

NA

DIE BOUCH

COLLEGE OF LAW OGUME  
**NOVENA UNIVERSITY**  
OGUME, DELTA STATE

**LAW JOURNAL**

N.U.L.J. Vol 1, 2017

**EDITORIAL BOARD**

**ADVISORY BOARD Hon. Justice Fedode Francis  
Tabai (JSC) Rtd.**

Justice of the Supreme Court of Nigeria

**Hon. Justice D. D. Narebor (Rtd)** Prof. of Law  
Delta State University

**Prof. Muhammed Tawfiq Ladan** Ahmadu Bello University,  
Department of Law Zaria, Nigeria

**Prof. Nduka Uriah** Novena University (former Vice Chancellor Igbiniedion  
University, Tansian University) **Prof. S. Igun** Novena University (former V.  
C. DELSU,

Michael & Cecilia Ibru University)

**Prof. Albert A. Osakwe** Novena University Director Academic  
Planning (DAP) **Dr. Nathaniel Patrick Obokoh** Novena University  
Librarian

**EDITOR-IN-CHIEF Prof. Bibobra Bello  
Oroubebe**

**EDITORS H. C. Okolo Esq. (Managing Editor) Dr.  
Omagbemi Oyinkeneseri (Research and Line Editor) Youkere  
Keneseifa Ebikefe, (Secretary Editorial Board)  
Egberipou Wariebi Esq. (Features Editor) Azuka O. Chegwe  
(Reference and Information Editor)**

**THE TORTUOUS LIABILITIES ON ENVIRONMENTAL**

# **POLLUTION: A CASE OF WATER POLLUTION IN NIGERIA.**

BY

**IJAIYA BASHIR LEKE\* ABDULRAZAQ F.  
F. (MRS)\*\*  
AFOLABI. O. S\*\*\***

**Abstract** *This paper examines the tortious liabilities on environmental pollution in Nigeria with particular focus on water pollution. It also discusses the services, functions and values of water, the various meanings of pollution, the causes of water pollution and the effects of such pollution on both the flora and the fauna alike. It further described and examined the tortious liabilities under the common law viz - Negligence, Nuisance and the doctrine of Res Ipsa Loquitor as well as the rule in Ryland. V. Fletcher. More importantly, it also examined the various legal frameworks on water pollution. Given these legislations, it is suggested inter alia that, the lawmakers must not shy away from legislating on appropriate legislations to avert water pollution, there should be adequate monitoring of the human activities, sensitization of the populace on the need to preserve clean water, adequate compensation to the affected victims of water pollution as well as adequate enforcement of the articulated policy on preservation of clean water environment*

Lecturer in the Department of Private and Property Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria. [bashirijaiya48@gmail.com](mailto:bashirijaiya48@gmail.com) 07030440221 Lecturer in the Department of Private and Property Law, Faculty of Law, University of

Ilorin, Ilorin, Nigeria [bola.bashir@gmail.com](mailto:bola.bashir@gmail.com) 08033736852 Lecturer in the Department of Private and Property Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria [solomonafolabi101@gmail.com](mailto:solomonafolabi101@gmail.com) 08036161754

Normally, the role of man in nature is enormous. This is evidently the self-annihilation men have contended with in virtually all other beautiful creation surrounding them. All other creatures of God have sustained and maintained their intrinsic purity, order and beauty without any violent destruction to all other creations in nature. This is not so of human beings, who have virtually polluted the air we breathe, water that we drink and for many other purposes is soiled with filth, slurry and other toxic substances. Indeed, nature supports the existence of human life on earth. Without these organisms, an existence will be faced with a very serious question mark and life may become meaningless. In fact, water is most essential to humans and this explains why is common say that 'water has no enemy'.

**Water: Functions, Services and Values** Our material existence is dependent on the use of water. The materiality of water is immeasurable as it is safe to say that the existence of mankind depends on preservation of water from being polluted. Water, undoubtedly, serves as a source of food, nutrient and energy not only to human beings but also to animals alike. Indeed, water is a source of producing useful chemicals and drugs as well as many other products and services.

