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Dealing In Petroleum Products Without License Is Criminal

The Nigerian Court of Appeal Lagos Division) affirmed the position of the law that it is criminal to deal in petroleum products without a license in its recent decision delivered in the case of M.V. Long Island v. FRN.



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CASE REVIEW OF M. V. LONG ISLAND V. FRN 2018 LPELR 43479 CA [4]

Introduction:

The Nigerian Court of Appeal Lagos Division) affirmed the position of the law that it is criminal to deal in petroleum products without a license in its recent decision delivered in the case of M.V. Long Island v. FRN. [5] As a Preliminary issue, the court restated the principle of law that the fact that the 1st accused M.V. Long Island or the Vessel), is inanimate does not mean that it is incapable of committing a crime and of being prosecuted and convicted in accordance with applicable law. Being a legal person, the 1st accused can be criminally liable for the actions of its officers and or owners. [6]

Facts of the Case:

The Appellant alongside several others were arrested by the Nigerian Navy for engaging in illegal activities, specifically; for dealing in petroleum products without license from appropriate authorities contrary to the Miscellaneous Offences Act. [7] The Appellant was arrested with approximately 200 metric tons of petroleum products on board the 1st Appellant - the vessel itself, M.V. Long Island. Neither the owner of the Appellant nor the charterer held a valid license to carry, deal with or in, the petroleum product found on the Vessel.

They were accordingly arraigned on a three-count charge preferred against the Appellant and others for conspiracy, dealing in petroleum products without a license and storing petroleum product without lawful authority before the Federal High Court sitting in Lagos.

They all pleaded not guilty to these charges and after a full trial, the Court found all of them guilty and sentenced the 4th 22nd accused persons to 2 years imprisonment with an option of fine of N200,000.00 on each count while the Appellant, 1st accused person at the lower Court) and its cargo were forfeited to the Federal Government of Nigeria. The 2nd and

3rd accused persons were sentenced to a fine of N200,000.00 each on Counts I, II and III.

This decision aggrieved the Appellant, hence the appeal.

Relevant Legislations:

The statutes considered by the Court of Appeal include the following:

The Petroleum Act Cap. P10 LFN 2004;
Miscellaneous Offences Act Cap. M17 LFN 2004;
The Evidence Act No. 18 of 2011; and
The Economic and Financial Crimes Commission Establishment) Act No. 1 of 2004.

Decision:

In a unanimous decision, the Court of Appeal in dismissing the appeal answered the questions raised while holding as follows:

Whose duty is it to obtain licenses or authority required for dealing with petroleum products?

The appellant had contended that it was not the responsibility of the vessel owner to obtain the necessary permit to deal with petroleum products. It was further argued that it is the person with the product that has the responsibility of obtaining the license and not the vessel. The court disregarded this argument as pedestrian and concluded that based on the findings of the lower court, the appellant did not have the necessary licence or permit to be on Nigeria's territorial waters with petroleum products on board. In any event, the licenses tendered on behalf of the appellant in an attempt to establish that the appellant had complied with the requisite regulatory requirements had expired. [8]

Can Indemnity arise with respect to criminal liability for illegal actions?

The Appellant's counsel had argued before the Court that the charterer of the vessel had agreed to indemnify the Appellant and this absolved it of any liability arising from the agreement between the parties.

The court rejected this argument and held that Indemnity cannot arise with respect to criminal liability for illegal actions carried on by the Appellant. If the accused persons had knowingly conspired to go on an illegal venture, the Appellant as well as the other accused persons found culpable cannot escape liability as the agreement to indemnify the Vessel is strictly speaking a private affair between them and cannot be a basis to absolve the Appellant from criminal liability.

Footnotes

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4 2018 LPELR 43479 CA .

5 See n. 4.

6 Section 65 of the Companies and Allied Matters Act, Bolton Engr. Co. Ltd v. Graham & Sons 1957 1 QB 159.

7 CAP. M17 LFN 2004.

8 M.V. Long Island v. FRN supra, at p. 24.

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