



A REVIEW OF THE JURISDICTION OF THE STATE HIGH COURTS IN MATTERS INVOLVING PETROLEUM COMPANIES IN NIGERIA

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ABSTRACT

By virtue of section 251(1)(n) of the Constitution of the Federal Republic of Nigeria, the Federal High Court (FHC) has exclusive jurisdiction in matters and disputes arising from mines and minerals (including oil fields, oil mining, geological surveys and natural gas). It is the aforesaid Constitutional provision that tend to drive the choice of jurisdiction in a wide range of litigations concerning the petroleum sector in Nigeria. However, there is a gap in the constitutional provision. It is against the backdrop of the existing gap that this paper explored to highlight the circumstances where the State High Courts (including, the High Court of the Federal Capital territory) can legally deal with matters concerning the oil and gas companies. The paper reached the conclusion that in matters where the oil and gas companies are involved, especially matters of breach of contractual obligations, the High Court of States have jurisdiction.

Keywords: Jurisdiction, Contracts, Petroleum, Nigeria.

1. INTRODUCTION

Jurisdiction is a fundamental concept that drives court legitimacy and propriety. The "American and English Encyclopedia of Law," 244, defines jurisdiction as "the authority by which judicial officers take cognizance of and decide causes."¹ Anderson's Law Dictionary defines it as the "power to hear and determine a cause."²

In Hales, Anal., Sec. II, jurisdiction is defined as "the right by which judges exercise their power."³ Halifax, Anal., V. 3, C. 8, No. 4, defines it as "the power of hearing and determining causes and of doing justice in matters of complaint."⁴ LexisNexis

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¹ J W Walsh. The True Meaning of the Term "Jurisdiction". The "American and English Encyclopaedia of Law, 1901.

² [N. 2]

³ [N. 2]

⁴ [N. 2]

explains that it is the authority or power of the court to determine a dispute between parties as well as the territory over which the legal authority of a court extends.⁵ Simply put, jurisdiction, in law, is the authority of a court to hear and determine cases.⁶ To put more succinctly, jurisdiction is the power that a court of law or an official has to carry out legal judgments or to enforce laws.⁷

There are two distinctive yardsticks for determining jurisdiction in common law system viz: (a) Jurisdiction over the subject matter of a case, *in rem* and (b) jurisdiction over the person, *personam*. In *Mobile Producing Nigeria Unlimited v. Suffolk Petroleum Services Ltd*,⁸ the Court elucidated *inter alia*:

Jurisdiction is a threshold and hybrid issue of law which calls for immediate attention and resolution at any point it rears its head in the course of proceedings. This is because where jurisdiction is lacking, the Court will act in futility irrespective of how brilliantly the case would have been done.⁹

The Court further stated that:

It is a fundamental principle, that jurisdiction is determined by the plaintiff's claim. In other words, it is the claim before the Court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the Court.¹⁰

Jurisdiction is an essential foundation of any judicial proceedings. Therefore, the Black's Law Dictionary defines 'jurisdiction' as "government's general power to exercise authority over all persons and things within its territory." Nonetheless, within the framework of judicial actions, 'jurisdiction' has been defined to mean 'a court's power to decide a case or issue a decree'.¹¹ "It follows that before a court of law entertains any matter brought before it for adjudication, it must ensure that it

⁵ LexisNexis. What is jurisdiction? Online at <https://www.lexisnexis.co.uk/> Accessed 2 October 2023

⁶ George and Charles Merriam, Merriam-Webster Law Dictionary 1831. Also in Gideon Boas, Public International Law: Contemporary Principle and Perspectives (Edward Elgar 2012) pp. 251–254.

⁷ Malcolm Shaw, International Law (6th edition, Cambridge University Press 2008) pp. 668–686; Also in Collins Dictionary. Online at: <https://www.collinsdictionary.com/dictionary/english/jurisdiction> accessed 2 October 2023

⁸ Suit No. CA/PH/667/2013

⁹ The court further cited the following authorities to back its definition of jurisdiction: *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 at 595, *A-G, Anambra State v. A-G, of the Federation* (2007) All FWLR (Pt. 379) 1218 at 1273; *A-G Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. 111) 552; *A-G, Lagos State v. A-G, of the Federation* (2014) 3 NWLR (Pt. 1412) 217; *Jeric (Nig.) Ltd. v. U.B.A. Plc* (2000) 12 SC (Pt. 11) 133, (2000) 15 NWLR (Pt. 691) 447; *Nnonye v. Anyichie* (2005) 2 NWLR (Pt. 910) 623; and *Dapianlong v. Dariye* (2007) 8 NWLR (Pt. 1036) 332.

