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The role of strict liability laws on environmental conservation in Nigeria

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Abstract
Environmental issues are important in every nation. No nation wish to be careless with factors affecting environmental preservation; Then laws are made to regulates the use of every environment. In Nigeria, only very few litigated cases addressing the reliefs of victims of harsh environmental impacts has succeeded. The numerous cases that failed at the Supreme Court applying the rules of Ryland vs. Fletcher and largely due to the inability of victims to wrestle with the the oil giants in the Niger Delta regions with divers ethnic groups claiming ownership of the natural resources. The undue influenced of Government on major oil explorers in the zone also contributed to the failures and the untold hardship of the inhabitants in the affected areas,who suffers from pollutions and contamination on their land making farming and aquatic activities cumbersome. The Rule of Ryland and Fletcher which provides for strict liability against an offender has not effectively handled the menaces occasioned by the polluters in the area. Shell BP, Chevron, Mobil etc are the major offenders. The human right approach to environmental conservation is suggested to achieve results. This approach is the constitutionally guaranteed rights to life and dignity of the human person as provided in section 33(1) and 34(1) of the Nigerian Constitution. The right to a clean, poison free, pollution free and healthy environment are also embodied in the constitution. This right has been expanded by the Nigerian 1999 Constitution to include full enforcements of all legal rights of human including safety at work places, and living homes. This paper, suggests that, the rules in *Ryland vs. Fletcher* which evolved in 1868 has outlived its usefulness in Nigeria evidence from numerous cases that failed with the rules at the Apex court, therefore the human right approach should be applied. The government should also reconsider a favourable sharing formula of mineral resources with all affected zones in Nigeria where mining activities are on going, so that the indigenes can enjoy the benefits of naturally endowment.

Keywords: Environment, preservation, rule of Rylands v. Fletcher, Nigerian constitution

Introduction

There is nobody in the world who does not like a good environment. A Good environment is a part of human right that must be enjoyed by all. Such environment must contain clean air, stable climate, adequate water, sanitation and hygiene. Safe use of chemicals, protection from radiation, healthy and safe work place, health protective and built environments and preserved nature are all pre-requisites for good health in a good environment [1].

An environmental free from hazard is the alienable right of every human being. These rights are protected through legislations and environmental tort remedies which required strict liability on the offender(s).

Nuisance are major desecrations to the environment for which actions are meant to sanction

In actions based on nuisance, the burden is on the plaintiff to prove the connection of either a private or public nuisance that the defendant had perpetrated against him. Where private nuisance is alleged, the onus is on the plaintiff to prove that, the defendant unreasonably interfered with the enjoyment of his property rights. More so, where the cause of action is in public nuisance, the plaintiff carries the burden of showing that, he had suffered special damages beyond those suffered by members of the public.

The fact is clear that environmental legislations abounds, but to what extent are polluters liable in torts? This rhetoric question is evidenced is other jurisdictions like Canada and Britain which tends to reveal that apart from developments of new causes of actions, there is a growing desire to shift the burden of proof in environmental litigations from the plaintiffs to the defendant(s). This environmental tort remedy is also available to an aggrieved plaintiff(s), in Nigeria. This is the strict liability rule laid down in *Rylands v Fletcher*. The attraction of the rule lies in the fact that it dispenses with the need to either prove negligence or special damages suffered by the plaintiff. The rule is that "the person who for his own purpose 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, he is prima-facie answerable for all the damages which is the natural consequence of its escapes" [2].

It is imperative to examine ways by which the Nigeria environment can be preserved for the future generation. In doing this, strict liability roles remain sacrosanct in re-vitalising the Lugubrious and complacent structure of the Nigeria environment in terms of air pollution, population increase, species and habitats extinction as well as deforestation. Strict liability rules are beneficial to the protection of the Nigerian environment if properly annexed.

1. Definition

Liability under the rule in *Rylands v Fletcher* is often described as “strict” the defendants are usually not exonerated from damage caused by their actions. Strict liability can means a number of things in different context but to this context, environmental laws are considered [3].

In the context of *Rylands v Fletcher*, liability, however, simply means that absence of negligence is no defence. Under the strict liability law, if a defendant possess anything that is inherently dangerous as specified under the ultra-hazardous definition, the defendant is strictly liable for any damage caused by such possessions, no matter how careful

the defendant is in safe guiding them [4]. In other words, where there is an "escape" from the defendant's land, he will be liable for the consequences even where he shows that he took all reasonable care to prevent that escape.

Furthermore, the phrase "strict liability" implies that the defendant will be held, liable even where he cannot foresee that the escape of the thing in question will cause damage. This type of 'strict liability' is conversant with environmental statutory provisions which give effect to the "polluter pays" principle. Those liable for contaminated land must be held liable.

