shell BP*,<sup>ccxvi</sup> respondent claimed against the appellant for the escape of oil waste (accumulated by appellant on a land under appellant's control) which caused damage to plaintiff's ponds, lakes and lands. The Supreme Court of Nigeria upheld the liability of the defendant/appellant under the rule. Similarly, in *SPDC v Anaro*,<sup>ccxvii</sup> the appellant oil prospecting company laid its crude oil carrying pipes through the respondent's land. Appellant knew that crude oil conveyed through its pipes is dangerous to the environment. There was in fact such oil spillage which destroyed respondent's crops and vegetation. The Court of Appeal held that the appellant was liable under the rule in *Rylands v Fletcher*.

The principle of strict liability expounded in *Rylands v Fletcher* has been highly appreciated in Nigeria.<sup>ccxviii</sup> The legislature has given vent to it by several statutes to make it more apposite in environmental litigations. The Statute prohibits the dumping and deposit of any harmful waste

or hazardous substances in Nigeria without lawful authority.<sup>ccxix</sup> Under the Act, it is of no moment whether the substance escapes or not. Such dumper or depositor does so at his own peril. The proof of the deposit or dump is, *prima facie*, sufficient evidence of liability for all damage and injuries naturally flowing from the dump.<sup>ccxx</sup>

For the determination of either civil or criminal liability<sup>ccxxi</sup> under the Act, the wrongful or prohibited act must have been carried out within the specified places.<sup>ccxxii</sup> The rule of strict liability may now be pleaded in the alternative to certain statutory provisions in an environmental action. Paragraph 36 of the First Schedule to the Petroleum Act forms the legal authority for statutory liability for compensation in oil related cases.<sup>ccxxiii</sup> It is argued that these regimes of compensation may be extended in principle to other aspects of environmental litigation which require monetary compensation particularly, in matters involving sand dredging. Thus, in *Umudje v Shell BP*,<sup>ccxxiv</sup> the trial court made award to plaintiffs as compensation for injurious affection<sup>ccxxv</sup> without reference to the common law remedy. The cause of action in this case, which was contested up to the Supreme Court of Nigeria, disclosed the following facts:

- (i) in the cause of road building, the defendant had blocked and diverted a natural stream thereby interfering seriously with the plaintiff fishing right; and
- (ii) the defendant had accumulated oil waste on land under their control and that oil had escaped to the plaintiff land and caused damage there.

In respect of the claim (i) above, the Supreme Court held that defendants were not liable since their blocking of the stream has not resulted in flooding of plaintiff land but a starvation of water and fish, and that there was therefore no escape of water from defendant's land to plaintiff's land. Although *Umudje case* was fought on the front of negligence and the rule in *Rylands v Fletcher*, the Supreme Court missed an opportunity to expand Nigeria's jurisprudence to include *Riparian Right* as is the case in other jurisdictions.<sup>ccxxvi</sup>

It is argued that the claim constituted in claim (i) above situates within the plaintiff's *riparian right*. The courts also have applied the statutory provision to compensation for disturbance of land rights.<sup>ccxxvii</sup> However in practice, except where the cause of action is not contemplated or cannot be situated within the statute, the level of compensation payable is somewhat influenced by the Oil Producers Trade Section Rates.<sup>ccxxviii</sup> These rates were approved in 1998.<sup>ccxxix</sup> The inadequacy or failure of these statutory regimes is the basis for the upsurge in environmental

litigations.<sup>ccxxx</sup> The application of statutory provisions to compensation for disturbance of land rights has been described as statutory strict liability.<sup>ccxxxi</sup> In *Ikpede v Shell BP*,<sup>ccxxxii</sup> crude oil from defendants' facilities escaped unto plaintiff's land destroying all the fishes in the swamp, ponds together with economic crops. The plaintiff claimed compensation from defendants relying on the rule in *Rylands v Fletcher*. Ovie –Whiskey (Judge), agreed with the plaintiff but stated that *Rylands v Fletcher* (under the common law) was inapplicable as the defendants established its statutory authority which is a defence under the rule.

Nevertheless, the Court held defendant in the foregoing case liable to pay reasonable and adequate compensation under section 11 (5) (c) of the Oil Pipelines Act<sup>ccxxxiii</sup> on the basis of what the court termed *statutory strict liability*. Similarly, in *Otuku v Shell BP*,<sup>ccxxxiv</sup> the defendant was held liable under the rule. Statutory strict liability has been criticised for affording remedies that are grossly inadequate.<sup>ccxxxv</sup> Olisa vehemently argues against the application of strict liability doctrine to oil pollution cases.<sup>ccxxxvi</sup>

## OBSERVATIONS / FINDINGS

The common law remedies have been very useful in ensuring some level of environmental discipline. The main purpose for these remedies in tort is to protect interest in land. However, their applications have extended considerably to cover the area of environmental protection. It is observed that the Nigerian courts are very unwilling to identify and develop new heads of action by case law and has done little to strengthen the 'traditional' common law remedies in line with the digital era. The disadvantages in the adoption of the 'traditional' common law heads of action are enormous. They are not specifically developed to meet the needs of environmental protection particularly, in sand dredging. Sand dredging activities which is a common mining activity on watercourse (and may affect a 'riparian right')<sup>ccxxxvii</sup> may not be adequately covered by the 'traditional' common law heads of action.<sup>ccxxxviii</sup> They also elicit prohibitive cost of prosecution. The huge cost of funding environmental litigations discourages "poor" victims in deserving cases from seeking redress. This is more so when the defendants are usually persons of means.

The Nigerian system views a plaintiff in an environmental litigation as gold - digging and so sets standards to discourage litigants at common law.<sup>ccxxxix</sup> Wherever the Nigerian courts have been called upon to exercise their discretions to grant equitable remedies to restrain violators, they have found reasons to sympathise with the violators, even on technical grounds. Again, the evidential difficulties encountered by the plaintiffs leave plaintiffs most times at the mercy of the defendants.<sup>ccxli</sup> There is, therefore, the need to make a paradigm shift. The common law doctrine of *locus standi* has shown a strangling hold on the justice delivery system in sand dredging matters.<sup>ccxlii</sup> This is unlike what obtains in other Commonwealth jurisdictions. The advantages of the common law heads of action to environmental law however abound. They are most useful where there is no statutory regime regulating the activities which have occasioned injuries. Where statute already exists or environmental laws codified, the common law has been relied upon only where the wrong pre-dates the statute or where such statutes set some higher standards.<sup>ccxliii</sup> It also affords the litigant multiple grounds to base the action to ensure greater chances of success.<sup>ccxliv</sup> It has afforded an alternative where statute has shown some lapses.

In *National Rivers Authority and Anglers Cooperative Association v Clarke*,<sup>ccxlv</sup> the defendant caused the release of waste from pig-farm into River Sapiston in Suffolk. There was a pollution spanning through the 75 kilometre - river. Fisheries were destroyed. Remedy was sought against the defendant under the statute.<sup>ccxlv</sup> The action failed. The Court of Appeal held that the plaintiff/ petitioner could not prove that the defendant had knowledge of the said discharge.

The plaintiff/ petitioner was undeterred. The plaintiff initiated a purely civil action against the defendant under the common law heads of action. He recovered in damages so much so as to cover even for legal expenses.

## RECOMMENDATIONS

From the foregoing, it has been shown that victims of sand dredging activities and sundry environmental issues who wish to approach the courts experience 'uneasy' access to judicial remedies and are most 'uncertain' with their expectation of desirable reliefs. Mining of solid minerals such as sand and laterite are done indiscriminately on flowing streams (even on farmlands), in a manner that alters the topography, river beds and endanger riverbanks. In the

course of sand dredging, natural flow of water is interfered with to the detriment of natural users.<sup>ccxlv</sup> This trend has not been contained by the traditional common law heads of action. It requires expert testimonies to establish a claim in the circumstances. Such experts come at prohibitory costs to an indigent/ordinary litigant. The Nigerian adversarial system stands and sinks upon proofs. Osipitan rightly notes that the burden of proof ‘traditionally’ imposed on a potential plaintiff undoubtedly diminishes the realisation of the right to clean environment.<sup>ccxlvii</sup> There is the growing trend to shift the burden of proof from plaintiff to defendant in environmental actions.<sup>ccxlviii</sup> The American jurisprudence has developed “implied warranties” in environmental litigations.<sup>ccxlix</sup> Under the foregoing approach, the plaintiff only needs to show that he has suffered injuries from the defendant. The legal system will be adjusted to fit the facts with the result that the defendant is held liable to the plaintiff as the burden of proof shifts to the defendant to show otherwise. The battle between the forces of environmental deterioration and their victims is uneven as plaintiffs are usually seen as opportunists. Reitz makes case for a shift from bias against victims of environmental infringement to a more sympathetic appreciation of their case.<sup>cccl</sup>

To this end, the paper makes the following recommendations:

