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Magnus Ejelonu[1]

The Continuing Harm and Continuing Tortious Acts Conundrum: Insights from *Jalla v. Shell Int'l Trading & Shipping Co. Ltd.*, and Its Implications for Oil Spill Compensation Litigation in Nigeria

1. Background

1.1 On the issue of the applicability of statutes of limitation in statutory oil spill compensation claims, Nigerian courts have equivocated between three mutually contradictory positions regarding the concept of continuing torts. In the first set of cases, the courts have held that State limitation statutes are applicable to compensation rights provided in the *Oil Pipelines Act* ("OPA") and the *Petroleum Act*.[2] In doing so, the Court of Appeal jettisoned the provisions of section 4(5) of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, which invalidates state laws that conflict with federal laws, without providing adequate justification for that position. The Courts, in the second set of cases, rejected the applicability of State limitation laws to federal laws such as the OPA and the *Petroleum Act*.[3] This line of authorities appears to rest largely on a spontaneous reliance on the supremacy of the Constitution. Finally, the third line of authorities have applied the *English Limitation Act* 1623, a statute of general application, in resolving the conundrum in oil spill claims.[4] This third approach appears more plausible, logical and persuasive for the following reasons:

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1 **Magnus Ejelonu, Esq., Associate Partner, S. P. A. Ajibade & Co.**
2 See, *SPDC v. West* (2018) LPELR-44290(CA); *Shell Petroleum Development Company (Nig) Ltd v. Williams & Ors*. (2017) LPELR-49294 (CA) and *Nigerian Agip Oil Co. Ltd v. Ogbu* (2017) LPELR-45217(CA).
3 See, *Shell Petroleum Development Company Limited v. Farah* (1991) NWLR (Pt 382) 201 and *Benson v. Mobil Producing (Nig) Unltd* (2012) LPELR-14241.
4 See, *Sampson & Ors v. SPDC* (2021) LPELR-53314(CA).

1.2 First, limitation laws enacted by State Houses of Assembly cannot regulate the practice and procedure[5] of the Federal High Court,[6] which is the court with jurisdiction over statutory oil spills compensation claims.[7] Secondly, enforceable rights cannot exist in perpetuity, as the Supreme Court held in *Folarin v Agusto*.[8] In that decision the Court stated:

> *The settled position of the law is that every enforceable right has a prescribed period within which an action may be brought. The right to enforce an action does not exist in perpetuity but is generally limited by statute. That is the essence of statute of limitation.*[9]

Also, in the case of *Asaboro v. Pan Ocean*[10] the Supreme Court held:

> *… It cannot be correct or the intention of the law that a claimant…could wait for an indefinite period of time after the accrual of his right to seek redress.*

1.3 Where applied, the doctrine of continuing tort operates to extend the limitation period prescribed by the statute.[11] Nigerian Courts have often struggled with whether to treat ongoing harm as the same thing as an ongoing wrongful act when deciding whether the doctrine of continuing tort should apply. This difficulty becomes particularly significant in oil spill cases, where the consequences of the spill, such as contaminated land, polluted water, or long-term environmental degradation, may persist for years after the initial oil spill incident. The key issue is whether the law recognises these lasting effects as constituting a continuing tort, capable of keeping the cause of action alive, or whether only fresh wrongful acts by the defendant can do so.

1.4 This article examines the impact of the United Kingdom's Supreme Court decision in *Jalla & Anor v. Shell International Trading and Shipping Co Ltd & Anor ("Jalla")*[12] and its implications for oil spills compensation claims in Nigeria.

2. Continuing Tort: The United Kingdom and Nigerian Courts' Approach

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5 The principle that limitation of actions is a procedural matter rather than a substantive issue is firmly rooted in Nigerian law. See, *Chigbu v. Tonimas Nig. Ltd. & Anor* (2006) LPELR-846(SC) and *Obayiuwana v. Minister of FCT & Ors* (2009) LPELR-8202(CA).

6 Section 254 of the Constitution. See also, *Fasakin Foods Nigeria Ltd. v. Martins Shosanya* (2006) 10 NWLR (Pt. 987) 126.

7 See, section 251(1)(n) of CFRN and section 7 (1), (3), (5), and (6) of the *Federal High Court Act*. See also, *Mene-Okotie v. Pan Ocean Oil Corporation (Nig) Ltd* (2025) LPELR-81438(SC).

8 (2023) 11 NWLR (Pt. 1896) 559 at 585.

9 Ibid, per Ogunwumiju J.S.C., at 585, para F. In *Jimoh v. A.G, Federation & Anor*, the Court of Appeal held to the effect that a legal right to enforce an action is not in perpetuity but generally limited by Statute.

10 (2017) LPELR-41558 (SC) page 17-18.

11 See, *Dosumu v. N.N.P.C* (2014) 6 NWLR (Pt. 1403) 282. 313 paras A-C.

12 (2023) UKSC 16.