Many of the benefits of water accrue to agriculture itself. It is a fact that, almost all agricultural activities depend on water to thrive. The provision of nutrients for the development of improved crop varieties and livestock breeds is important element water provides to agricultural activities. Water also functions for the diversification of agricultural areas ensuring variety ecological services vital for food security, natural resources conservation, economic viability, climate amelioration, cultural reservation and community empowerment.

clothing and tourism. Second, existence value represents the pleasure people derive from simply knowing that a natural resources exist, even if representatives are never actually observes directly. This is a component of aesthetic value that, by definition, cannot be captured in tourism or other commercial measurements. Third, it is sometimes argue that if we are allowed water to be polluted, both the flora and the fauna and other creation will spell the disaster. Then, if we believe that this value is important, then we should act to present water from further pollution. Four, there is a moral argument originating ultimately from religious and philosophical convictions, that we have an ethical obligation to preserve water notwithstanding any direct benefits to humans

Barakat' commenting on the values of water observed that water ensures productive and environmental sustainability. In addition to contributing to environmental sustainability, water helps sustain many production functions both in low external input and high input-output agriculture

Karl observed that not only does water provides a habitat for quite numbers of animals but also provides some waste like leaves, stems and alike for them to feed on. Colonies of microscopic life feed on these particles are in turn eaten by estuaries species such as shrimp, some fish and small crustaceans that serve as forage for birds, predatory fish and eventually people

Andrew M & Martins L. W 'Patterns of Behaviour in Biodiversity Preservation' (1994) Working Paper No. 1538 The World Bank Policy Research Barakat H 'The Date Palmgrove Oasis: The North African Agro-System' In Halladay P & Gilmour D. A (eds) Conserving Biodiversity Outside of Protected Areas, the Role of Traditional Agro-System IUCN & AMA, Gland Karl, G. M'Environment, Poverty and Economic Growth' (Annual World Conference on Development Economics Washington D. C. 1997)

Andrew & Martins observed that water's functions and services may be divided to four broad categories. First, water may has commercial values in uses as supplement for food, medicine, clothing and tourism. Second, existence value represents the pleasure people derive from simply knowing that a natural resources exist, even if representatives are never actually observes directly. This is a

component of aesthetic value that, by definition, cannot be captured in tourism or other commercial measurements. Third, it is sometimes argued that if we are allowed water to be polluted, both the flora and the fauna and other creation will spell the disaster. Then, if we believe that this value is important, then we should act to prevent water from further pollution. Fourth, there is a moral argument originating ultimately from religious and philosophical convictions, that we have an ethical obligation to preserve water notwithstanding any direct benefits to humans

Barakat commenting on the values of water observed that water ensures productive and environmental sustainability. In addition to contributing to environmental sustainability, water helps sustain many production functions both in low external input and high input-output agriculture

Karl observed that not only does water provide a habitat for quite numbers of animals but also provides some waste like leaves, stems and alike for them to feed on. Colonies of microscopic life feed on these particles are in turn eaten by estuarine species such as shrimp, some fish and small crustaceans that serve as forage for birds, predatory fish and eventually people

EL

Andrew M & Martins L. W "Patterns of Behaviour in Biodiversity Preservation'

(1994) Working Paper No. 1538 The World Bank Policy Research Barakat H 'The Date Palmgrove Oasis: The North African Agro-System' In Halladay P & Gilmour D. A (eds) Conserving Biodiversity Outside of Protected Areas, the Role of Traditional Agro-System IUCN & AMA, Gland Karl, G. M'Environment, Poverty and Economic Growth' (Annual World Conference on Development Economics Washington D. C. 1997)

in fact, the functions, values and services of water to mankind and other creations are inexhaustible this is because the survival of human beings and most of other creations depends solely on pure available mater.

**1 Pollution: Definition, Causes and Effects** **2 Definition** The word pollution has been variously defined and used in different concepts. In one sense, pollution has been defined as:

*The introduction by man, directly or indirectly or substances or energy into the environment resulting in such deleterious effects as harm to living resources, hazard to human health, hindrance to marine activities including fishing, impairment of quality for use or sea water and reduction of amenities"* In another

sense, it has also been defined as:

*"Man-made or man aided alteration of chemical, physical, or biological qualityenvironment to the extent that is detrimental to that environment or beyond acceptable limits and "pollutant" shall be construed accordingly") .*

**b. Causes of Water Pollution** Undoubtedly, it is humans who should accept full responsibility for the increasing rate of water pollution than any other creations. Other creations as noted earlier have sustained and maintained the intrinsic purity, peace and beauty of all natural resources. Over the years, the causes of water pollution is generally attributed to the activities of industrial companies, who in their bid to consolidate in the production of their products, have in most cases, failed to consider the environment effects their activities would have on the communities.