- i) Plaintiffs in sand dredging and similar environmental litigations should not rely on just one head of action, particularly, the common law. The emerging trend is to rely both on the common law and the statute in the same suit. This trend is commendable and highly recommended as statute and common law are meant to complement each other.<sup>cccli</sup> This is because a plaintiff who may be unable to meet the standard of proof required at common law may only need to prove that a statute prohibited the act as was done by defendant. Thereafter, the defendant bears the burden to prove the legitimacy of its action at law, particularly, where such statutes provide for strict liability.
- ii) Nigerian courts should recognise or develop new heads of action to cater for emerging industrial trends. New heads of action such as *Riparian rights* have become more needful given that the coverage goes beyond oil activities around which most environmental litigations in Nigeria revolve. The recognition and development of Riparian rights (specific common law remedy) will enrich the jurisprudence and ensure no escape route for violators of environmental sanctity. This is the trend in India, United Kingdom, USA, Philippines and a host of others.<sup>ccclii</sup>



- iii) It is also recommended that the Nigerian Courts should adopt ‘implied warranties’ as a guiding principle/doctrine in sand dredging and other environmental litigations as the courts do in the US. The legal system should be enabled to arrest mischief resulting from human unscrupulous activities by fixing the violator with the burden to proof the legitimacy of the offending practice.<sup>ccliii</sup>

The attempts by the National Assembly (legislature) to appreciate the principle of shifting the burden of proof by statutory prescription have been applauded.<sup>ccliv</sup>

- iv) There should be a codification of environmental obligations of operators whose operations impact the environment in the form of ‘Sand Dredgers’ Handbook.’ The world is moving towards codification of environmental causes of action and remedies. It has become desirable for statutes to impose duties on persons and make violation of such duties actionable as *strict liability* against the violator. Codification would make for certainty of the law / best trade’s practices and give less discretion to judges who oftentimes are unwilling to venture unto the turbulent turf of environmental adjudication.
- v) It is vehemently recommended that the doctrine of *locus standi* as presently applicable in Nigeria be revisited. The rest of the world has moved in the direction of greater access to courts in environmental matters. Public interest litigation has gained momentum in India, Bangladesh, South Africa and the United States of America. Nigeria cannot afford to stand still. The decision in *Centre for Oil Pollution Watch v NNPC*<sup>cclv</sup> is rather unfortunate.
- vi) Finally, access to justice should further be liberalized by reducing / lowering the cost of litigating environmental cases, particularly with respect to filing fees and cost of compiling appeals. Environmental cases which ventilate socio – economic rights should attract the same filing fees as suits under the FREP Rules. Additionally, a peculiar rules of court should be evolved (as in fundamental rights actions) for speedy dispensation of justice in environmental rights suits / actions.<sup>cclvi</sup>

## CONCLUSION

This paper has examined access to justice and remedies for victims of sand dredging activities in Nigeria. It has revisited the settled legal principle of *ubi jus ibi remedium*. The study found that the common law remedies with the attendant traditional burden of proof in environmental (civil) cases have not adequately answered to the needs of justice in the present milieu, particularly in the area of sand dredging. Vital substantive and procedural issues (which are somewhat within the realm of technicalities) which create barriers to environmental justice in Nigeria have been discussed. The light has been thrown on how litigants must surmount them in the quest for justice.

It is contended that the traditional standing to sue and burden of proof in Nigerian jurisprudence need to accommodate public interest litigation and implied warranties respectively in order to guarantee greater access to justice by plaintiffs and accountability of the defendants in sand dredging/environmental matters.

Some suggestions to the various problems identified as defining how the justice delivery system in these cases may be activated and by whom, have been advanced. These include the development and recognition, by the courts, of new heads of action such as riparian rights, the doctrine of implied warranties and capacity to sue in line with the evolving new world order. This should be done in such surgical manner as to restore the optimism of the ordinary citizens in the justice delivery system and to show that the era of impunity and doing violence to the environment without consequences are over for good.

## ENDNOTES

---

<sup>i</sup>The principle is encapsulated in the Latin maxim, “*Ubi Jus ibi remedium*” which has received judicial endorsement. See *Leo Feist v Young* [1943] 138F.2d 972 (7th Cir.); *Ashby v White* [1703] 92 ER 126; *Bello v Attorney - General of Oyo State* [1986] 1SC1, 70; *Amaechi v Independent National Electoral Commission (INEC)* [2007] 18 NWLR (pt 1065) 96.

<sup>iii</sup> s 17(2) (e) of the CFRN provides for the independence, impartiality and integrity of the court of law and easy accessibility to the courts. This is a fundamental objectives and directive principle of state policy from which the Nigerian state has not derogated.

<sup>iii</sup> CFRN, 6(6)(b) and 46(1).

<sup>iv</sup> Some of the instruments / laws which have provided access to judicial remedies in Nigeria include: (1.) the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules). See, particularly, Preamble 3 (b) (i),

(ii), (c), (d), (e) and (f) of the FREP Rules; and (2.) the Nigerian Minerals and Mining Act Cap N 162 Laws of the Federation of Nigeria (LFN) 2004 (NMMA). s 142 of the NMMA gives access to the Federal High Court on mining matters. This includes sand dredging.

<sup>v</sup> See *Attorney - General of Adamawa State v Attorney - General of the Federation* [2014] 14 NWLR (pt 1428) 515, 550 paras E - F, 551 paras D - G, 556 paras C - D.

<sup>vi</sup> *Attorney - General of Abia State and Thirty-Five Others v Attorney - General of the Federation* [2001] 11 NWLR (pt 725), 689; 733 paras A - B; 746 paras C - D; 771 paras D - E. See, also, *Green v Green* [1987] 3 NWLR (pt 61) 480; *Akilu v Fawehinmi* (No 2) [1989] 2 NWLR (pt 102) 122; *Emiator v Nigerian Army* [1999] 12 NWLR (pt 631) 362; *Afolayan v Ogunrinde* [1990] 1 NWLR (pt 127) 369.

<sup>vii</sup> In *Rinco Construction Company Limited v Veepee Industries Limited and Another* [2009] 3 - 4 SC 1, 14 paras E - G, Niki Tobi, JSC defined reasonable cause of action to mean a cause of action with some chances of success. For a statement of claim to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and the obligations of the defendant. It must then go on to set out the facts constituting infraction of the plaintiff's legal right or failure of the defendant to fulfil his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the relief or remedy he seeks. See *Shell Petroleum Development Company Nigeria Limited (SPDC) and Another v X.M. Federal Limited and Another* [2006] 16 NWLR (pt 1004) 189; *Barbus and Company (Nigeria) Limited and Another v OkaforUdeji* [2018] LPELR-44501 (SC) 1 Ratio 1.

<sup>viii</sup> See *Barbuscase* (n 7) where the Supreme Court of Nigeria stated as trite, the law, that whenever issue of reasonable cause of action is raised, it is the statement of claim or, as in this case the averments in the affidavit in support of an originating summons or motion that ought to be considered. So long as the statement of claim or the affidavit in support of the originating motion discloses some questions which can be decided by a judge, there is reasonable cause of action. See, also, the dictum of Okoro, JSC in *Yusuf and Others v Akindipe and Others* [2000] 8 NWLR (pt 669) 376, 388 - 9 paras A - D.

<sup>ix</sup> T Okonkwo, *The Law of Environmental Liability* (3rd edn vol. 1 Afrique Environmental Development and Education [AEDE] 2014) 132.

<sup>x</sup> See s 12 (1) and (2) of the Harmful Waste (Special Criminal Provisions, etc) Act Cap F 10 LFN 2004.

<sup>xi</sup> See CFRN, s 1 (1).

<sup>xii</sup> CFRN, s 308.

<sup>xiii</sup> *Dasuki v Muazu* [2002] 16 NWLR (pt 793) 319. See, also, *Amaechi v INEC* [2008] 8 NWLR (pt 1080) 227; *Duke v Global Excellence Communications Limited* [2007] 5 NWLR (pt 1026) 81.

<sup>xiv</sup> *Alamieyesigha v Yeiwa* [2001] 33 WRN 144. In *Akume v National Party of Nigeria* [1984] 5 NCLR 494, the trial High Court rejected the contention of the claimant's counsel that Governor Aper Aku could easily waive the immunity and subject himself to trial. This contrasts with *F and F Farms (Nigeria) Limited v NNPC* [2009] 12 NWLR (pt 1155) 387 where it was held that a pre-action notice may be waived by a statutory body. It is more difficult to waive a constitutional provision than a statutory provision.

<sup>xv</sup> *Industrial Commercial Service Limited v Balton BVBackershagen (Balton BV)* [2003] 8 NWLR (pt 822) 223.

<sup>xvi</sup> *Tinubu v IMB Securities Plc* [2001] 16 NWLR (pt 740) 670, 695. See *Rotimi and Others v Macgregor* [1974] NSCC 542. The foregoing case was litigated upon s 161 (1) (c) of the 1963 Constitution which is on all fours with s 308 of the CFRN.

<sup>xvii</sup> See *Gani Fawehinmi v Abacha* [2000] 6 NWLR (pt 660) 288 and *Dasuki* (n 13).