¹⁰ [N. 9]

¹¹ N. Davis, "The Doctrine of Double Effect: Problems of Interpretation," (1984) (65) Pacific Philosophical Quarterly, 107–123.

possesses the jurisdiction to sit over the matter, failing which the proceedings no matter how well conducted amount to nullity. Procedurally, jurisdiction of court does not exist in vacuum. For this reason, court's authority or jurisdiction is a product of constitution or other specific statutes."¹² It is crucial to point out that constitutional provisions and other sources of legal authorities that empower the doctrines and principles of the applicability of jurisdiction have their origin in theories and jurisprudence therefore, this paper proceeded by presenting a nutshell version of the possible origin and prime utility of the doctrine and concept of jurisdiction.

2. THEORETICAL AND JURISPRUDENTIAL ORIGIN OF JURISDICTION

In international law, jurisdiction flows from five legal axis namely: "(1) Territorial, based on the place of commission of the offense; (2) Active Personality or Nationality, based on the nationality of the accused; (3) Passive Personality, based on the nationality of the victim; (4) Protective, based on the national interest affected (and as such is related to the passive personality); and (5) Universality, based on the international character of the offense."¹³ However, every legal doctrine being applied in practical decision making by public agencies including the judiciary are rooted in jurisprudence. Therefore, it is crucial to appraise the sources of the laws of the Nigerian jurisdiction with regards to the utility of the court powers in handling cases where either a party or all the parties are from the petroleum sector. There are two major sources of the contemporary jurisdiction determinants in the Nigerian legal system with regards to the jurisdiction in petroleum cases as follows:

(a) Utilitarian Theory

Utilitarianism was created out of the societal desire for balanced ethical wellbeing. The theory is tailored towards the determination of *just and equitable* reasonableness and to separate right from wrong by focusing on realistic outcomes. It follows that in reaching a balanced decision, the most ethical choice is the one that will produce the greatest good for the greatest number. Thus, the theory applies to jurisdiction whereby equitable and legal doctrines that govern the jurisdiction of courts and their exercise of discretion are meant to maximize social welfare.¹⁴

Utilitarian theory is of the view that jurisdiction of court of law must be designed based on the principles underpinning and achieving the 'greatest good' of the greatest number. Consequently, before designing court jurisdiction, it is crucial to ascertain that the allotted jurisdiction must positively affect social costs. In essence, it must be fit for purpose hence, jurisdiction must possess utilitarian rationale, fully equipped to foster social welfare. Secondly, it must possess deontological rationale thereof, designed to protect parties against unfair netting.¹⁵ Where jurisdiction fails to produce social welfare advantages, it is said to have infringed on the calculus of utility. Hence,

¹² NIC. Jurisdiction and Power, Online at: <https://nicn.gov.ng/jurisdiction-and-power> accessed 5th February 2024.

¹³ M. Cherif Bassiouni. Theories of Jurisdiction and Their Application in Extradition Law and Practice (1975) (5) (2) California Western International Law Journal

¹⁴ M. Whincorp. "Three Positive Theories of International Jurisdiction" [2000] (14) (2) MelbULawRw Melbourne University Law Review 379

¹⁵ Ibid

utilitarian theory of jurisdiction attempts to justify the selection and apportionment of *forum* in which the justification for an action is decided by whether the action would bring the greatest happiness or welfare for the most people or society.

(b) Deontology Theory¹⁶

Deontology theory as applicable in legal analysis derive its root from philosophy and ethical theories which tend to depend on the relationship between duty and the morality of human actions.¹⁷ Deontology theory is premised on the postulation as to, whether an action is moral and whether it is evaluated by the nature of the action, not its consequences.¹⁸ Therefore, judicial decisions made based on deontological principles may be appropriate for an individual even though those decisions may not lead to good outcomes for the entire society.¹⁹ For instance, Ellis²⁰ explained *inter alia*:

In contemporary moral philosophy, deontology is one of those kinds of normative theories regarding which choices are morally required, forbidden, or permitted. In other words, deontology falls within the domain of moral theories that guide and assess our choices of what we ought to do (deontic theories).