5

Stockholm Declaration United Nations, December A/CONF 48/8 78-79 **Section 8 of the Federal Environmental Protection Act, Cap 131, Laws of the Federation of Nigeria, 1990**



occur as a result of the proceeds of production of finished products. This may eventually flow into the shore of the river, hence water is polluted.

There are also contributions from sources like on and off-shore use explosives at the exploration stage; the radioactive materials at the development stage, produce water and other effluents, deck drainage sanitary and domestic waters from off-shore facilities.

There is also a human factor resulting from the abject poverty prevalent in the country. Some people especially fishermen in the quest of improving their lots usually pour poisonous substances into the water to increase the numbers of fishes for their consumptions and sales. This it is observed does not only pollute the water but may also lead to rapid extinction of marine living resources. The discharge of oil into the high sea by vessels as well as collision on the sea between oil carrying vessels no doubt will cause pollution whereby the water is polluted and the marine living resources greatly disturbed.

Ogbuigwe evidently observed that oil spills or pollution from oil has its detrimental effect on air, land and water. Thus oil pollution affects not only the environment, but also the individual, within the environment.

Another contributor to the water pollution is human population growth. The human family in the mid-19th century had a population one billion. One and half centuries and five billion people later, human are beginning to wonder whether they are in danger of exceeding the limit of their resources. Each year, as the human population continue to grow, water is becoming polluted and affected at an alarming rate resulting from the need to urbanize and create shelter for human being. Hence, marine living resources are displaced and their habits destroyed as well.

Ogbuigwe A. E 'Compensation and Liability for Oil Pollution in Nigeria' (1980)  
Vol. 3 22, Journal of Private and Property Law

Novena University Law Journal Vol. 1, 2017

Threat to global warming has also been responsible to pollution. It is possible that the rise of temperature beyond a normal affects some marine living resources and thereby affects their Fals. The death of the coral reefs (anchors of much of marine Es) has been caused by warm water arising from hot nature. The rise in sea levels could eliminate a large portion of world's coastal wetlands, the

home of abundant biodiversity.

In Nigeria today, water pollution has evidently claimed lives. This is evidently clear of the epidemic of contagious diseases resulting from poor drinking water that has been polluted in one way or the other.

**Effects of Water Pollution** The consequences of water pollution in the recent time sober the mind. This is a scientific, ethical, political and economic issue that is profoundly significant to the future of humanity. Water provides the material basis for many medicines, genetic strains of food crops, and industrial products.

The reason why human should mourn the increasing rate of water pollution is the loss of scientific knowledge that can subsequently be put to the good of the world. The other reasons are a powerful. Moral concern and aesthetic pleasure are too more. We ought to be worried if we are caring humans, one of many millions of different genetic constellations.

Since the service and functions of water are essential for our survival, it would clearly be prudent to monitor the same in much the

same way that we monitor our manufactured capital stocks, such as roads, buildings and machinery. This has not been standard practice, however, and even today such monitoring is not conducted in any systematic way. Instead reliance is often placed in an economy's gross output (crops, fisheries, forest products) and the prices of these outputs to assess whether the resource base is being depleted. This is a mistake. Agricultural output, for example, can rise even if soils are being mined. The environmental resource base is dynamic and complex, consisting of biological communities that interact with the physical and chemical environment in time and space. Moreover, these interactions are often nonlinear, thus the resource base can

University Law Journal Vol. 1, 2017

display threshold effects meaning that the flow of services can be interrupted.

It is to be further noted that water pollution not only affects the quantity and quality of the services produced by ecosystems, it also challenges their resilience. An ecosystem's resilience is its capacity to absorb disturbances without undergoing fundamental changes. If a system loses its resilience, even a small perturbation can change it into a wholly new state.