<sup>xviii</sup> See *Anzaku v Governor of Nasarawa State* [2005] 5 NWLR (pt 919) 448, 531 - 2 where the trial National Industrial Court of Nigeria allowed the claimant to successfully maintain an action for wrongful dismissal from statutory employment by Lafia Local Government Council. In the suit the court refused argument to have the governor's name or the entire suit struck out pursuant to s 308 of the CFRN. See, also, *Industrial Commercial Service Limited* (n 15). The other exceptions to the general rule established under s 308 of the CFRN are outside the purview of environmental law. Thus, immunity from legal actions may not cover cases of election petitions, acts done outside Nigeria and police investigations. See *Fawehinmi v Inspector General of Police (IGP)* 10 NSCQR 826. See, also, W Olanipekun, 'D.S.P. Alamieyesigha's Trial Against International Law,' *The Guardian* (Lagos, 18 October 2005) 65 and S Fabamise, 'The Immunity Clause and the Fight' <<https://www.ajol.info>> accessed 1 September 2021.

<sup>xix</sup> See *Gulf Oil (Nigerian) Limited v Oluba* [2002] 12 NWLR (pt 780) 92. See, also, *George Horsfall v Shell British Petroleum Development Company Limited (Shell BP)* [1974] 2 RSLR 126, 131. See, generally, OG Amokaye, *Environmental Law and Practice in Nigeria* (2nd edn, MIJ Professional Publishers Limited 2014) 911 - 4.

<sup>xx</sup> *Attorney - General of Adamawa State* (n 5). See *Ehigokwe v Okadigbo* [1973] 4 SC 113; *Ezenwosu v Ngonadi* [1992] 9 LRCN 719; *Central Bank Nigeria (CBN) v Okojie* [2015] 14 NWLR (pt 1479) 231, 260. In *Ibrahim v Lawal* [2015] 17 NWLR (pt 1489) 490, 523 paras F - H, the National Industrial Court of Nigeria stated that where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. Also, where an action is statute barred, a plaintiff who might have had a cause of action loses the right to enforce it by

judicial process because the period of time laid down by the limitation law for instituting such action had elapsed and the right to commence the action would have been extinguished by law. See, also, *Sommer v Federal Housing Authority* [1992] 7 LRCN 100 and *Texaco Panama Incorporation v Shell Petroleum Development Corporation of Nigeria* [2002] 94 LRCN 152.

xxi *Mulima v Usman* [2014] 16 NWLR (pt 1432) 160, 199 paras C - D.

xxii *Attorney - General of Adamawa State* (n 5) 565, paras A - C.

xxiii *Adejumo v Olawale* [2014] 12 NWLR (pt 1421) 252, 284 - 5 paras E - B.

xxiv *Ajibona v Kolawole* [1996] 10 NWLR (pt 476) 22.

xxv *Ibid.* 35 - 36. See *Ethiopian Airways v Afribank Nigeria Plc* [2007] All FWLR (pt 373) 185, 196 - 9 paras C - E.

xxvi *Akibu v Azeez* [2003] 5 NWLR (pt 814) 643.

xxvii *Adejumo* (n 23).

xxviii See OF Ogbuinya, *Guidelines to Interpretation of Nigerian Statutes* (Snaap Press Nigeria Limited 2019) 226.

xxix *NPA v Ajobi* [2006] 13 NWLR (pt 998) 477 and *Central Bank of Nigeria v Okpong* [2008] 13 NWLR (pt 998) 555.

xxx See s 110 (1) of the Nigerian Ports Authority Act Cap N 126 LFN 2004. See, also, s 11 (1) and (2) of the State Proceedings Law Cap 131 of the Laws of Anambra State 1986; Limitation Law of Delta State Cap L 11 Laws of Delta State 2008.

xxxi *Abiodun v Attorney General of the Federation* [2007] 15 NWLR (pt 1057) 359.

xxxii See s 5 of the Arbitration and Conciliation Act Cap A 18 LFN 2004.

xxxiii *Onward Enterprises Limited v MV "Matrix"* [2010] 2 NWLR (pt 1179) 530.

xxxiv See s 61 (1) of the Nigerian Railway Corporation Act 2004.

xxxv *Chigbu v Tonimas (Nigeria) Limited* [2006] 9 NWLR (pt 984) 189. See *Atolagbe v Awumi* [1997] 9 NWLR (pt 522) 536, 575.

xxxvi See ss 18, 44 and 45 of the Limitation Edict 1994 of Imo State.

xxxvii See Limitation of Actions Act LFN 2004.

xxxviii See Limitation Law of Lagos State Cap 70 of 1973; Limitation Law Cap 24 of the Laws of Abia State 1998 - 2000; Limitation Law Cap 102 Laws of Ebonyi State of Nigeria 2009; Limitation Act (Abuja) LFN 2004.

xxxix s 37 (1) of the Limitation of Actions Act (n 37) and s 8 (1) of the Limitation Laws of Lagos State 2015.

xl *Chartered Brains Limited v Intercity Bank Plc* [2009] 15 NWLR (pt 1165) 445. See *Ekiti Local Government Area v Aje Printing (Nigeria) Limited* [2009] 4 NWLR (pt 1131) 304.

xli See the dictum of Chukwuma-Eneh, JSC in *Nigeria Social Insurance Trust Fund Management Board (N.S.I.T.F.M.B.) v Klifco Nigeria Limited* [2010] 13 NWLR (pt 1211) 300, 307.

xlii See s 2 (a) of the POPA Cap P 41 LFN 2004. See, also, Ogbuinya (n 28) 214.

xliii See *Sani v President of the Federal Republic of Nigeria* [2010] 9 NWLR (pt 1198) 153; *Nwaka v Head of Service of Ebonyi State* [2008] 12 NWLR (pt 1037) 156 and *Power Holding Company of Nigeria (PHCN) v Alabi* [2010] 5 NWLR (pt 1190) 253.

xliv See *Sylva v INEC* [2015] 6 NWLR (pt 1486) 576, [2015] LPELR - 14447 (SC).

xlvi See the case of *Yare v National Salaries, Wages And Income Commission* (N.S.W and I.C.) [2013] 12 NWLR (pt 1367) 173, 188 - 89, paras F - B. See, also, s 24 of the Niger Delta Development Commission (NDDC) (Establishment) Act 2004. The Supreme Court explained the age rooted purpose of the limitation law in CBN (n 20) 260 paras D - G when it held that the three months' time frame for bringing actions against public officers is designed to protect the public officer from having to answer frivolous and vexatious litigation, The Plaintiff must seek prompt action for the breach of his rights in court of law within the time stipulated. If he fails to come within three months he has a cause of action, but sadly one that is unenforceable or cannot be heard by the courts as the courts cease to have jurisdiction over actions brought after 3 months.

xlvi See s 32 (1) of the (NESREA) Act 2007; s 100 (2) and 110 (1) of the NPA (Establishment, etc) Act Cap N 126 LFN 2004; s 12 (2) of the NNPC Act Cap N 122 LFN 2004; s 83 (1) of the Nigerian Railways Act 2004 interpreted in *Industrial Training Fund (ITF) v Nigerian Railway Corporation (NRC)* [2007] 3 NWLR (pt 1020) 28 and *Bakare v NRC* [2007] 17 NWLR (pt 1064) 606. Others include s 26 (2) of the National Insurance Corporation of Nigeria Act which was interpreted in *Ugwuanyi v Nikon Insurance Plc* [2013] 11 NWLR (pt 1366) 546; s 16 of the Federal Road Safety Commission (FRSC) (Establishment) Act 2004 interpreted in *Darlington UgoEhirim v FRSC* (Unreported) Suit No. FHC/WR/CS/90/2017 judgment delivered by E Nwite, (Judge) of the Federal High Court sitting in Warri on Friday 25 January 2019.

xlvi *Nigericare Development Company Limited v Adamawa State Water Board* (A.S.W.B.) [2008] 9 NWLR (pt 1093) 498, 520. It was further held that the issue of pre-action notice need not be pleaded as it is an issue of jurisdiction that can be raised *suomotu* by the court at any time.



xlvi See, also, Karibi – Whyte, JSC in *Captain Amadi v NNPC* [2000] 10 NWLR (pt 674) 76, 111. In *Atalegbe v Awuni* [1997] NWLR (pt 525) 537, 562. Uwais, CJN defined a condition precedent as one which delays vesting of a right until the happening of an event. See, also, *Attorney - General of Kwara State v Adeyemo* [2017] 1 NWLR (pt 1546) 210.

xlvi See the dictum of Akintan, JSC in *Nnonye v Anyichie* [2005] 1 KLR (pt 189) 129, [2005] 2 NWLR (pt 910) 633, 647.

<sup>1</sup> See s 41 (1) of the Sheriffs and Civil Process Law of Anambra State.

<sup>li</sup> *F and F Farms (Nigeria) Limited v NNPC* (n 14).

<sup>lii</sup> See s 11 and 12 of the NNPC Act 1977.

<sup>liii</sup> *Texaco Panama Incorporation* (n 20). See, particularly, the dictum of Kalgo, JSC 163 paras F - K and 169 paras EE - JJ.

