

The Application of Strict Liability Rule in Rylands V Fletcher to Oil Spills in Nigeria

Kathleen Ebele Okafor, FC Arb^{1*}

¹Professor, Baze University, Abuja, Nigeria

DOI: [10.36348/sjbms.2022.v07i03.002](https://doi.org/10.36348/sjbms.2022.v07i03.002)

| Received: 22.02.2022 | Accepted: 26.03.2022 | Published: 30.03.2022

*Corresponding author: Kathleen Ebele Okafor

Professor, Baze University, Abuja, Nigeria

Abstract

The Research Paper ‘Application of the Strict Liability Rule in Rylands v Fletcher to Oil Spills in Nigeria’, is a robust and timely evaluation of the legal concept of Strict Liability as it applies to the recurrent problem of oil spillage in Nigeria. For several decades now, crude oil production sites have regularly spilled oil and other petroleum-related chemicals, into the riverine communities of the Niger-Delta region of Nigeria. This has sometimes devastated the fishing and farming livelihoods of the poor villages within the vicinity of such spillages, and agricultural productivity is greatly reduced. This is in addition to air pollution, wildlife decline and overall environmental degradation. This paper looks at efforts to hold accountable those responsible for such degradation using the concept of Strict Liability. In order to obtain justice and compensation for the riverine communities, it must be proven that the offending oil companies were guilty of nuisance and negligence, as described by the Rule in Rylands v Fletcher. The companies are expected to know that their activities are reasonably likely to cause far-reaching destruction to the environment. Concluding, the paper makes recommendations to further tackle the problem of oil spillage in Nigeria.

Keywords: Strict Liability, Crude Oil, Environmental Degradation, Compensation, Negligence.

Copyright © 2022 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

Nigeria is the sixth-largest exporter of oil in the world with petroleum products accounting for about ninety percent of the foreign exchange earnings. Since the 70’s, oil has contributed immensely to employment opportunities thereby increasing the nation’s gross domestic product, foreign exchange reserves and supply of energy to industries, etc. Employment opportunities have been generated creating industries, road construction projects, drilling sites, transportation facilities, banking facilities, education, health, recreational amenities, etc.

However, the operations of oil companies have been causing degradation of the environment, gas flaring, oil spills which have impacted negatively, in many ways, on communities and their environment.

The communities have been responding by struggles for environmental justice through protests,

violence, kidnapping, social activism of the youths and the community leaders. etc.

Oil spills, particularly, quickly reverse the main gains of the petroleum economy by causing job losses in tourism, hospitality enterprise, commercial and recreational fishing as well as agriculture and many micro-economic activities like trading, canteens of the communities.

Comparatively, European nations have only experienced 10 incidents of oil spills in 40 years, while Nigeria has experienced 9,343 incidences in 10years. The quantity of oil spilled in Nigerian domain in five decades is about 9-13 million barrels as against the big Exxon Valdez oil spills of 1989 of (260,000 barrels). This makes Nigeria one of the worst hit oil spill zones in the world. During the 2010 Gulf of Mexico oil spill and Exxon Valdez oil spill of 1989, thousands of seabirds, fishes, fishing industries and waterways were

wiped out with deleterious consequences on the communities and the ecosystem.

Particularly, Nigeria faces enormous challenges because of lack of effective management measures, poor response strategies, delays in clean-up of environmental breaches, inadequate policy enforcement neglect of the communities, non-payment of compensations and corruption. Apart from deforestation and acute environmental pollution, there have also been negative impacts on the culture, traditions of morality and chastity resulting in poor social amenities, migration, cultism, theft and social tension.

The humongous impact of oil spill has reoccurred in the recent (2020) Nembe oil spill disaster which has been described as one of the worst disasters in the history of oil and gas exploration and exploitation in the country. The impact of the incident which led to nationwide outrage affected dozens of nearby fishing settlements along the Nembe coastline and the Santa Barbara River which meanders through the Niger Delta before emptying into the Atlantic Ocean.

According to reports from experts, the spill was of a special type of hazard - a gas blowout, which involved 80 percent gas and 20 percent oil from equipment failure or third-party interference.

The large crude oil spillage which was from a wellhead owned by the Shell Petroleum Development Company (SPDC) triggered apprehension among the nearby fishing settlements and camps in Nembe Local Government Area of Bayelsa State.

The spillage spread to the waters and creeks of the communities, further ruining the aquatic livestock in the environment, which the people solely depend on as their main source of income and their livelihood.