2.1 The position in the UK on the doctrine of continuing tort appears to be settled, as illustrated in *Jalla.*[13] The facts revealed that on 20/12/11, an oil spill ("Bonga Spill") occurred off the coast of Nigeria. The claimants alleged that the spill constituted a private nuisance by interfering with their use and enjoyment of their land. Upon the Claimants' application to amend their claim, argument ensued over the applicable limitation period, with the Claimants contending that the alleged private nuisance constituted a continuing wrong. While ruling on this, the court provided a detailed exposition of the doctrine of continuing tort/nuisance in the UK by holding thus:

> In this case, therefore, one can naturally describe the oil still being on the claimants' land as a continuing nuisance. But that is wholly misleading when one is trying to clarify the meaning of a continuing nuisance in the legal sense...In principle, and in general terms, a continuing nuisance is one where, outside the claimant's land and usually on the defendant's land, there is repeated activity by the defendant or an ongoing state of affairs for which the defendant is responsible which causes continuing undue interference with the use and enjoyment of the claimant's land. For a continuing nuisance, the interference may be similar on each occasion but the important point is that it is continuing day after day or on another regular basis. So, for example, smoke, noise, smells, vibrations and, as in Fearn, overlooking are continuing nuisances where those interferences are continuing on a regular basis. The cause of action therefore accrues afresh on a continuing basis. This explanation is consistent with Hole v Chard Union [1894] 1 Ch 293 which was a nuisance case in which the general concept of a continuing cause of action was considered albeit in the context of procedural rules that no longer apply. There the defendants had repeatedly discharged sewage and refuse into a stream that ran through the claimant's land and past his house... The Court of Appeal held that there was a continuing cause of action in nuisance. Lindley LJ said at pp 295-296:
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> *"what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought." And AL Smith LJ said at p 296: "If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on de die in diem."*

Accordingly, the Court dismissed the claimants' argument that a continuing nuisance arose afresh each day that the undue interference with their land persisted due to the presence of oil from the one-off spill. The court held:

> There was no continuing nuisance in this case…because, outside the claimants' land, there was no repeated activity by the defendants or an ongoing state of affairs for which the defendants were responsible that was causing continuing undue interference with the use and enjoyment of the claimants' land. The leak was a one-off event or an isolated

[13] *Supra*.

escape.

2.2 One principle that can be drawn from the *Jalla* is that there is a distinction between the repetition of tortious conduct and the continuance of harm arising from a one-off tortious conduct. While ongoing or repeated tortious conduct may extend the limitation period, the persistence of damage or injury from one-off tortious conduct does not have the same effect.

2.3 The decisions of Nigerian courts on continuing tort have been inconsistent, oscillating between continuing/ongoing harm and continuing or repeated tortious conduct. For instance, in the case of *Chikere & Ors v. Chevron Nigeria Ltd*.,[14] the appellants instituted this suit seeking damages for various harms resulting from the Defendant's oil operations. The Appellants alleged that after drilling in 2000, the defendant neglected and left the oil location unattended and that this situation continued for about 10 years. The Appellants alleged that, due to this ongoing neglect, the oil location had caused ongoing and severe damage. In response, the respondent, at the lower court, successfully challenged the court's jurisdiction on the ground that the claim was statute-barred. While allowing the appeal, the Court of Appeal held thus:

> Do the paragraph disclose continuing injury? What is continuance of injury or damage? It is not merely continuance of the injurious effects of a legal injury but the continuance of the legal injury itself. It is the continuance of the act which causes the damage…The grievance of the claimants as evident from afore-quoted paragraphs of their statement of claim was that the continuous acts of negligence of the Defendant was continuously causing them injury. In paragraph 18 of the claim, the claimants averred thus: "The claimants have suffered losses by virtue of Defendants careless operation of its oil location and the Defendant will continue to pollute, destroy or waste Plaintiffs' farmland with other properties unless the honourable (sic) intervenes" for each point or time that the act of negligence of the Defendant persisted a new cause of action arose.[15]

In this case, the court made it clear that it considered the claim to be one of continuing tortious conduct and not just of the injurious effect of the tort. However, in *Chevron Nigeria Limited v. Sedara & Ors*[16] the same court jettisoned its approach in *Chikere's case* and held:

> The writ which is in page 3 of the record shows the action was filed on 16.12.13. The statement of claim (supra) indicates the events that led to the action started in 1995 in the present Ondo State. The paragraphs of the statement of claim (supra) read in harmony, aggregate to the averment or fact that the acts complained of "remain and are still

[14] (2018) LPELR-44123 (CA).
[15] *Ibid* at 21-23.
[16] (2019) LPELR-47272 (CA).