<sup>liv</sup> See ss 3, 7 (3), 8 and 9 of the Oil Terminal Dues Act Cap 339 LFN 1990.

<sup>lv</sup> See s 110 of the Nigeria Ports Authority (Establishment etc) (NPA) Act Cap 361 LFN 1990.

<sup>lvi</sup> See *Ogbuinya* (n 28) 247. See, also, *Peter v NNPC* [2010] NWLR (pt 1195) 173 and *Odoemelam v Amadiume* [2008] 2 NWLR (pt 1070) 179.

<sup>lvii</sup> *Darlington Ugo Ehirim* (n 46).

<sup>lviii</sup> s 16 (1) of the FRSC (Establishment) Act 2007. See, also, *Lagos State Development and Property Corporation v Adeyemi - Baro* [2005] All FWLR (pt 275) 484.

<sup>lix</sup> *Darlington Ugo Ehirim*, *Ibid.* See page 14 of the judgment.

<sup>lx</sup> See *Katsina Local Government v Makudawa* [1971] 1 NMLR 100, 107. On test to be employed by the courts in determining which provisions of statute is mandatory or directory, see the dictum of Ogundare, JSC in *Odua Investment Company Limited v Talabi* [1997] 7 SCNJ 600, 652 – 3.

<sup>lxi</sup> See *Katsina Local Government v Makudawa* [1971] 1 NMLR 100, 107. On test to be employed by the courts in determining which provisions of statute is mandatory or directory, see the dictum of Ogundare, JSC in *Odua Investment Company Limited v Talabi* (n 60).

<sup>lxii</sup> *Mobil Producing (Nigeria) Unlimited v LASEPA*, [2002] 18 NWLR (pt 798) 1. See, also, the argument of appellant's counsel challenging the validity of pre-action notice on constitutional and jurisdictional grounds in *NNPC v Fawehinmi* [1998] 7 NWLR (pt 559) 598. To this end, litigants who seek judicial remedies on sand dredging causes must necessarily comply with statutory stipulations on pre-action notices as any failure in this regard may render their actions incompetent. See, generally, PN Okoli, 'Access to Justice and Fair Hearing: An Evaluation of Pre-action Notice in Nigerian Jurisprudence' *Africa Journal of International and Comparative Law* (2012) 70.

<sup>lxiii</sup> See the dictum of Onolaja, JCA in *Agboola v Agbodemu and Others* [2008] LPELR – 8461 (CA).

<sup>lxiv</sup> See *Amokaye* (n 19) 889.

<sup>lxv</sup> *Ibid.* See *Ladejobi v Oguntayo* [2001] FWLR (pt 45) 780. See, also, *Abraham Adesanya v President of the Federal Republic of Nigeria and Another* [1981] All NLR (Reprint) 1.

<sup>lxvi</sup> *Baker v Car* 369 US 186 [1962]

<sup>lxvii</sup> *Ibid.*, 204.

<sup>lxviii</sup> *Olawoyin v Attorney- General of Nigeria* [1961] 2 SCNLR 4; [1961] 1 All N.L.R 269. In the case, the Supreme Court construed some provisions of the Children and Young Persons' Laws, 1958 of Northern Nigeria and held that plaintiff had no standing to sue.

<sup>lxix</sup> *Ibid.*

<sup>lxx</sup> See *Yusuf v Akindipe* (n8) 375. For the meaning of cause of action, See *NNPC v Sele* [2004] 5 NWLR (pt 866) 379 and *Egbe v Adefarasin* [1987] 1 ANLR 1. See, also, *Attorney - General of Enugu State v Avop Plc* [1995] 6 NWLR (pt 399) 90; *Ajiowura v Disu and Thirteen Others* [2006] 28 NSCQR 19.

<sup>lxxi</sup> See the liberal dictum of Fatai – Williams, CJN in *Adesanya* (n 65) 23.

<sup>lxxii</sup> See, generally, M Adekwale - Owoade, 'Locus Standi, Criminal Law and the Rights of the Private Prosecutor in Nigeria: *Fawehinmi v Akilu* and Another Revisited' *Nigeria Juridical Review* (1989-1999) 4, 3.

<sup>lxxiii</sup> *Owodunmi v The Registered Trustees of Celestial Church of Christ* [2002] 10 NWLR (pt 675) 315. Thus, a litigant must have personal interest. See *Gamioba v Ezezi* [1971] All NLR 608, 613.

<sup>lxxiv</sup> See AE Abuza, 'The Law and Policy on Curbing Desertification in Nigeria: A Contemporary Discourse' *Journal of Juridical Science* (2017) 42 (2) 65, 93.

<sup>lxxv</sup> Oil Pipelines Act Cap O 7 LFN 2004 and Harmful Waste (Special Criminal Provisions, e.t.c.) Act Cap H 1 LFN 2004.

<sup>lxxvi</sup> See the National Environmental (Mining and Processing of Coal, Ores and Industrial Materials) Regulations 2007. Regulations 8 (4) and (5) donates legal standing to private persons to pursue action in court to stop, prevent, control the contravention of the Regulation with or without proof of any personal injury or discomfort from the acts of the polluter. See also, the FREP Rules (n 4) which has further liberalised locus standi which hitherto prevented Human Right Public interest litigators from challenging some level of impunity. Preamble 3



(e) to the Rules mandates courts to encourage and welcome public interest litigations in human rights field and no human right case may be dismissed or struck out for want of locus standi. It expanded the class of persons that may bring Human Rights actions to include Association, NGO and “even busybodies.” See, also, *Fawehinmi v Akilu and Others* [1987] 4 NWLR (pt 67) 797 which dealt with the standing of a person to enforce the right of another person.

<sup>lxxvii</sup> AOO Ekpu, ‘Environmental Impact of Oil on Water: A Comparative Overview of the Law and Policy in the United States and Nigeria’ *Denver Journal of International Law and Policy*(1995) 24 (1) 91, 99.

<sup>lxxviii</sup> See *Friends of the Earth Incorporated v Gaston Copper Re-cycling Corporation*, 179F 3d 107 113 – 114 and 181 4thCir. [1999] (US); *Inland Revenue Commissioners (IRC) v National Federation of Self-Employed and Small Businesses*[1981] 2 All ER 93 103 – 4 (UK) and *Peoples’ Union for Democratic Rights v Minister of Home Affairs* [1968] LRC 547 (India) where the common law doctrine of locus standi have been relaxed in favour of citizens’ litigation right.

<sup>lxxix</sup> *Centre for Oil Pollution Watch v NNPC* [2019] 5 NWLR (pt 1666) 518.

<sup>lxxx</sup> See Abuza (n74) 94.

<sup>lxxxi</sup> See Principle 10 of the Rio Declaration.

<sup>lxxxii</sup> See CFRN, s 19 (d) which enjoins Nigeria to honour International Law and Treaties.

<sup>lxxxiii</sup> See IRC (n 78).

<sup>lxxxiv</sup> *United States v Students Challenging Regulatory Agency Procedures (SCRAP)*[1973] 412 US 669. See, also, *Friends of the Earth Incorporated* (n78)

<sup>lxxxv</sup> *Van Huyssteen and Others v Minister of Environmental Affairs, Tourism and Others*[1996] 1 SA 283 (C) (South Africa).

<sup>lxxxvi</sup> *Wildlife Society of Southern Africa and Others v Minister of Environmental Affairs, Tourism and Others*, Case No. 1672/1995 (South Africa). This case is illustrative of civil litigation as a viable weapon for enforcement of statutory duties on environmental conservation.

<sup>lxxxvii</sup> *Mohiuddin Farooque v Bangladesh Civil Appeal* No 24 of 1995, 17 BLD (AD) 1997, vol XVII, 1, 33, 1 BLC (AD)(1996) 189 - 129 (Bangladesh).

<sup>lxxxviii</sup> See, also, *Oposa v Factorian*, G.R. No 101083 July 30, 1993 (Philippines). Similarly, the courts have granted locus standi to a party who is not a riparian owner but interested in protecting lives of those who make use of the water flowing in River Ganga. See *M. C. Mehta v Union of India and Others*, Writ Petition No 3727 Of 1985 D/-12-1988 (Indian Case); *Peoples’ Union for Democratic Rights*(n 78)

<sup>lxxxix</sup> *KajingTubek v EkranBiid and Others*[1996] *Malayan Law Journal* (Malaysia) 2. Contrast with *Oronto Douglas v SPDC and Five Others* [1998] LPELR – CA/L/143/97.

<sup>xc</sup> *ET and EC (Nigeria) Limited v Nevico* [2004] 3 NWLR (pt 860) 327.

<sup>xci</sup> See, generally, GN Okeke, ‘Re - Examining the Role of Locus Standi in the Nigerian Legal Jurisprudence’ *Journal of Politics and Law*(2013) 6 (3) 215.

<sup>xcii</sup> *Keyamo v House of Assembly, Lagos State* [2000] 12 NWLR 196.

<sup>xciii</sup> See Abuza (n 74).