Strict Liability for Nuisance and Negligence

Legally, the case of *Rylands vs Fletcher* (1868) LR 3 HL 330 [1] now over one and half centuries old, is a blueprint to the current scenario of breaches by oil companies. In that case, the defendant employed some contractors to construct a reservoir on his land. Due to the negligence of the contractors, water eased from the reservoir to the plaintiff's coal mine located below the land, thus causing extensive damage to it. Blackburn J and Lord Cairns later formulated the rule on strict liability, as follows:

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

¹Rylands vs Fletcher (1868) LR 3 HL 330

Oil spills specifically fall into the legal pre requisites for strict liability in that

1. The oil companies bring and accumulate oil pipelines and the oil upon the environment,
2. The use of the pipelines and oil are non-natural uses of the land,
3. The oil escapes to the environment,
4. Damage is caused to the communities and habitat,
5. The oil companies know that the oil would likely do mischief if it escapes or is spilled. In a case of strict liability, ignorance of the law is no excuse.

Furthermore, cases like *Giles v Walker* (1890) 24 QBD 656 [2] and *Read vs Lyons* [1946] UKHL 2 [3], confirm liability based on escape from a place in which the defendant has control or occupation of the land as is the case with THE oil companies to a place over which the oil companies have no control or occupation.

Possible Defences to strict liability

Acceptable possible defences to liability which may be considered in the following circumstances are not sustainable. These are:-

1. If the host country/communities can be said to consent to the degradation, not just the exploration/exploitation. That is, does Nigeria accept that exploitation must involve environmental degradation and at the magnitude being experienced?
2. If the spills arose on by Act of God or Act of a stranger?

If there are element of community sabotage

In the case of *Perry vs. Kendricks Transport Ltd* (1955) EWCA [4], the damage that resulted from the acts of little children who threw a lighted match into the petrol tank of a vehicle, was a ground for defence for the defendants. However, in *Richard v Lothian*, the defendant failed in his claim when a third party turned on the tap and deliberately blocked the water-pipe of a lavatory basin in the defendant's premises, thereby flooding the plaintiff's premises. This case is clearly the trend for strict liability in environmental breaches.

In Nigeria, numerous court decisions uphold strict liability. For example, in the case of *Umudje vs. Shell BP Petroleum Development Co of Nigeria Ltd* (1975)-SC [5]. SPDC blocked a stream from flowing, during the course of oil exploration, thus interfering with the fishing rights of the plaintiff. Also, the waste oil accumulated by (SPDC) escaped to the plaintiff's land, causing damage. The defendant was held liable for the oil spill since the waste oil, a non-natural use of the

²Giles v Walker (1890) 24 QBD 656

³Read vs Lyons [1946] UKHL 2

⁴Perry vs. Kendricks Transport Ltd [1955] EWCA

⁵Umudje vs. Shell BP Petroleum Development Co of Nigeria Ltd (1975)-SC

land was accumulated and escaped to the plaintiff's land, causing damages.

Okpabi v Shell and Four Nigerian Farmers v Shell (2021) [6] is also another Nigeria case on strict liability- The *Okpabi* case consists of two related sets of proceedings, one filed by some 40,000 inhabitants of the Ogale community in Rivers State, Nigeria, and another filed by 2,335 residents of the Bille community in Rivers State. The RDS and its Nigerian subsidiary SPDC were held liable for environmental damage caused by oil spills from pipelines and infrastructure operated by SPDC, which they argued were the result of negligent pipeline maintenance and slow oil spill response by the operating company. The claimants further argued that RDS owed them a duty of care at common law, as it exercises significant control and direction over its subsidiary, amongst other things by promulgating, monitoring and enforcing group-wide health, safety and environmental policies and standards.

A principal issue in the *Okpabi* proceedings thus far, has been the defendants' jurisdictional challenge against the claimants' case. The claimants had applied for permission to serve the claim against SPDC, otherwise outside the English courts' jurisdiction, on the basis that it was a 'necessary and proper party' to the claim against anchor defendant RDS. The defendants, however, argued that there was no 'real issue to be tried' against RDS, as the duty of care claim had no prospect of success. Surprisingly, both the High Court and the Court of Appeal agreed with the defendants, holding that based on the publicly available evidence, the claimants did not have an arguable case against RDS, and thus set aside the service of claim against SPDC. The claimants were given leave to appeal to the Supreme Court.