It is therefore, the sound intellectual prophecy of this exposition that, the makers of the Nigerian Constitution applied the ideas and principles of the utilitarian and deontology theories in apportioning the larger proportion of jurisdiction in oil and gas matters to the Federal High Court considering the spread of the assets of the oil and gas companies across Nigeria. Hence, the disregarding of the possible consequences of some actions and omissions of the petroleum companies and the diverse nature of the parties involved in several petroleum litigations, when determining what is right and what is wrong.²¹ It is also probable that the makers of the Nigerian Constitution contemplated a situation where the High Court of States may take steps in apportioning liberal decisions in favour of parties from the petroleum host communities being grounded within the localities of the courts, therefore, the allocation of such cases to the Federal High Courts would remove the influence and effects of local affinity thus, reduce the transaction cost of foreign direct investment in the petroleum sector of the economy. Nevertheless, contrary to popular belief among lawyers, state high courts and the high court of the Federal Capital

¹⁶ S. Lazar. "Deontological Decision Theory and Agent-Centered Options," (2017) (127) *Ethics* 579–609; E. Mack. "In Defense of the Jurisdiction Theory of Rights," (2000) (4) *Journal of Ethics* 71–98.

¹⁷ J. Rawls. *A Theory of Justice*, Cambridge: Belknap Press of Harvard University Press, 1971; H. Steiner, *An Essay on Rights*, Oxford: Blackwell, 1994.

¹⁸ F. M Kamm. *Morality, Mortality: Volume II: Rights, Duties and Status* (New York: Oxford University Press, 1996).

¹⁹ J. Mandal, D K Ponnambath, S. C. Parija. *Utilitarian and deontological ethics in medicine*. (2016) (6) *Trop. Parasitol* 5–7.

²⁰ A. Ellis. "Deontology, Incommensurability and the Arbitrary," (1992) (52) (4) *Philosophical and Phenomenological Research* 855–875.

²¹ M. Moore. *The Rationality of Threshold Deontology*, *Moral Puzzles and Legal Perspectives*, H. Hurd (ed.), (Cambridge: Cambridge University Press, 2019) 371–387.

Territory are not entirely precluded from handling all matters involving the oil and gas companies.

2. STATES HIGH COURT POWERS IN PETROLEUM MATTERS

It is not in dispute that Section 251(1) (n) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("The Constitution"), empowers the Federal High Court as follows:

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

The aforesaid provision of the Constitution has generated controversies therein led to heated debates on whether the State High Courts (including, the High Court of the Federal Capital territory) can adjudicate on matters where parties or a party is of the petroleum or mining sector. It is against this background that the Court stated in *Onuarah v. K.R.P.C. Ltd.*²² *Inter alia*:

The law is elementary that in the determination of whether a Court has jurisdiction in a matter or not, the Court will examine or consider the claims or reliefs. This is because only the claims or reliefs donate jurisdiction to the Court [*per Cordelia Ifeoma Jombo-Ofo, J.C.A.*].

It is axiomatic point of law in Nigeria that, the Federal High Court has no jurisdiction in handling cases that are purely contractual in nature, irrespective of the identity of the parties. This was illustrated in *Standard Cleaning Services Company v. Council of Obafemi Awolowo University, Ile-Ife*,²³ where the Court of Appeal held that:

It is trite principle of law where a matter is based on simple contract, it is the State High Court or the High Court of the Federal Capital Territory (where applicable) and not the Federal High Court, that has jurisdiction to entertain the suit irrespective of the parties or the subject-matter of the contract.

Similarly, in *Mobile Producing Nigeria Unlimited V. Suffolk Petroleum Services Ltd.*,²⁴ the Court clearly stated that:

The cardinal principle, which is indisputable, is that it is the plaintiff's claim, as disclosed from the endorsement on the writ of summons and/or the statement of claim that is material and relevant for the

²² (2005) All FWLR (Pt. 256) 1356.