According to Boserup, as population grows, land, water and other natural resources



become scarcer relative to labor, and access market improves. As a result agricultural intensification occurs. Relative prices change and food price increase as demand for food rises. At first (implicit) wages declines to reflect the increased supply of labour. The process generates the need for new institutions, such as private property rights, which somehow emerge. The new institutions facilitate the adoption of more intensive techniques and greater investment, which increase yields. Rather than deteriorating, the natural resource base improves as it becomes more valuable. Moreover, economics specialization and of scale associated with the provision of infrastructure and public services (education, health care, portable drinking water and the like) emerge, leading to a greater supply of these services. These improvements promote increases in labour productivity that eventually reverses the initial wage decline induced by population growth.

The effect of water pollution can also be seen from a list of the harmful effects of the atmospheric pollutant on plants and animal and on the inorganic substance as well as all human beings. For instance the emitted gases into the atmosphere during industrial activities have found injuries to human health. Also, the concentration of various chemicals in water bodies poses problems to man.

Boserup E *Population and Technological Change: A Challenge* (University of Chicago Press, Chicago 1981) 286

#### *Study of Long-term*

Novena University Law Journal Vol. 1, 2017

-Ketal observed that there is a serious environmental stress due to the application of agro-chemicals on a number of human activities. For example, the use of pesticide and gamalin 20 has greatly led to the ruination of aquatic lives such as fish and other marine living resources

Not only this, dirty water due to pollution constitutes as death traps to man. For example, there have been several occasions when outbreaks of epidemic were traced to contaminated water. Unplanned and

regulated development of both surface and ground water resources erald also have drastic input on the physical environment hydrological exte and biodiversity. This development may ultimately lead to the

cadence of flooding and health hazards. Pollution generally deteriorates the quality of environment. Such activities include agricultural practice, mining, laying of pipelines among others. This development usually anses from the unplanned actions of events.

Ijaiya'also observed that women have always relied on the vironment for the provision of most of the environmental resources food, water, air and soil) for their socio-economic activities. On the contrary, an overexploited environment would always spell doom for women thereby undermining their socio economic activities that in the song run could lead to diseases, reduction in productivity, loss of amenity and poverty. An explanation of this connection indicates that an environment that is well managed and protected would continue to provide the necessary natural resources for women and economic development in general, but when the environment is degraded the welfare of women is reduced by ill health and premature mortally, and an impaired health may lower the

Van-Ketal, M quoted in Kolo R. J &Lamai S. L. "Degradation of Aquatic Environment by Agro Chemicals in the Middle Belt Nigeria' Proceedings of the Annual Conference of the Environment Protection Society of Nigeria 1997

Ijaiya G. T 'Environment, Poverty and Women: A Perspective on Socio Economic Forces 'In Jimoh, H &Ifabiyi, I P (eds) Contemporary Issues in Environmental Studies, Haytee Publishing Co, Ilorin 1997) 228

productivity of women thus reducing the productivity of many resources used directly or indirectly by women. Given this situation, water is so important to human beings, plant and animals in that it provides all the nutrients needed and required for their survival and existence.

**3. The Tortious Liabilities under the Common Law** The general common law rule for the liability of the polluters arising out of water pollution can be seen in the tortious principles of Negligence, Nuisance, Res Ipsa Loquitor and the principle in the case of Rylands. V. Fletcher. Therefore, it is safe to conclude that, the general common law rule is applicable and available to redress the incessant water pollution both under, the municipal and international laws. a. Negligence According to Winfield & Jolowicz Negligence as a tort is the breach of a legal duty to take care which results in damage undesired by the defendants to the plaintiff. Thus its ingredients are

a legal duty in the part of 'A' in this case the polluter toward 'B' in this case the victim to exercise care in such

- conduct of 'A' as falls within the scope of the duty; ii . The breach of the duty;
- iii . Consequential damage to 'B'

It is to be further noted that the tort of negligence was given universal interpretation in the *locus classicus* case of *Donoghue V. Stevenson*" where Lord Wright stated thus:

Winfield & Jolowicz on Tort (14th ed, Sweet & Maxwell, London 1984) 78 (1932) A. C. P 562 @ 580

- 86

Novena University Law Journal Vol. 1, 2017

*In strict legal analysis negligence means more than needless or careless conduct, whether in omission or commission, it properly connotes the complex concept of duty, breach and*

*image thereby suffered by the person to whom the duty was being*

In the Nigerian case of *Nigeria Bottling Company Ltd. V. Ngonadi*?, The Supreme Court adopted and applied the above stated ratio in defining liability in the "neighborhood" principle. To successfully de un an action in negligence, the victim or plaintiff, as the case may