The Supreme Court has now overturned the decision of the Court of Appeal. In a unanimous judgement, the Court reiterated its decision in *Vedanta* is case to the effect that parent companies' duty of care is not exceptional and should be assessed under ordinary principles of tort law. Also, the Supreme Court ruled that the Court of Appeal should have restricted itself to ascertaining whether the claimants' case against RDS was demonstrably untrue. According to the UKSC, the claimants had sufficiently demonstrated that there was a 'real issue to be tried', and the case against RDS was allowed to proceed.

Another case of *Four Nigerian Farmers and Stichting Milieudéfensie v Shell* (2021) [7] in the Dutch Court of Appeals is both factually and legally closely related to the *Okpabi* case. It encompasses three claims made by Nigerian farmers, supported by the non-

governmental organization (NGO) Milieudéfensie, regarding three separate oil spills from Shell-operated pipelines and wellheads in the Oruma, Goi and Ikot Ada Udo villages, respectively. The claimants sued both RDS and SPDC as co-defendants, alleging that the spills were caused by negligent maintenance by the defendants, resulting in extensive damage to the claimants' farmlands and fishing grounds. The defendants denied the allegations, arguing that the spills were caused by sabotage and that, in any event, they had adequately responded to the spills by shutting off the pipelines, closing off the leaks and cleaning the polluted soil. Initially, the District Court had only upheld the claim of farmer Friday Alfred Akpan relating to the Ikot Ada Udo spill, holding that the spills were indeed likely caused by sabotage, but that in this case the defendants had not taken sufficient measures to protect the infrastructure against such sabotage.

The Court of Appeal reversed the judgement of the District Court, decided the *Oruma* and *Goi* cases on the merits, and delivered an interlocutory decision in the *Ikot Ada Udo* case. It held that in the former two cases, SPDC was subject to strict liability under applicable Nigerian statutory law for damage resulting from the oil spills. The only possible defence was to prove 'beyond a reasonable doubt' (criminal standard of proof) that the spills were caused by criminal acts like sabotage, which the court ruled the defendants had not been able to do. Furthermore, the court found SPDC's responses to the spills negligent under common law standards, ruling that the installation of a so-called 'Lead Detection System' (LDS) would have enabled the defendants to shut off the pipelines and stop the spills earlier. Lastly, the court found that following its active intervention with its subsidiary after 2011, RDS had a duty of care towards the claimants, to ensure the installation of an LDS in the Oruma pipeline. It rejected all further claims, including the negligence claim against RDS regarding the cause of the spill, and the claims regarding inadequate clean-up. Damages were reserved for later hearings.

CONCLUSIONS

In the event that oil companies fail to comply with requirements to protect fully the environment, the Directors must also be held responsible for applicable civil and criminal liability.

1. The National Oil Spill and Detection Response Agency (NOSDRA) needs to ensure full proof of regulatory standards compliance.
2. Aggravated damages, reparation as well as disaster insurance must be ensured to mitigate psycho-social consequences on host communities.
3. Government and oil companies must work out the cleaning activities of Ogoni and Nembe communities etc. with integrated control of erosion and flood systems which have been exacerbated by environmental degradations. Intelligent warning signs of oil spills must be engendered, effectively.

⁶*Okpabi v Shell and Four Nigerian Farmers v Shell* [2021]

⁷*Stichting Milieudéfensie v Shell* (2021)

4. The economic environments of the circular host communities need to be revitalized with adequate waste management systems, pollution control mechanisms and minor and medium scale enterprises to sustain long term development in the areas. An integrated conservation of the ocean, deforestation, will be necessary to achieve fair ecological balance, with greater biodiversity for humanity.
5. Provision of proper wild life management with agroforestry and syntropic farming solutions need to be introduced into the local communities for environmental justice.
6. Oil spills, alone, are not the subjects for application of strict liability. All those who, for economic purposes or for sheer pleasure, exploit the environment and cause nuisance to humanity are

subject to strict liability. These include those who assemble security dogs, snakes, etc. for their personal safety. If such provisions escape and cause damage.

REFERENCES

1. Rylands vs Fletcher (1868) LR 3 HL 330
2. Giles v Walker (1890) 24 QBD 656
3. Read vs Lyons [1946] UKHL 2
4. Perry vs. Kendricks Transport Ltd [1955] EWCA
5. Umudje vs. Shell BP Petroleum Development Co of Nigeria Ltd (1975)-SC
6. Okpabi v Shell and Four Nigerian Farmers v Shell [2021]
7. Stichting Milieudéfensie v Shell (2021)