²³ (2019) LPELR-CA/AK/110/2014

²⁴ *Supra*

consideration whether the trial Court has the requisite jurisdiction in law to entertain the claims of the plaintiff (per. Ejembi Eko, J.C.A).²⁵

Nonetheless, it is important to note that Section 7(1) of the Federal High Court Act, (as amended) and Section 251 (1) of the 1999 Constitution (as amended) does not confer jurisdiction on the Federal High Court to handle civil causes or matters whether in or over civil causes or matters arising from contract for service, or a contract for provision of services. Therefore, it is settled that in cases of breach of contracts, the Federal High Court lacks jurisdiction to entertain such claims.²⁶

In *Crestar Integrated Natural Resources Limited v. The Shell Petroleum Development Company of Nigeria Limited; Total E&P Nigeria Limited and Nigerian Agip Oil Company Limited*.²⁷ The single issue for determination by the Supreme Court was whether the Court of Appeal was right in holding that the Federal High Court does not have the jurisdiction to entertain the Appellant's claims.

The Facts of this case are herein reproduced to drum home clarity: The Respondents and the Nigerian National Petroleum Corporation (NNPC), were parties to a Joint Operating Agreement (JOA) in relation to Oil Mining Leases (OML) 18, 24, 25 and 29. The Appellant was not a party to the JOA, just as NNPC was not a party to the Agreement for Assignment ("the SPA") of 45% Undivided Participating Interest in OML 25 owned jointly by the Respondents. Sometime in June 2013, the Appellant became aware that the Respondents were considering divesting their 45% Undivided Participating Interest in OMLs 18, 24, 25 and 29 and receiving expression of interest from credible organisations, the Appellant therefore, expressed its interest in OMLs 24 and 25, demonstrating financial and technical capabilities. The Appellant was pre-qualified to bid for OML 25 in October, 2013 and by 13th July, 2014, the Appellant and the Respondents executed the SPA for assignment of the 45% Undivided Participating Interest in OML 25 owned by the Respondents, in consideration of the sum of US\$453,320.00 (four hundred and fifty-three thousand, three hundred and twenty US Dollars).

By Article 19.4 of the Joint Operating Agreement (JOA), a transferring party (the Respondents) is required to give notice of its intention to assign its Participating Interests to a Third Party and give details of the name and address of the Third Party, including the terms and conditions of the proposed assignment, so that the other party can exercise its right of first option or interest. The notice gives the other party 30 days within which to exercise its right of option/pre-emption. Some terms of the agreement between the Appellant and the Respondents however, included waiver by

²⁵ The court followed the principles laid out in: *Mustapha v. Governor, Lagos State* (1987) 2 NWLR [pt.58] 539; *Tukur v. Government, Gongola State* (1989) 4 NWLR [pt.117] 517 at 549; *Nigeria Agip Oil Co. Ltd v. Chief M. William Kemmer* (2001) 8 NWLR [pt.716] 506; *O.H.M.B. v. Garba* (2002) 14 NWLR [pt.788] 538; *Onuorah v. K.R.P.C Ltd* (2005) 6 NWLR [PT.921] 393; *Minister Of Works & Housing v. Shittu* (2008) ALL FWLR [pt.401] 847 at 864

²⁶ *Adelekan v. Eculine NV* (2006) 12 NWLR [pt.993] 33 at 52; *Ports & Cargo Handling Services Co Ltd v. Migfo Nig Ltd* (2012) 18 NWLR [pt.1333]

²⁷ **SC.765/2017**

the NNPC of its pre-emption right under the existing JOA; the consent of NNPC to the assignment of the Respondent's 45% Undivided Participating Interest in OML 25; and the approval of the Minister of Petroleum Resources for the assignment under the JOA.

NNPC subsequently, exercised its right of pre-emption under the JOA by its letter of 8th August, 2014. Thus, the Appellant filed an action against the Respondents at the Federal High Court, whereat it challenged NNPC's right of pre-emption on the ground that same lapsed on 4th August, 2014, and that the Respondents negligently and/or collusively in bad faith when it failed to object to NNPC's letter which foreclosed the Appellant, as a Third Party interested in the Respondent's 45% Participating Interest in OML 25. The Appellant alleged further that the Respondents failed in their contractual obligation, to procure the conditions precedent stipulated in the terms of agreement in the SPA. It therefore, sought inter alia, an declaration that the termination of the SPA by the Respondents by their letter of 20th January, 2015 was wrongful, null, void and of no effect whatsoever; and an Order of Specific Performance, compelling the Respondents to transfer their Participating Interest in OML 25 to it.