Strict liability crime does not require *mens rea*. Strict liability does not take into consideration why the substance escaped, and does not take ignorance as an excuse as a defence. The disposition of the offender as to whether he intended to cause damage to another's property or, not is irrelevant. He is usually held accountable and he must return the property to its former state that it was before the contaminant was released [5], the injured must be indemnified by the offender as well.

Legal consequences may arise using the rules on Ryland vs. Fletcher to seek redress on strict liability for environmental harm if the hazardous substance under the defendant controls 'escapes'. As the rules apply, fault is not an issue, and the reason why the substance was released by its owner does not matter either. What matter is that the injured must be compensated adequately against what he had suffered.

The Rules in *Rylands v Fletcher*

The rule in Rylands Fletcher is one of strict liability, in which a man acts at his peril; and is responsible for accidental harm occasioned by his action independently of the existence of either wrongful intent or negligence. The rule was formulated by *Blackburn, J. in the court of Exchequer Chamber* [6] and was affirmed by the House of Lords [7] in the following terms:

"We think that the true 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"

Basic Elements of the Rule

- **Accumulation of things in land:** This is where the cause of damage is an escape of naturally consequence on the land or has accumulated there by natural forces in which case, no liability will follow under the rule. In *Giles v Walker* [8] for example, an escape of thistle seeds was not covered by the rule, nor in *Smith v Kenkrick* [9] was the escape of a natural accumulation of rain water.
- **For his own purpose:** This rule apply to a defendant own interest, that the cause of escape or nuisance is as a result of things of personal purpose, so that if the things are brought on to the land by the defendant for the purposes of another, he cannot be liable. The position in this regard is unclear. However, in *Rainham Chemical Works v Belveders*
- *Fish Guamo Co. w*here two parties engaged in the manufacture of explosives had in breach of terms of their explosives of their lease, assigned their tenancy of a factory to a company which they had formed. The House of Lords held the parties were liable when an explosion occurred.

- **Likely to do mischief:** It is clear from the decision of the House of Lords in Transco v Stockport MBC that the rule will only apply where the defendant has done something' which gives rise to an' exceptionally high risk of danger or mischiefs if there should be an escape [10]. In this case, the defendants, Stockport council were owners of a three-inch pipe which supplied water to a block of flats. The claimants (formerly British Gas Plc) were the owners of a gas main on neighbouring land. Without fault on the part of the council, a leak developed in the pipe and went unnoticed for some time. The water saturated the land beneath the block of flats and then percolated towards the land in which the gas main was situated. The court did not hold Stockport council liable. It further refined the role of the *Rylands v. Fletcher* rule in modern law. In particular, their lordships made the following observations:

The rule protects a claimant's interest in land i.e. those with exclusive possession of the affected land.

The rule cannot be used to recover personal injury.

The rule applies only to activities on land that are exclusive hazardous.

This decision on House of Lords in *Transco v. Stockport MBC* has done much to settle the question of whether it is a requirement of the rule that the thing which escapes from the defendant's land must be inherently dangerous. The more straight forward approach taken by their Lordships in Transco, however, was to point out that the question whether a thing was likely to do mischief could not be sensibly considered in isolation from the requirement that the defendants was making a 'non-natural use of his land.

- **Escape:** For liability to arise, the thing which the defendant has on his land must 'escape', In *Read v Lyons Ltd* [11] where the plaintiff was wounded by the explosion of a shell inside the defendant's war-time munitions factory, the defendant were not liable under the rule because the explosion was confined to within their premises.

- **Non-natural use of land:** In a line of cases, culminating with the famous decision in Richards v Lothian [12], the sense in which Blackburn J. and Lord Cairns had used these words was altered by the courts, so that 'a natural' use of land came to mean a use of land which was' ordinary' or usual. The original function of the 'non-natural requirement, therefore was to draw a distinction between a naturally occurring event (natural flooding) and an event which occurred artificially (flooding of reservoir). In Richards's case, the plaintiff's offices were flooded when water flowed into them from the defendants' premises two floors above. The flooding was caused by the blocking of a lavatory basin which had overflowed because a "malicious person" had left a tap running into it. The Privy Council held that the defendants were not liable under the principle of *Rylands v Fletcher*. Lord Moulton said:

"It is not every use to which land is put that brings into play that principle. It must 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 benefit of the community"

1.2 Defences to an action under Rylands v. Fletcher

Liability under *Rylands v Fletcher* rule is 'strict' though there exists defences under the rules.