<sup>xciv</sup> *Centre for Oil Pollution Watch* (n 79). For detailed definition of locus standi, see Kabiri – Whyte, JSC in *Attorney - General of the Federation v Attorney - General of Abia State and Others* (No 2) [2002] 6 NWLR (pt 764) 772- 3 paras E - B. See Okeke (n 91).

<sup>xcv</sup> See *Keyamo* (n 92); and *Adesanya* (n65). See, also, *Oredoyin and Others v Awolowo and Others* [1989] 4 NWLR (pt 114) 172.

<sup>xcvi</sup> On the knotty issue of the litmus test of which provision of the law/statute is mandatory, see respectively, the dicta of Ogundare, JSC in *Odua Investment Limited v Talabi*(n 61) and Pats - Acholonu, JSC in *BBN Limited v Olayiwola and Sons Limited* [2005] 3 NWLR (pt 912) 434, 458; *Inakoju v Adeleke* [2007] 4 NWLR (pt 1025) 427, 697- 8. See, also, *Darlington UgoEhirim*(n 46).

<sup>xcvii</sup> For prohibitive nature/tendencies of filing fees on litigants seeking justice see, generally, A Akpomudje, ‘Environmental Claim: the Law, Regulations and Practice, Being a Paper Delivered at the Nigeria Bar Association Conference in Enugu’ in A Mudiaga - Odje, ‘Niger Delta Region and Principles of Self Determination’ a Paper Delivered at the University of Benin Law Students’ Association Distinguished Graduates Award Ceremony, 8 October 2008, 7. In *Okolo v CBN* [2004] 2 MJSC 69 it was established that payment of filing fees is a condition precedent for a court to assume jurisdiction.

<sup>xcviii</sup> See, generally, *Madukolu v Nkemdilim* [1962] All NLR 581; *Nigeria Deposit Insurance Company(NDIC) v CBN* [2002] 7 NWLR (pt 766) 272and *Ike v Nzekwe* [1975] 2 SC 1.

<sup>xcix</sup> Funding sand dredging litigation goes beyond the Federal High Court. The cost of compiling records of appeal to the Court of Appeal is way out of the reach of rural victims of sand dredging. This accounts for why most deserving cases hardly goes beyond the High Court. One of such cases is The Scholars ‘case.

<sup>c</sup> CFRN, ss 33 and 34.

- <sup>ci</sup> *Gbemre v SPDC* [2005] AHRLR 151. In the case, the Federal High Court (Benin Division) held that “the fundamental rights to life and dignity of the human person as guaranteed by sections 33 and 34 respectively of the 1999 Constitution inevitably includes the rights to clean, poison – free, pollution – free, healthy environment”. See Articles 4, 16 and 24 of the African Charter on Human and Peoples’ Right (Ratification and Enforcement) Act Cap A 9 LFN 2004. See, also, F Falana, *Nigerian Law on Socio – Economic Rights* (Legaltext Publishing Company Limited 2017) 2 and F Falana, *ECOWAS Court: Law and Practice* (Legaltext Publishing Company Limited 2010) 63.
- <sup>cii</sup> See the Schedule of (filing) fees under the FREP Rules (n 4).
- <sup>ciii</sup> s 272 of the CFRN; *SPDC v Anaro* [2015] LPELR – 24750 (SC); [2000] 23 WRN 111.
- <sup>civ</sup> *Attorney - General of Adamawa v Attorney - General of the Federation* [2006] IMJSC 1; and *Teno Engineering Limited v Adisa* [2005] 7 MJSC 89. The above statement is true with respect to the 1979 CFRN. The 1999 CFRN has delimited and circumscribed the hitherto unlimited jurisdiction of the State High Court by creating exclusive jurisdictions for the Federal High Court, the National Industrial Court of Nigeria and other tribunals.
- <sup>cv</sup> See CFRN, s 251 (1) (n). The Federal High Court has exclusive jurisdiction on issues relating to mines and minerals.
- <sup>cvi</sup> *Menakaya v Menakaya* [2001] 8 MJSC 50.
- <sup>cvi</sup> *7Up v Abiola* [2001] 5 MJSC 93, 97; [1997] 6 NWLR (pt 508) 236, [2002] 11 NWLR (pt 723) 168 SC.
- <sup>cvi</sup> *Shell Petroleum Development Company (Nigeria) Limited (SPDC) v Abel Isaiah* [2002] 1 NWLR (pt 723) 168. Counsel to appellant relied heavily on s 7 (1) (b), 7 (3) and 7 (5) of Federal High Court (Amendment) Decree No 60 of 1991 and s 230 (1) of the CFRN (Suspension and Modification) Decree No 107 of 1993. See, also, Petroleum Act and Oil Pipelines Act 2004.
- <sup>cix</sup> *SPDC v Hallelujah Buguma (HB) Fishermen* [2002] 4 NWLR (pt 758) 505, [2001] LCN/1036 (CA).
- <sup>cx</sup> *SPDC v Maxon* [2001] 9 NWLR (pt 719) 541, 554.
- <sup>cx</sup> See the dictum of Mohammed, JSC in *Isaiah Case* (n 108) 179.
- <sup>cxii</sup> The decision of the Supreme Court in this case has settled once and for all, the jurisdiction of the Federal High Court in relation to mines and mineral including all fields, oil mining, geological surveys. On this authority, *Savannah Bank of Nigeria Limited v Pan-Atlantic Shipping Company and Transport* [1987] ALL NLR 42 and *Bronik Motors Limited v Wema Bank* [1983] 1 SCNLR 272 which conferred concurrent jurisdiction on Federal and State High Courts are no longer the law.
- <sup>cxiii</sup> *SPDC v Gbatiebo VII and Others* [1996] 4 NWLR (pt 445) 71. See, also, *Koya v Adesina* [1993] 6 NWLR 187, 185.
- <sup>cxiv</sup> See CFRN, s. 251. See, also, *Isaiah Case* (n 108).
- <sup>cxv</sup> See EO Popoola, ‘Moving the Battle Fields: Foreign Jurisdictions and Environmental Justice in Nigeria’, <<https://items.ssrc.org>> accessed 10 June 2021.
- <sup>cxvi</sup> *Anaro* (n 103).
- <sup>cxvii</sup> *SERAC and ESR v Nigeria* (Communication No 155/96, Ruling delivered on 27 May 2002) <<https://globalhealthrights.org>> accessed 14 September 2021, [2001] AHRLR 60.
- <sup>cxviii</sup> *Wiwa et al v Royal Dutch Petroleum et al* (No 96 civ 8386) <<http://ccrjustice.org/files>> accessed 10 June 2021. See, also, *Akpan and Vereniging Milieudefensie v Royal Dutch Shell Plc and Another*, District Court of the Hague [2013] cited in Popoola (n 115) accessed 14 September 2021.
- <sup>cxix</sup> *Kiobel v Royal Dutch Petroleum Co et al* No 06 – 4800, 2010 US App. LEXIS 19382, 1 (2d Cir. Sept 17, 2010).
- <sup>cxx</sup> *Bodo Community and Others v Shell Petroleum Development Company of Nigeria Limited* <<https://business-humanrights.org>> accessed 10 June 2021, [2002] CHR 537. See, also, JC Nwobike, ‘The Africa Commission on Human and Peoples’ Rights and the Demystification of Second and Third Generation Rights under the African Charter: Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria’ *African Journal of Legal Studies* (2005) 1, 137 - 8.
- <sup>cxxi</sup> Alien Tort Claims Act (ATCA) 1789 (originally a provision of the Judiciary Act of 1789) also known as Alien Tort Statute (ATS). The ATS has a chequered history with corporate liability of multi-national corporations spanning over 210 years. This Statute has been used against Occidental in Colombia, Unocal in Burma, Exxon Mobil in Indonesia, Talisman in Sudan, Rio Tinto in Papua New Guinea at different times. See RA Madu, ‘Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel’ *Miyetti Quarters Law Review* (2016) 1 (3) 123. See, also, *Rabi Abdullahi v Pfizer, Inc.* OI CIV. 8118 (WHP) L case text. In the case, it was alleged that Pfizer conducted medical experiments on Nigerian children without consent. Other ATS suits include Pfizer in Nigeria. See *Doe v Nestle, SA*, 748 F Supp 2d 1057, 1132-45 (CD Cal 2010). The plaintiff alleged that defendants aided and abetted child slavery/labour in the Coted’ Ivoire. The defendants used children to work their cocoa farms. See, also, *Jesner v Arab Bank*, 138 S.Ct. 1386 [2018]; *Nestle in Ivory Coast*, see *Doe v Nestle* (supra) and *Doe 1 v Exxon Mobil Corporation*, 393

F.Supp. 2d 20, 24, 28 (D.D.C 2005).and Al-Qaeda in Afghanistan, see *Umwani v Al-Qaeda*, 947 F. Supp. 2d 1(D.D.C.2013). The ATS provides original jurisdiction for District Courts in any civil action by an alien for tort only, committed in violation of the law of nations or a treaty of the US. Most ATS cases only end at the District Courts.