The Respondents raised a Preliminary Objection to the competence of the court, on the ground that the action relates to breach of contract, which the Federal High Court lacks jurisdiction to determine. In its decision, the trial court held that though the suit relates to a contractual relationship between parties, it is not a simple contract as the Federal High Court has original jurisdiction to determine dispute of this nature, which is connected or pertaining to mines, minerals, including oil field, oil mining, geological surveys and natural gas. The Respondents successfully appealed the decision of the trial court; hence, the appeal to the Supreme Court. The Court dismissed the Appeal on the following grounds:

- (1) The Federal High Court is a court of limited jurisdiction, the precincts of which are circumscribed by Section 251(1) of the 1999 Constitution (as amended), and Section 7(1) of the Federal High Court Act.
- (2) It is the subject matter (the *rem*) of the suit that determines whether or not the Federal High Court can rightfully exercise jurisdiction over it as stated in *Oloruntoba-Oju v Dopamu*.²⁸
- (3) The Federal High Court can legitimately expound or expatriate on its jurisdiction, it cannot validly expand the frontiers of its jurisdiction to cover matters which the Constitution or the Statute enabling its jurisdiction has not vested in it. The trial court was in error, when it held that the Federal High Court is a court of unlimited jurisdiction.²⁹
- (4) There is no aspect of breach of contract, be it a simple or complex contract, that the Constitution, Section 7(1) of the Federal High Court Act and Section 251(1) thereof, confers jurisdiction on the Federal High Court to adjudicate on.

²⁸ (2003) FWLR (Pt. 158) 1268.

²⁹ OMOSOWAMI v CHIEDOZIE (1998) 9 NWLR (Pt. 566) 477.

- (5) It is clear from Sections 249 and 251 of the Constitution that the Federal High Court, by its establishment, is intended to be a court of limited jurisdiction over matters enumerated in Section 251(1) thereof. Torts and Contract and their breach are not within those enumerated matters. The intent and purpose for the establishment of the Federal High Court is that matters of tort or contract should not be actionable at the Federal High Court, but at the State High Court.³⁰
- (6) In circumstances where a case, is a compound of the tort of negligence and collusion actuating the breach of contract. In both circumstances, the Federal High Court lacked the jurisdiction to adjudicate on the matter.
- (7) The Agreement for Assignment (the SPA) of 45% Participating Interest in OML 25 owned jointly by the Respondents, is not directly connected to or arise from the items listed in Section 251(1)(n) of the Constitution; the dispute is contractual, not constitutional. The SPA did not have a thing to do with the activity that would be carried out by the owners of the lease, in exploration for oil drilling or exploring crude. The suit was not about an oil field covered by OML 25, but about Appellant's right to the participating interests of the Respondents in OML 25 and breach of the terms of the SPA.

Similarly, in *Shell Petroleum Development Company of Nigeria Limited V. Chief Truelove Oruambo & 10 Ors*,³¹ where the Supreme Court was invited to determine amongst others “*Whether the Court of Appeal was right to hold that the trial court (The High Court of Rivers State) had the requisite jurisdiction, to entertain and determine the 1st to 9th Respondent's suit. Secondly, whether the Court of Appeal was right to affirm the decision of the trial court (The High Court of Rivers State), granting the reliefs sought by the 1st to 9th Respondent. The cause of action was the failure of the Appellant to pay compensation to the Respondents.*

The facts of the case were as follows: The 1st to 9th Respondent commenced an action against the Appellant and the 10th and 11th Respondent at the High Court of Rivers State, Port Harcourt. They sought inter alia, a declaration that the 1st to 9th Respondent are entitled to be paid compensation by the Appellant, together with other affected persons in respect of the Gas Gathering Associated Pipeline Project Structural Assessment carried out by the Appellant on portions of land in Bakana Town of Degema Local Government Area of Rivers State, to determine lands acquired for the Appellant's Gas Gathering Project and persons entitled to compensation. They also sought an order of court, mandating the Appellant to pay certain sums as compensation due to each of them in this regard.

It was the case of the 1st to 9th Respondent that despite the identification and assessment of their properties for compensation by the Appellant through the 10th and 11th Respondent like others in the area, and their claims were verified, when the

³⁰ ONUORAH v K.R.P.C & ANOR (SUPRA).