St establish the ingredients enumerated above. It is not every **en** act that a man could be held responsible neither in law nor even

**er** careless, act that causes damage. He will only be liable in guce if he is under a legal duty to take care. **et** Atkin in Donogue's case above stated that it has to be **aihed** that the defendant has been careless or negligence in the

**Eo**: his specific legal duty to take care. Evidently, where an **in** tought for negligence, a finding by the court that the defendant

**beg** igence would dispose of the action completely.

**Sivil** action as a result of water pollution to succeed, the

would be required to show that, the discharge or escape of its and or industrial waste was the failure to keep a good sewage

shat the resultant pollution damages was forceable. Thus in **Others** .V. Shell B.P.

Development Company Nig. Ltd **tation** was brought against the defendant by the plaintiff in

**u** med for damages as a result of the escape of crude oil gas **Hibikini's** pipelines destroying fishes in their lakes and farmland.

**at** the plaintiff could not establish that the negligence of the Terimate cause of the damage.

Cogheli High Court delivered on 12th November, 1974

= 87

2017

From this decision therefore, it appears that the onus of proof is always on the plaintiff to establish the existence of damages through pollution.

**b. Nuisance** An actionable nuisance is incapable of exact definition, and it may overlap with some other headings of liability in tort such as negligence or the rule Rylands. V. Fletcher (supra). However, nuisance has been defined **as** an act or omission that is an inference with, disturbance of or annoyance to a person in the exercise or enjoyment of:

a. a right of belonging to him as a member of the public, when it is a public nuisance, or b. his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land, when it is a private nuisance.<sup>14</sup>

The essence of nuisance is a condition or activity, which unduly interferes with the use or enjoyment of land. In modern parlance nuisance is that breach of law of tort most closely concerned with "protection of the environment"<sup>15</sup>. Thus nuisance actions have concerned pollution of water or other noxious substances.

Public nuisance as pointed out is a criminal offence, which is under the realm of public law and state prosecution. In public nuisance while the conduct of the defendant may be unlawful, such is not the case in private nuisance. The conduct of the polluter becomes nuisance when the consequences of his acts are not confined to his own land, but extend to the land of the victim or community and causing physical damage accordingly.

<sup>14</sup> Winfield & Jolowicz (See note 10 above) <sup>15</sup> Clark & Lindsell on Tort (16th ed, Sweet & Maxwell London 1982) 1354

For a victim or plaintiff to successfully maintain an action under nuisance for oil spill affecting the marine living resources and their habitats, the victim who is not suing in a representative capacity, must be able to prove that he has suffered over and above every other person in the community. In *Amos. V. Shell B.P. Limited* the plaintiff could not succeed in an action for nuisance since he could not show how he has suffered more damage above every other member of the public.

**c. Res Ipsa Loquitur** As noted earlier, for a plaintiff in this kind of claim to discharge the burden of proof placed upon him, it is usually necessary for the

plaintiff to prove specific acts or omissions of the polluter. But where however, the circumstances are such that the court will be prepared to draw an inference against the polluter without hearing detailed evidence of what he did or did not do, the plaintiff may thus successfully plead the doctrine of res ipsa loquitor.

Res ipsa loquitor literally means, "The thing speaks for itself. It would come to play where no proof of negligence is required beyond the accident itself, which is such as necessary to involve negligence. It is no more than a rule of evidence, which merely shifts the onus on the defendant.

This doctrine was developed in the case of Scott.V. London & St.

Katherine Dock Company, where Elle C.J. stated thus:

*Where the thing is show to be under the management of the defendant or his servant and the accident is such as in the ordinary course of things do not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from want of care.*

(1974) 4 E. C. S. L. R 486 (1865) Ex. Ch 665

189

ovena University Law Journal Vol. 1, 2017

There are two main requirements for the maxim to succeed viz:

- a. That the thing causing the damage would be under the control of the defendant or his servants; and b. That the accident must be such as would not in the ordinary course of things have happened without negligence. The proof of these requirements that the happening c. of the accident must be evidence of negligence on the part of the defendant and that the injury or damage should not have happened unless there was want of care. In Aliu Bello & Ors.V.A.G. Oyo State 8, the Supreme Court while examining the provisions of Torts Law of Oyo



State applied this principle laid down in the Scott's case (Supra).