> present, causing continuing damage to the plaintiffs' communities" (paragraph 19 of the statement of claim, in particular). In every respect, any continuing damage or injury as in this case removes an action from the adverse effect of limitation law. Accordingly, the Court below was right by holding that the action as pleaded is not caught by limitation law because of the continuance of the damage or injury... The statement of claim (supra) objectively viewed is a combination of the tort of unabated nuisance and alleged environmental degradation which has allegedly altered and is still altering the ecosystem of the Rewoye and Sedara Communities of Ilaje in Ondo State…Accordingly, the Court below was right in dismissing the application and holding that the action was not statute-barred.[17]

The Court of Appeal dismissed the appeal and affirmed that the respondents' action was not barred by the Limitation Law due to the continuing nature of the damage and injury alleged.

2.4 It is evident from the afore-cited cases that the Nigerian courts have not adopted a consistent approach in resolving the continuing tort conundrum. This inconsistency has left Nigerian law in a state of confusion, especially in oil spill claims. Unlike the UK, where *Jalla* provides clear guidance, Nigerian courts have tended to blur the lines. And with the Court of Appeal in *Mobil Producing Nig. Unltd v. Ketan Oyorokoto Fishing Co-op Investment and Credit Society Ltd*[18] expressly holding that *Jalla* does not apply in Nigeria, the chance of adopting that careful distinction has been shut off. In that case, the Court did not mince words when it held:

> In all the argument of counsel, he has not referred to any other authority of the Apex Court which contradicts the clear decision of the Apex Court that the learned trial Judge relied upon. The English case of *Jalla & Anor v. Shell International Trading and Shipping Co. Ltd & Anor* (supra) could be persuasive only where there is no clear decision of the Apex Court of Nigeria on the issue. Until the Apex Court adopts and approves that decision, we cannot be persuaded by it to discard our Apex Court's decision, so clearly stated. It is my humble but firm view that the learned trial Judge was very right and cannot be faulted for following the latest decision found on the subject of limitation law, and I so hold.[19]

2.5 The Court of Appeal judgment in the circumstance cannot be faulted in the circumstance considering the *ratio decidendi* of the apex court's recent decisions in *A.G. Rivers State v. A.G. Federation*,[20] *Olateju v. Commissioner for Lands & Housing,*

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17 *Ibid* at 15-19, paras. C-A.
18 (2024) LPELR-62929(CA).
19 *Ibid* at 37-38, paras. D-A. The Court of Appeal reiterated this reasoning (on continuance of damage) in *Effiong v. Mobil Producing Nigeria Unlimited* (2024) LPELR-62930(CA).
20 (2022) 15 NWLR (Pt. 1852) 99.

Kwara State & Ors,[21] *Uniport v. Nwuzor.*[22] In *Folarin v. Agusto*[23] the Supreme Court held thus:

> The law on limitation of actions recognizes some exceptions, one of which is that where there has been a continuance of damage, a fresh cause of action arises from time to time, as often as the damages persist.[24]

2.6 The Supreme Court's position, while authoritative, is not without difficulty. In merging ongoing damage within a continuing tortious action, the Court risks setting a precedent whereby claims can, in effect, become forever actionable for so long as proof of injury or damage can be shown to persist. This has the potential to vitiate the very rationale of limitation statutes, i.e., to promote certainty and prevent the ventilation of stale claims in perpetuity.[25] Absent more distinct differentiation, limitation periods can be robbed of much practical utility in oil spill litigation, with defendants left open-endedly exposed and early settlement of claims disincentivized.

2.7 It is hoped that in the future the Supreme Court will reconsider its approach and introduce more clarity into the jurisprudence and strike a balance between protection of victims of long-tail environmental damage and upholding the underlying purpose of limitation statutes. Such rebalancing would not improperly close the doors of the courthouse to victims of oil spills, but would not allow rights of action to be, in substance, perpetual.

3. Conclusion

3.1 The courts in Nigeria have not demonstrated consistency in their adoption and application of continuing damage and continuing tortious conduct in oil spillage litigation. While the UK Supreme Court in *Jalla* provides a rather straightforward methodology, there has been a seeming oscillation between adopting the continuing damage or continuing tortious conduct as the basis upon which the limitation period can be extended, and this has resulted in a rather confused state of the law in regard to issues of continuing tort, particularly in the context of long-term pollution of the physical environment. While it would seem that the Supreme Court in Nigeria currently leans in favour of the proposition that continuing damage can found a novel cause of action, this appears rather detrimental to the *raison d'être* of limitation laws in that claims could remain effectively valid for indefinite periods.

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21 (2024) LPELR-62589(SC).
22 (2024) LPELR-62382(SC).
23 (2023) LPELR-59945(SC).
24 *Ibid* at 28-28, paras A-B per Okoro J.S.C.
25 See, *Atunrase v. Sunmola* (1985) 1 NWLR (Pt. 1) 105.

For further information on this article and area of law,
Please contact **Magnus Ejelonu** at:
S. P. A. Ajibade & Co., Lagos by
Telephone (+234 806 437 3384, +234.814.594.2221),
Mobile:(+234 8037. 476.651)
Email: mejelonu@spaajibade.com
www.spaajibade.com