<sup>cxxii</sup> A district court in California reached the same conclusion as *Kiobel v. Nestle, SA*, (n 121) a week before the appellate court's decision. However, *Kiobel* has taken up the spaces and has now become the law being a decision of the apex court. See *Viera v Eli Lilly and Company*, No. 09-495 2010 WL 3893791 (SD Ind. Sept. 30 2010); *Mustafa v Chevron Corporation* 759 F. Supp 2d 297 (SDNY 2010); *Flomo v Firestone Natural Rubber Company* 744 F. Supp 2d 810 (SD Ind. 2010).

<sup>cxxiii</sup> Okonkwo (n 9) 134.

<sup>cxxiv</sup> See s 11 (4) of the Harmful Waste/Hazardous Substances Act Cap H 1 (Special Criminal Provisions etc) LFN 2004. See, also, s 32 of the NESREA Act 2007 and s 57 of the Environmental Impact Assessment (EIA) Act Cap E 12 LFN 2004.

<sup>cxxv</sup> See CA Ogbuabor, 'Expanding the Frontiers of Judicial Review in Nigeria: The Gathering Storm' *Nigerian Juridical Review*(2011-2012) 10,1 - 2.

<sup>cxxvi</sup> See, generally, Order 40 of the High Court of Delta State (Civil Procedure) Rules 2009; Order 38 of the Edo State High Court (Civil Procedure) Rules, 2012; Order 40 of the Imo State of Nigeria High Court (Civil Procedure) Rules, 2017; and Order 34 of the Federal High Court Rules 2009.

<sup>cxxvii</sup> *Padfield v Minister of Agriculture, Food and Fisheries*[1968] UKHL 1,[1968] AC 997.

<sup>cxxviii</sup> See ss 9, 11 and 21 of the EIA Act (n 124). See, also, ss 5 (1) (b) and 33 of the NESREA Act (n 124) for discretionary powers exercised by Agencies and Ministers in Nigeria.

<sup>cxxix</sup> See, particularly, Lord Denning's dictum in *Breen v Amalgamated Engineering Union*[1971] 2 QB 175,[1971]1 ALL ER 1148,1153.

<sup>cxix</sup> *Fawehinmi* (n 17).The Court of Appeal's decision was reversed on further appeal to the Supreme Court.

<sup>cxixi</sup> See State Securities (Detention of Persons) Act Cap 414 LFN 1990 as amended by the State Securities (Detention of Persons) (Amendment) Decree No 11 of 1990.

<sup>cxixii</sup> *Fawehinmi* (n 17) 760.

<sup>cxixiii</sup> See *Egharevba v Eribo* [2010] 9 NWLR (pt 1199) 411.

<sup>cxixiv</sup> See s 5 (1) (b) of the NESREA Act. See, also, s 1 (4) Harmful Waste (Special Criminal Provisions, etc) Act Cap H I LFN 2004.

<sup>cxixv</sup> See *R v Electricity Commissioners* [1924] 1 KB 171, 204 - 05 by *Atkin, LJ. and Okupe v Federal Bureau of Internal Revenue* (FBIR) [1974] 4 SC 93. See, also, the dictum of Rand J. in *Roncarelli v Duplessis* [1959] 16 DLR (2d 689) 705 (A Canadian case). Order for certiorari or prohibition may operate as a stay on further proceedings. See, generally, Order 40 (3) (9) and (10) High Court of Delta State (Civil Procedure) Rules (n 126).

<sup>cxixvi</sup> See HWR Wade, *Administrative Law* (5th edn, Oxford University Press 1982) 630. See, also, the Tanzanian case of *Festo Balegele and Seven Hundred and Forty- Nine Others v Dar Es Salaam City Council, Misc. Civil Cause No 90 of 1991* (Tanzania). See, generally, Okonkwo (n 9) 136.

<sup>cxixvii</sup> See *Sierra Club v Morton*, 92 S.Ct. 1361 [1972] (USA)

<sup>cxixviii</sup> *Attorney - General v PYA Quarries*[1957] 2 WLR 770. This is a case that is founded on quarrying activities. Sand dredging is a quarrying activity. It is argued that Nigerian courts could covet the boldness and reasoning of Lord Denning (Master of the Rolls) in this case to stem the tide of unscrupulous sand mining activities in Nigeria.

<sup>cxixix</sup> See Order 34 (7) Federal High Court Rules; Order 40 (7) Lagos High Court Rules; Order 40 (7) Imo State High Court Rules, 2017; and Order 40 (7) High Court of Delta State (Civil Procedure) Rules (n 126).

<sup>cxli</sup> See *R v Tottenham and District Tribunal Ex parte Northfield (Highgate) Limited* [1957] 1 QB 103.

<sup>cxlii</sup> See *R v Liverpool Corporation Ex parte Taxis Fleet Operators Association* [1972] 2QB 299 where a licensing authority was held not to have validly acted before giving fair hearing.

<sup>cxliii</sup> See *Associated Provincial Pictures Houses Limited v Wednesbury Corporation* [1948] 1KB 223.

<sup>cxliiii</sup> *Governor of Oyo State v Folayan* [1995] 9 SCNJ 50 and *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155.

<sup>cxliv</sup> See s 2 (a) of the POPA (n 43) and Order 40 (4) of High Court of Delta State (Civil Procedure) Rules (n 131). See, also, *Agbiti v Nigerian Army* [2011] 4 NWLR (pt 1236) 175, 120; *Akoshi v Chief of Naval Staff* [2004] 15 NWLR (pt 896) 268, 291; *Amokeodo v Inspector General of Police (IGP)* [1999] 6 NWLR (pt 607) 467 and *Katto v CBN* [1991] 9 NWLR (pt 214) 126, 147

<sup>cxlv</sup> See *Madu* (n 121) 137. See, also, ss 135, 136 and 137 of the Evidence Act 2011.

<sup>cxlvi</sup> *Sommer v Federal Housing Authority* [1992] 1NWLR (pt 219) 548.

<sup>cxlvii</sup> *Uhunmwangbo v Uhunmwangbo* [1992] 2 NWLR (pt 226) 709.



cxlviii In *Reynolds Construction Company (RCC) (Nigeria) Limited v Edonwonyi* [2003] 4 NWLR (pt 811) 513 the court held that a claim for loss of earning is a claim in special damages which requires full particulars to be given and proved. See *Arabambi v ABI Limited* [2006] 3 MJSC 61; *SPDC v Tiebo* [2005] 9 MJSC 159.

cxlix *Seismograph Services (Nigeria) Limited v Ogbemi* [1976] 1 All NLR 163. Expert witnesses come at great cost.

cl See *Anya v Concorde Hotel* [2003] 2 MJSC 160; *Royal Ade v National Oil* [2004] 9 MJSC 40 and *Adediran v Interland Transport Limited* [1986] 2 NWLR (pt 20) 78.

cli I Ehighelua, *Environmental Protection Law* (New Pages Law Publishing Company 2007) 194.

clii A Aigbe and ECAkpeme, 'Protection of the Nigerian Environment: Legal and Critical Analysis of Laws and Regulations' *University of Ibadan (Unib) Law Journal* (2016) 6, 154.

cliii See *Abiola v Ijeoma* [1970] 2 All NLR 768 and *Airoboyi v Nigeria Pipelines Limited* [1970] 6 ECSLR 53.

cliv Only the Attorney General may lawfully sue in behalf of the public in public nuisance. See MT Ladan, 'Enhancing Access to Justice on Environmental Matters: Public Participation in Decision Making and Access to Information' Judicial Training Workshop on Environmental Law in Nigeria, Abuja, May 2006, 5.

clv *Amos v Shell BP* [1977] 6 SC 1 and *Dumez Nigeria Limited v Ogboli* [1972] All NLR 241. See the contrast with *Ejowhomu v Edok-Eter Mandilas Limited* [1986] 9 SC 41.

clvi *LawanXons v West African Portland Cement Company Limited* [1973] 3 UILR (pt iv) 459. See, also, ME Ndukwe, 'Legal Frame-work for the Prevention of Air Pollution in Nigeria' *Delta State University (DELSU) Law Review* (2011) 1 (3) 281, 306.

clvii *Airoboyi* (n 153).

clviii See *Abiola* (n 153).

clix *Oladehin v Continental Textiles Mills Limited* [1975] 11 SC 156.

clx *Tebite v Nigerian Marine and Trading Company Limited* [1971] UILR 432. See, also, *Moore v Nnando* [1967] FNLR 156 and *Karagulamu v Oyesile* [1973] UILR (ptiv) 516.

clxi *Sedleigh - Denfield v O'Callaghan* [1940] AC 880, 908. See the cases of *Abiola* (n 153) and *Tebite* (n 160) respectively. See, particularly, the dictum of Fabiyi, JCA in *Universe Trust Bank (Nigeria) Limited v Ozoemena* [2001] 7 NWLR (pt 713) 718, 733. However, in the old case of *St. Helen Smelting Company v Tipping* [1856] 11 ER 1483 the House of Lords held that the nature of locality is a relevant factor where there is an interference with enjoyment of land, but where there is material damage to property the nature of the locality becomes irrelevant and the defendant cannot escape liability. Although, the issue of locality was not raised, it is posited on the strength of the foregoing authority that *Magege v DOFE Limited* (Unreported) Suit No: HOR/ 90/ 2011, judgment delivered by TO Uloho (Judge) of the Delta State High Court Orerokpe in July 2016 and *Seismograph Services Limited v Onokpasa* [1972] 4 SC 123 are rather unfortunate given the damage wrecked on claimants.