As rightly observed by Winfield & Jolowicz "the intent of the maxim as it were was to shift the onus of proof on the defendant. The inference of negligence raised by the mere fact of the accident may sometimes be irresistible." in the case of Shell Petroleum Development Co. (Nig) Ltd. V.Amaro<sup>20</sup>. Akintan J.C.A. stated that:

*The effect of the application of the maxim is that the onus of proof of negligence, normally placed on the plaintiff, shifts. The defendant is therefore required to establish that there was in fact no negligence on this part.*

It would appear in practice however that, the defendant could rightly displace this burden in pollution cases where it could call expert evidence to show that the act causing damage to the plaintiff was not from his negligence. So that, if the defendant could show on the balance of probabilities that the accident was not due to his fault, then the burden again would have shifted to the plaintiff.

(1986) 2 N.S.C. 1257

Winfield & Jolowicz (See note 10 above) (2000) 10 N.W.L.R. (Pt.675) 279

**& The Rule in Rylands. V.Fletcher** The rule in Rylands. V.Fletcher, is one of the few doctrines in the law of torts which has been acclaimed as a rule of strict liability, and one of the major instances in which a man acts at his peril; and is responsible for accidental harm independently of the existence of either wrongly intent or negligence.

The rule formulated by Blackburn J. in the above named case provides thus:

*The person who for his own purpose brings on his land and collects there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prima facie answerable for all the damages which is the natural consequence of*

*this escape.* However, the House of Lords in the same case restricted the scope of the rule in the following terms:

*We think that the rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes,*

*must keep it at his peril, and if he does not do so is prima facie answerable for all the damage*

*which is the natural consequence of its escape* Before the rule can apply, the plaintiff must prove that there was an escape and that there was a non-natural user of the land. In *Reads. V. Lyons Company Ltd* Viscount Simon defined "escape" as escape from a place where the defendant has occupation or control over land to a place which is outside occupation or control" and in *Richards. V. Lothian*,<sup>22</sup> Lord Moulton defined a natural user to "be some special use bringing with it increased danger to others and must not merely be the ordinary use of the land or such a use as is proper for the general benefits of the community. There is no doubt that from the qualification and application of the rule, the victim of water pollution would appear to have an added burden of proof before the court can find against the defendant.

21

(1947) A. C. 156 @ 168 (1913) A. C. 263 @ 280

22

= 91

Novena University Law Journal Vol. 1, 2017

In

Allan

*Irou.V.Shell*

B.P. 23 the trial judge refused

to grant injunction in favour of the plaintiff whose land, fishpond and creek had been polluted by the defendant's oil mining operations. His reason was that nothing should be done to disturb the operations of the trade (that is petroleum), which is the main source of the nation's economy.

However, the Court has shifted from this position following greater consciousness of environmental degradation as a result of oil pollution and the likes. In the case of *Ojoko & Others .V. Shell B.P. Development Company*<sup>24</sup>, the Court had to make a pronouncement on non-natural user oil of land. What happened was that oil from the defendants manifold over flown causing damage to the plaintiff fishing nets vegetation as well as their source of drinking water. The Court held that since the manifold was placed on land, it was therefore a non-natural user of land.

Also in *Umujie & Anor. V. Shell B.P. Petroleum Development Company Ltd.*<sup>25</sup> the Supreme Court had earlier considered the principle in the *Rylands. V. Fletcher* when the plaintiff/Respondent claimed damages from the Defendant/Appellant for the "escape of oil waste which was alleged to have damaged their ponds and lakes. The Supreme Court held the Appellant liable under the rule.