³¹ SC.219/2011

compensation was eventually paid, their names were deliberately removed from the list of persons entitled to compensation. The Appellant filed its Statement of Defence to the action, wherein it categorically denied the allegations in the Statement of Claim. The Appellant averred that it lawfully acquired land in some communities for its gas project and duly paid compensation to all the communities, including Bakana and individuals whose properties were affected by the acquisition.

The 1st to 9th Respondent called a witness and tendered Exhibits A-A8, while the Appellant called two witnesses who testified to the effect that the 1st to 9th Respondent do not have specific right over the property acquired by the Appellant. In its judgement, the trial court upheld the claims of the 1st to 9th Respondent and granted the reliefs sought. Aggrieved, the Appellant filed an appeal to the Court of Appeal, which court dismissed the appeal and affirmed the decision of the trial court. The Appellant filed a further appeal to the Supreme Court.

It was the contention of the Appellant that, the claim related to the oil and gas activities of the Appellants, specifically gas gathering, and insofar as their cause of action is a claim for compensation owing to the purported effects of the Appellant's gas projects on their properties, the claim is strictly within the purview of the Federal High Court being the only court that has jurisdiction to entertain a cause or matter, ancillary to, relating to, arising from, connected to or pertaining to oil and gas exploration in accordance with Section 251(1)(n) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); Section 7(1)(n) of the Federal High Court Act, 2004. The Supreme Court held that:

- (1) *In order to determine the court's jurisdiction to entertain a case; the court will have recourse to the averments contained in the Statement of Claim.* Therefore, that it was evident from the averments in the Statement of Claim, that the reliefs sought by the 1st to 9th Respondent were in relation to compensation as agreed and assessed by the Appellant for their land acquired by the Appellant for its Associated Gas Gathering Project. Therefore, that the 1st to 9th Respondent's claim is a simple case of breach of the promise to pay compensation for land acquired, and does not come within the purview of oil and gas exploration or any matter connected with, pertaining to, or relating to oil and gas exploration, over which the Federal High Court has exclusive jurisdiction to entertain.³²
- (2) *The jurisdiction of the State High Court is not ousted, in a claim for agreed compensation for land acquired for oil and gas exploration. Given the foregoing, the court held that the 1st to 9th Respondent's action cannot come under Section 251(1)(n) of the 1999 Constitution and Section 7 of the Federal High Court Act, as to oust the jurisdiction of the State High Court.*

Despite the well-established position with regards to "promise to compensate," the provisions of the Petroleum Industry Act with regards to the rights to seek redress with regards to compensation from the oil companies has become more complex.

³² The Court cited *NKUMA v ODILI (2006) 6 NWLR (Pt. 977) 587* to support its position

3. THE CURRENT LEGAL POSITIONS ON PETROLEUM COMPENSATION MATTERS

With regards to petroleum undertakings, there are plethora of laws in Nigeria authorizing the payment of compensation to individuals, groups and communities that are affected by petroleum operations. For instance, 6(1) of the Oil Pipelines Act (OPA)³³ mandates the operator of an oil acreage to give 14-days' notice to the occupier or holder of lands within the range of intended oil pipelines. Section 6(4) of the OPA stipulates that damages and compensation are payable in the case of failure to notify.

Furthermore, apart from the entitlement of compensation and damages to land owners or the occupiers, the permit holder is under the obligation to provide alternative accommodation for the occupiers of the affected lands in accordance with sections 15 and 16(1) of the OPA. In the event of a breach of duty by the oil company, the claimant is permitted to seek redress in the State High Court where the quantum of claim exceeds the jurisdiction of the Magistrates' Court.

Consequently, Section 15(2) of the OPA provides that. "If any doubt shall arise whether any lands fall within those described in this section, or who the owners or occupiers or persons in charge thereof are, the decision of the High Court shall be final." Section 16(1) of the OPA provides as follows:

The holder of a licence shall make and maintain for the accommodation of the owners or occupiers of any land in respect of which the license been granted or of the Owners or occupiers of adjoining land or for the accommodation of the users of any customary track or path such crossing, bridges, culverts, drains or passages as may be necessary for the purpose of making good any interruption to the use of such land or the amenities thereof or to the use of such customary track or path caused by the exercise of the powers granted in accordance with this Act. Provided that it shall not be necessary to make good any interruption in respect of any of which compensation under this Act has been paid; Provided further that upon accommodation works being provided in accordance with the provisions of this section no further accommodation works shall be necessary in respect of any change of use of any land deviation of any track or path or any other act or omission of any person not being the holder of the licence or his agent, workman or servant.