clxii *St. Helen Smelting Company* (n 161).

clxiii *Ehighelua* (n 151) 7.

clxiv *AllarIrou v Shell BP* (Unreported) Suit No: W/89/71, Warri High Court Judgment delivered 26 November, 1973.

clxv *Mckinson Industries Limited v Walker* [1951] 3 DLR 577, 581.

clxvi Oputa J. (as he then was) gave attention to evidence of malice before holding the defendant liable in *Moore v Nnando* (n 160). Plaintiff had alleged defendant caused excessive noise in his palm wine bar near-by and played stereo unreasonably loud into the night. See, also, *Christie v Darey* [1969] 1 Ch. 316

clxvii *Tebite v Nigerian Marine and Trading Company Limited* (n 160). See, also, *Lambton v Mellish* (the organists) [1894] 3 Ch. 163.

clxviii *Dymond v Pearce* [1972] 1 QB 496. See, also, Z Makuch, 'Barriers to Achieving Remedies for Environmental Harm' in O Fagbohun and S Simpson (eds), *Environmental Law and Policy* (Law Centre Faculty of Law, Lagos State University [LASU] 1998) 86. See, also, AO Otokhina, 'Environmental Litigation' in AD Badaiki, *Landmarks in Legal Development*, Essays in Honour of Justice CAR Momoh, Honourable Chief Judge of Edo State (Nobility Press Limited 2003) 164.

clxix See the dictum of Karibi – Whyte JSC in *Abusomwan v Merchantile Bank of Nigeria Limited* [1987] 3 NWLR (pt 60) 116, 119 – 20.

clxx In *Allarcase* (n 164) injunction was refused because the defendant had statutory authority to conduct oil exploration activities. The case is made for all sand dredgers to be validly authorised by relevant government agencies.

clxxi *Kiddle v City Business Properties Limited* [1942] 1 KB 269.

clxxii *Ikpede v Shell BP* [1975] 9 - 11 SC 172.

clxxiii Lord Atkin in *Donoghue v Stevenson* [1932] AC 562, 527. See, also, *Blyth v Birmingham Water Works Corporation* [1990] 2 All ER 908.

clxxiv Lord Wright in *Lochgelly Iron and Coal Company v McMullian* [1934] AC 1, 25.

- clxxv LA Atsegbua, V Akpotaire, and F Dimowo, *Environmental Law in Nigeria* (AMBIK Press 2010) 44. See, also, Aigbe (n 152) 156.
- clxxvi See *Okonkwo v Guinness (Nigeria) Limited* [1980] 1 PLR 593. No presumption exists in favour of plaintiffs. Good cases are easily lost in negligence due to improper pleadings and lack of sufficient proof. See, also, *Atunbi v Shell BP*, (Unreported) Suit No: UCH/48/73 (judgment delivered on 12 November 1974).
- clxxvii Ehighehwa (n 151) 204 - 5. See, also, Blyth (n 173).
- clxxviii National Electric Power Authority (NEPA) v Akpata [1991] 2 NWLR (pt 175) 536 and *Grant v Australian Knitting Mills Limited* [1936] AC 85, 101 - 2.
- clxxix *Makwe v Nwukor* [2001] FWLR (pt 63) 1.
- clxxx See *Esiegbe v Agholor* [1990] 7 NWLR (pt 161) 237 and *Nigerian Bottling Company Limited v Ngonadi* [1985] 1 NWLR (pt 4) 739, 748.
- clxxxi See S Wolf and A White, *Principles of Environmental Law* (2nd edn, Cavendish Publishing Limited 1997) 90.
- clxxxii *Murphy v Brentwood District Council* [1990] 3 WLR 414, [1990] 2 ALL ER 908 (HL). See Ehighehwa (n 151) 204.
- clxxxiii *Miller v Jackson* [1977] 3 WLR 20, [1977] All ER 338.
- clxxxiv *Res ipsa loquitur* is a Latin maxim which means “the thing/ fact speaks for itself”. See the dictum of Adefarasin, CJ in *Akintola v Guffanti and Company Limited* [1977] 5 CCHCJ 691, 673.
- clxxxv Scott v London and St. Katherine’s Docks Company [1865] ER 665. See, also, *Igbokwe v University College Hospital Board of Management* [1961] WNLr 173. See, also, Karibi- Whyte, JSC in *Bello v Attorney General of Oyo State* (n 1) 93 - 4.
- clxxxvi Scott v London and St. Katherine’s Docks Company [1865] ER 665. See, also, *Igbokwe v University College Hospital Board of Management* [1961] WNLr 173. See, also, Karibi- Whyte, JSC in *Bello v Attorney General of Oyo State* (n 1) 93 - 4.
- clxxxvii *Anaro* (n 103).
- clxxxviii *Abusomwan* (n 169) 196, 208 - 9.
- clxxxix See JF Fekumo, ‘Civil Liability for Damages Caused by Oil Petroleum Pollution’ in JA Omotola (ed), *Environmental Laws Including Compensation* (Faculty of Law, University of Lagos 1990) 270, 275.
- cx Proof of causation in environmental torts as of necessity requires scientific evidence of experts in the particular field which services are seldom at the disposal of genuinely aggrieved plaintiffs. See T Osipitan, ‘Problems of Proof in Environmental Litigations’ in *Omotola* (n 198) 118.
- cxci *SPDC v Otoko* [1990] 6 NWLR (pt 159) 725. See, also, *Amachree* (n 186).
- ccii *Okonkwo* (n 9) 148.
- cciii *Elioochim (Nigeria) Limited v Mbadiwe* [1986] 1 SC 99, 134.
- cciv *Gregory v Piper* [1829] 9 B and C 591. See, also, *Randall v Tarrant* [1955] 1 WLR 255.
- ccv *Wolf* (n 181) 93.
- ccvi *Gregory* (n 203).
- ccvii *Jones v Llanrwst Urban District Council* [1911] 1 Ch 398; [1908] All ER 922.
- ccviii *Martin v Reynolds Metal Company* cited in *Fagbohun* (n 157) 22. See, also, Aigbe (n 152) 161.
- ccix *Friesten v Forest Protection Limited* [1978] 22 NBR (2d) 146. See *Okonkwo* (n 9). See, also, *PYA Quarries* (n 138).
- cc *Solomon v Mogaji* [1982] 11 SC 1 and *Olagbemi v Ajagunbade* [1990] 3 NWLR (pt 1) 105.
- cci See *Wolf* (n 181) 95.
- ccii See *Bonnington Casting v Ward Law* [1956] AC 613. See, also, *Thorpe v Brumfit* [1973] 8 Ch. app. 650
- cciii See Clerk and Lindsell on Torts (18th edn, Sweet & Maxwell 2001) 45 - 6 para 2.06. See, also, *Robinson v Post Office* [1974] 1 WLR 1176 and *Kay v Ayrshire and Arran Health Board* [1987] 2 ALL ER 94.
- cciv *Bourhill v Young* [1943] A.C 92 and *Page v Smith* [1994] 1 ALL ER 53.
- ccv *Magee (The Scholars’ Case)* (n 161)
- ccvi In India, where sand dredging has been conducted without compliance with the EIA requirement, the courts have declared such dredging activities illegal and granted injunctions. See *River Sand Mining in Indian 2015 - III - Judicial Interventions* <<https://sandrp.worldpress.com>> accessed 13 April 2022.
- ccvii See *Dredging Operations Terms and Conditions for Lagos State 2016* : Lagos Ministry of Waterfront Issues Guidelines for Dredging Activities <<https://www.ddhmaga.com>> accessed 13 April 2022.
- ccviii *Cambridge Water Company v Eastern Counties Leather Plc* [1994] 2 WLR 53, [1994] 1 ALL ER 53.
- ccix See *Amokaye* (n19) 955.
- ccx *Wolf* (n 181) 99.
- ccxi *Rylands v Fletcher* [1868] LR 3 HL, 330 - 40. See, also, *Edhemowe v Shell BP*, (Unreported) Suit No: UHC/12/70 (Ughelli High Court) delivered on 25 January 1971.
- ccxii *Wolf* (n 181) 101.