25

According to Idigbe J.S.C (as he then was)

*.. Liability on the part of an owner or the person in control of an oil waste pit, such as the one located at location E in the case in hand, exists under the Rule in Ryland. V. Fletcher although the "escape had not occurred as a result of negligence on his part... .*

23

Suit No W/89/91 (unreported) delivered on the 26th November, 1973 (unreported) B. H.C/2/83 (1975) 9-11 S.C 155

92

Novena University Law Journal Vol. 1, 2017

It must be noted that, the rule is not without exceptions. The following exceptions were well considered by the Supreme Court in the above named case, viz

a. An act of God; the escape was caused by the acts of a

stranger; b. The act was done as a result of the implied or express consent of the plaintiff; and the provision of a statutory exception to

the rule, which applies, directly to him. Be it noted that, a fundamental issue worthy of note is the fact that a plaintiff or victim of pollution will successfully maintain an action

against the polluter where in his claim he pleads and relies on the various tortious principles so far explained. In other words, if the plea of negligence does not succeed, he may succeed in the pleas of *Re ipsa loquitor* and or the rule in *Rylands. V. Fletcher*

#### 4. Legislative Framework

It is very important at this stage to examine the legislative frameworks, for both civil and tortious liabilities under the municipal and international laws.

##### a. Municipal Enactments

In Nigeria, there is no comprehensive statutory enactment for the furnishing of remedies for victims of oil pollution and the likes, i needs to be mentioned here, that the Criminal Code provides for criminal liability against the polluters of water. Section 245 of the Code privates thus:

*Any person who corrupts or foul the water of any spring, stream, well tank, reservoir so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor, and is liable to imprisonment for six months*

Not only that, there are much other legislation that holds polluters criminally liable all in the guise to minimize pollution. In the words of Ijalaye (now emeritus professor of law):

*These laws, both criminal and civil, were however, not designed as environmental laws to be found in a single statute book but were rather scattered in the various statute books.*

Ijalaye D. A 'Environmental Law in Nigeria. Proceedings on Environmental Awareness- (Seminar for National Policy Makers, Federal Ministry of Housing and Environment 1982) 59

=

93

Therefore, legislations that quickly come to mind are The Petroleum Act 1969 and the Petroleum Drilling and Production Regulations, 1969 which legislations contain provisions to the prevention of pollution of water and the likes arising from oil exploration activities. By the provision of the Act a holder of a pipeline license is therefore obliged to pay compensation to any person who suffers loss or damage caused by the leakage or breakage of an oil pipeline under his control.

However, where the amount of the compensation cannot be agreed upon between the victim and holder of the license, section 18 and 19 of the Act empowers the court to award such compensation as it considers just, having regard to:

- a. the damage done to any building, crops or profitable trees.
- b. The disturbance

caused by the holder in the exercise of such right c. Any damage suffered by any person by reason of any neglect on the part of the holder of such license; and loss (if any) in value of land or interest in land by reason of the exercise of the right aforesaid. Specifically, Section 97 of the Act provides that compensation shall be paid for damages done as a result of prospecting mineral operations.

Also, the Oil Pipelines Act of 1956 also provides  
*The holder of a license shall pay compensation to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage from the pipeline or ancillary installation, for any such damage not otherwise made good.*

The Oil in Navigable Waters Decree No. 34 of 1968 also prohibits particular polluting activities and provides penalties including criminal sanctions. There is also the Federal Government Environmental Protection Agency that contains comprehensive provision on the discharge of hazardous substances into the air, water and on land.

Section 21 of the Decree specifically related to oil pollution by providing additional liability and penalty in which the oil spillers had be responsible for the cost of removal of such pollutants.

### **International Enactments**

The problem of oil pollution was not seriously discussed at the eneration level until the mid 1950's when an International Conference was held to discuss prevention of pollution of the sea by

Treaties and Conventions principally regulate liability for oil pollution under the international law. These Conventions provided niform international rules and procedures for determining questions of liability and compensation.

## i. International Convention on Civil Liability for Oil

Pollution 1969 The International Convention on Civil Liability for Oil Pollution 1969 concluded at Brussels imposed strict liability where oil is ascharged into coastal waters causing damage to third parties.

Article III (1) of the Convention provides thus:

*Except as provide in paragraph 2 and 3 of this Article, the owner of a ship at the time of an incident consists of a series of an occurrences, shall be liable for any pollution damage caused by oil which has escaped or being discharged from any ship as a result of the incident.*

The purposes of the Convention amongst others include making the ship owners strictly liable for the escape or discharge of oil, unless he could bring himself within any of the following exceptions:

- a. An act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional inevitable and irresistible character; or b. An act or omission done with intent to cause damage by a third party; and c. The negligence or other wrongful act of any government or other authority responsible for the maintenance of . . . or other navigational aids in the exercise of that function.