3.1 The Effects of The Petroleum Industry Act, 2021 on Jurisdiction

The PIA has not altered the current position of the law rather it re-affirms the utility of Section 251(1) (n) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which states that the FHC has exclusive jurisdiction in relation to matters and disputes arising from mines and minerals (including oil fields, oil mining,

³³ CAP 07 LFN 2004

geological surveys and natural gas) which has not altered the effects of the authority of *Shell Petroleum Development Company of Nigeria Limited V. Chief Truelove Oruambo & 10 Ors (supra)*; *Onuarah v. K.R.P.C. Ltd (Supra)*, etc. However, it has introduced new disputes settlement regime making it difficult to seek redress against the oil companies in court.

Although, on the face of it, the Act made provisions for compensation (especially to the host Communities) wherein Section 101 (1) PIA states: "A licensee or lessee [of PPL and/or the PML holding the pipelines licence] shall not enter upon, occupy or exercise any of the rights or powers conferred by its licence or lease in relation to any

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- a) area held to be sacred, the question as to whether the area is sacred or not shall be decided by the customary court of the area, where necessary;
- b) part of the following relevant areas, except it obtains a written permission from and subject to conditions as may be imposed by the Commission, any part -
 - (i) set apart for, used or appropriated or dedicated to public purposes;
 - (ii) occupied for the purposes of the government of the Federation or a State;
 - (iii) Situate within a township, town, village, market, burial ground or cemetery;
 - (iv) which is the site of or is within 50 yards of any building, installation, water reservoir, dam, public road or tramway or which is appropriated for or situate within 100 metres of any railway; or
 - (v) of the land under cultivation;
- (c) any part consisting of privately owned or legally occupied land other than private land falling under paragraph (b) except permission in writing to do so has been obtained by the licensee or lessee from the Commission, which may grant permission if the licensee or lessee has:
 - (i) given previous notice in writing to the Commission specifying by name or other sufficient designation and by quantity, the land proposed to be occupied and the purpose for which it is required; and
 - (ii) paid or tendered to the person in lawful occupation or and the owner or owners of the land fair and adequate compensation; and
- (d) dispute under sub-paragraph (c) of this subsection as to who is in lawful occupation or the owner of any land or as to the amount of any compensation payable, the Licensee or Lessee, pending the determination of the dispute, shall deposit with the Federal High Court with jurisdiction over the matter such sum as shall be determined by the Federal High Court to be reasonable compensation payable to the rightful owner or occupier of the land."

PIA expressly indicate that compensation disputes are within the exclusive confine of the Federal High Court. Hence, Section 218(7) of PIA vests the Federal High Court (FHC) with exclusive jurisdiction over disputes between licensees, lessees or permit holders and the Commission or the Authority in accordance with Section 251(1) (n)

of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 218(7) of PIA has a lacuna in that it did not expressly state that matters of contractual nature should be within the jurisdiction of the Federal High Court, rather it re-affirmed the provision of Section 251(1) (n) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The PIA has also made it difficult for aggrieved persons and parties to petroleum contracts to seek redress in Court. Under Sections 163, 179 and 180, the Mid and Downstream Regulatory Authority has powers to mediate over disputes arising from rights of third parties to access areas for midstream and downstream gas and petroleum liquids operations as well as open access respectively. This a mandatory Alternative Dispute Settlement mechanism. Likewise, Section 234 of PIA bestows upon the Commission and the Authority powers to formulate and issue Regulations which shall contain a grievance mechanism to resolve disputes between the settlers and host communities. Pursuant to section 318 of the PIA, in the event of a dispute arising in respect to the date of first sale of chargeable oil or date of cessation of petroleum operations, the Commission is vested with powers to determine the said date. This decision cannot be appealed.

4. CONCLUSION

In view of the foregoing discourse, it is hereby submitted that the Federal High Court has no exclusive jurisdiction in a matter whose subject matter is outside section 251(1)(a)-(s) of the 1999 Nigerian Constitution (as amended). This also applies to section 251(1)(p),(q) and (r) of the Constitution as it affects Federal government agencies and parastatals. The High Court of States (including the High Court of the FCT) has the jurisdiction to adjudicate on disputes of contractual nature irrespective of the identity of the parties or the nature of the operational activities of the parties.