- ccxiii *Ehighelua* (n 151) 213.
- ccxiv PO Aderemi, *Modern Digest of Case Law* (Spectrum Books Limited 2000) 149. See Aigbe (n 141) 161 – 2.
- ccxv *Reads v Lyons and Company Limited* [1947] AC 156; [1946] 2 ALL ER 471. See the dictum of Lord Moulton in the Privy Council case of *Rickards v Lothian* [1913] AC 263, 280.
- ccxvi *Umudje v Shell BP* [1975] 9 - 11 SC 155, [1975] 5 UILR (pt 1) 115 and [1975] 5 E.C.S.L.R 564. See, also, *SPDC v Edamkue* [2009] 4 NLWR (pt 1160) 1.
- ccxvii *Anaro* (n 103)
- ccxviii *Otoko* (n200) 693. See, also, *Bartlett v Tottenham* [1932] 1 CH. 114 and *Rainham Chemical Works Limited v Belvedere Fish Guano Company Limited* [1921] 2 AC 465.
- ccxix See ss 1, 2, 3, 4, 5, 6, 7, 8, 12, and 14 of the Harmful Waste (Special Criminal Provisions, etc.) Act; and ss 20 and 21 of the NESREA Act 2007.
- ccxx See Spiller's Liability, s 21 (1) NESREA Act 2007.
- ccxxi See s 12 (1) (a) (b) and 12 (2) of the Harmful Waste (Special Criminal Provisions, etc.) Act 2004.
- ccxxii The offence or wrong can only crystallise if it is proved to have been carried out within any land or 'Territorial Waters', or 'Contiguous Zone' of Nigeria or its 'Inland waters'. The law is settled in Nigeria on what constitutes 'territorial waters', 'exclusive economic zone', 'land territory' or 'inland water ways' in the celebrated case of Attorney - General of Abia State and Thirty-Five Others (n 6) 542 - 905. See the dictum of Ogundare, JSC at 645 - 50. It is argued that the Act was a reaction to the notorious Koko toxic waste incident of 1986. See *Okonkwo* (n9) 138.
- ccxxiii See Cap P 10 LFN 2004. The Act requires the licensee to pay fair and adequate compensation for the disturbance of land rights of the owner or person in lawful occupation. This is in addition to further liabilities. Also, s 11 (5) (c) of the Oil Pipelines Act 2004 provides for the licensee to pay compensation for dangers suffered as of failure of his expertise or facilities. See, also, Regulation 23 of the Petroleum (Drilling and Production) Regulations which also provides for adequate compensation for disturbance of fishing rights arising from oil pollution. The practice is to treat compensation for 'disturbance' and compensation for 'value of land' simultaneously in arriving at the true compensation to be paid for land pollution in environmental litigations. See *Hughes v Doncaster Metropolitan Plc* [1991] 1 ALL ER 295 where the House of Lords laid down principles for assessment of compensation. See, also, EGASPIN, 2002, Part viii – Control and Combating of Oil and Hazardous Substances Spills, paragraph 8.2 and 11.
- ccxxiv *Umudje* (n 225)
- ccxxv Paragraph 36 of the First Schedule to the Petroleum Act 2004 which purports to exclude the common law right to injurious affection did not do so in clear and express terms. This omission has seen the court lean towards common law remedies and statutory compensatory regimes. See *NEPA v Amusa* [1976] 12 SC 99.
- ccxxvi See T Okonkwo, *The Law of Environmental Liability* (3rd edn. vol 2 Afrique Environmental and Development and Education [AEDE] 2014) 149. See, also, *Wolf* (n 181) 196 and *M. C Mehta v Union of India*, Writ Petition No 3727 of 1985 D/-12- 1988
- ccxxvii *Williams v Kamson* [1968] NSCC 313 and *Attorney- General of the Mid-Western State v Sam- Warri Essi* [1977] 4 SC 71.
- ccxxviii The 'rates' was issued on 10 April, 1987 by the Lagos Chamber of Commerce and Shell Petroleum Development Company's lands department procedure guide and administrative guidelines issued by the government (Technical Committee Report on Guidelines for Assessment of Oil-Related Pollution). See *Amokaye* (n 19) 982.
- ccxxix See Report on Guidelines for Assessment of Damages and Compensation Payable, Federal Executive Council Decision, Federal Republic of Nigeria, 18 October 1988.
- ccxxx See, generally, *SPDC v Farrar* [1995] 3 NWLR (pt 382) 148.
- ccxxxi See *Fekumo* (n 198) 273.
- ccxxxii *Ikpede* (n 172) 61.
- ccxxxiii Cap 145 of 1958.
- ccxxxiv *Otuku v Shell BP* (Unreported) Suit No: BHC/83 by Ichoko (Judge) of the High Court Bori in Rivers State, Nigeria with judgment delivered on 15 November 1985. See, also, *Mon v Shell BP* (1970-72) 1 RSLR 71, 73.
- ccxxxv See *Amokaye* (n 19) 977. See, also, *Farrah* (n 239) where parties sued and got better compensation and *Shell BP v Pere Cole* [1978] 3 SC 183, 192.
- ccxxxvi See MM Olisa, *Nigerian Petroleum Law and Practice* (Foundation Books Limited 1987) 152 - 63.
- ccxxxvii A riparian right attaches ownership of the bank of a watercourse. A riparian owner has a right to the security and preservation of a river bank. This includes the right to have the water flow in its regular natural channel, substantially undiminished in quantity and without an appreciable change in quality. See *Okonkwo* (n 9) 149.
- ccxxxviii See, generally, R Pant, *From Communities' Hands to MNCs, BOOTS: A Case Study From India on Right to Water (Rights and Humanity, 2003)* <<http://www.ircwash.org/sites/default/files/pant-2003->

communities.pdf> accessed 20 January 2022. In *Gerrard v Crowe* (1920) All ER 266 the English Court established the right of a person who owns land by a water course (a ‘riparian owner’) to take reasonable flood defence action.

<sup>ccxxxix</sup> See, generally, *SPDC v Ambah*[1999] 3 NWLR 1. In the case, sand dredging activities by shell led to the destruction of adjacent land of the plaintiff. It was not proved that shell was negligent neither was it proved that natural flooding resulted in the escape of water from shell’s facility. It is argued that had the court adopted a more liberal approach, the burden would have shifted to SPDC requiring it to tell what actually happened.

<sup>ccxli</sup> See the dictum of Holden, CJ in *Amos* (n 155) 488. See, also, *Okonkwo v Guinness (Nigeria) Limited* [1980] 1 PLR 593.

<sup>ccxlii</sup> See *Ambah*(n 248).

<sup>ccxliii</sup> *Cambridge Water Company* (n 217) 53.

<sup>ccxliv</sup> *Ibid.* See *Umudje*(n 225). Where claim was based on negligence and strict liability care must be taken not to relying on all the grounds and losing out on all. See *Amokaye* (n 19) 915. See *Cambridge Water Company* (n 217).

<sup>ccxlv</sup> *National Rivers Authority and Anglers Cooperative Association v Clarke* [1994] 232 Ends No 45.

<sup>ccxlv</sup> See s 4 (1) of the Salmon and Fresh Water Fisheries Act 1973. The statute requires proof of mensrea against the defendant which plaintiff was unable to establish.

<sup>ccxlvi</sup> The doctrine of Riparian Rights (and the converse concept of Prescriptive Rights) is expounded in *Okonkwo* (n 9) 376 - 7. See the case of *Braide v Adoki*, 10 NLR 15.

<sup>ccxlvii</sup> Other jurisdictions embrace and develop new causes of action to contain emerging cases. See, generally, T *Osipitan* in *Omotola* (n 199) 126.

<sup>ccxlviii</sup> *Ibid.*

<sup>ccxlix</sup> See, generally, AW Reitz, *Environmental Law* (2nd edn, North America International Publications 1972) Article Five: 30.

<sup>cccl</sup> *Ibid.*

<sup>cccli</sup> *Ikpede v Shell BP* (n 172) and *Mon v Shell BP* (n 243) 71.

<sup>ccclii</sup> In India, Riparian Right has been developed and held to be a natural right. See, *Tata Iron and Steel Company Limited v State of Bihar*[2004] 3 BLJR 1948; *The Secretary of State for India v Sannidhiraju Subbarayudu*, MANU/MH/0198/1931. See *Pant*(n 247). In *Young v Bankier Company Distillery*, [1893] A.C 691, the House of Lords held that even miners (with government authorisation) cannot trample upon plaintiff’s Riparian Rights. In Scotland in 2014, the Law Reform Review Group Identified Riparian Rights as an area which should be considered for possible reform. See E Brailsford, ‘UK: Resolving Rural Dispute Webinar: Riparian Rights’ <<https://www.mondaq.com.UK>>accessed 20 January 2022. In the US, the Supreme Court of the Michigan State upheld the doctrine of Riparian Rights in *Ruggles v Dandison*, 284 Mich 338. See,also, the decision of the Supreme Court of Minnesota, US in the case of *Petraborg v Zontelli*, 217 Minn 536, 547 (15 NW2D 174, 180).

<sup>cccliii</sup> *Ambah* (n 248)

<sup>cccliv</sup> See s. 12 (1) (a) and (b) of the Harmful Waste (Special Criminal Provisions, etc) Act 2010. See, also, *Spiller’s Liability* (n 212).

<sup>ccclv</sup> *Centre for Oil Pollution Watch* (n 79).

<sup>ccclvi</sup> The case of *SPDC v Anaro* (n103) which took plaintiffs some 32 years to get reprieve for the destruction of their livelihood / environment leaves much to be desired.