(i) Consent of the plaintiff: The maxim violenti non injuria states that when a plaintiff consent directly or indirectly to the use of his property by the defendants, no matter the nuisance accumulated in the cause of this, he is barred from complaining. Consent plays important roles in the defence of tortuous actions.

ii. Statutory Authority

The operation of a dangerous thing under statutory authority will avail the defendant of any liability unless he is shown to have been negligent. Thus in *Green v Chelsea Water-works* [13] where a water main burst, without any negligence on the part of the defendants, it was held that since statute had authorized the defendants to lay the water main and to maintain a continuous supply of water, the statute had also impliedly exempted them from liability in the absence of negligence.

iii. Act of Stranger

Should any damage be caused by the actions of a third party which were not foreseeable by the defendant, he will not be liable. Thus in *Perry v Kendrick Transport Ltd* [14] two boys ignited the fuel tank of a bus, injuring the plaintiff, the court of appeal held that the plaintiff had failed to show that the removal of the petrol cap by a third party was the type of act which the defendants ought reasonably to have foreseen and taken precautions against. Obviously, this defence somewhat dilutes the idea that the defendant must keep in the dangerous thing at his peril.

iv. Act of God

Damages are likely to be caused by unexpected natural disaster. As in a nuisance action, the defendant will escape liability if he can show that the damage has been caused by an Act of God. According to Lord Westbury in *Tennant v Earl* of Glasgow [15], the defence will operate as in:

"Circumstances which no human foresight can provide against; and of which human prudence is not bound to recognize the possibility, and which when they do occur, therefore, are calamities that do not involve the obligation of paying for the consequence that may result from them"

It was further established in the case of Nichols v. Marshland; the court held that there can be no liability on harm caused by an unexpected natural event.

The rule in *Rylands and Fletcher* in other jurisdictions

1. New South Wales: In New South Wales the environmental officers is usually a law officer specializing in public interest environmental law, with multiple experience in litigating environmental matters and participating in environmental law reform processes on perspective of environmental regulation. Environmental offences are in the context of:

1. Public interest
2. Deterrence, and
3. Ecologically sustainable development.

i. Public Interest

The environmental defender's office is usually of the opinion that the legal protections that form the cornerstone of their system should be firmly maintained, except where there is an overriding public interest to justify derogating from these intrinsic safeguards. In New South Wales, environmental crime persecution is necessary for the protection of the citizens health, safety and ecological reasons, and such as may have significant and long term impacts within catchment on other landholders, recreational users, community and ecosystem health. In their Public policy considerations, therefore environmental protection provisions is strictly instituted and enforced, and those who cause damage to the environment would be punished appropriately. The imposition of strict liability offences supports this end.

ii. Deterrence

The policy of environmental protection in New South Wales, deterrence is placed as per punishing offenders without much investigation. The rationale behind this legal culpability without an investigation of the mental state of an offender is to deter individuals and corporations from engaging in future conduct that is likely to cause environmental harzard. A clear message to those that pollute the environment that they will be prosecuted vigorously and that no legal loopholes would be made available to escape legal responsibility for their acts. This is especially proficient in relation to corporations which often participate in large-scale activities with the potentials to widespread environmental damage. As such, the regulatory regime of New South Wales established a significant disincentive for those corporations that have the tendencies of polluting the environments and also a substantial and targeted penalties to deter others.

In New South Wales, where deterrence in terms of financial consequences are not sufficient a term of imprisonment or heavy sanctions against the multinationals are usually imposed.

iii. Ecologically Sustainable Development

Ecological protection being vital to sustainable development, all environment offences are offences against the sustainable growth of the government of New South Wales, and with the hope that strict liability offences in the environmental arena are necessary to ensure the maintenance of the environment for future generations and the conservation of biodiversity the government make sure of this. The deleterious effects of pollution and environmental degradation on fauna, flora, land, air and sea are scientifically irrefutable. Such impacts are contrary to New South Wales Government.

2. The United States of America

In the United States of America, courts were initially reluctant on the scope of the rule. In *Turner v Big Lake Oil Co* [16], the court could not impose strict liability for the escape of salt water from ponds constructed and used by the defendants in the operation of oil wells. Oil was big business in Texas as at that time and such constructions were a necessary part of the oil business. In the same vein, the court took a restrictive view of the rule which it held in

policy to promote the concept of ecologically sustainable development.

Fritz v E.I Dupont de Benours & Co [17], the defendant was not liable for chlorine fumes which escaped from one of its chemical plants that injured the plaintiff, because the presence of the chlorine was not unusual... and was not dangerous per se in the light of recorded industrial use".

Since these cases, there has been a turn around in the attitude of American courts towards the rule and having learnt their lessons they have applied the rule strictly [18]. Drawing perhaps from the efficacy of the strict liability doctrine in the United State of America in line with the prevailing British Petroleum Oil saga, the then American President, Barrack Obama who vowed to make reckless British Petroleum pay for the oil spill, cleaning up the oil and initiating the impact on the people and environment of the Gulf Coast [19]. BP is being held accountable for its action [20].

As Rodgers [21] aptly remarked, some Americans have taken a different doctrinal route to enforcing the principles of strict liability while rejecting *Rylands v. Fletcher* by name. In some other states of the United States of America, pride of place has been accorded to "implied warranties" in environmental suits. The advantage in the concept of implied warranties lies in the fact that if injury can be proved to be caused by the action of the defendant, the legal system will be adjusted to fit the facts [22] with the result that, the defendant will be adjudged liable to the plaintiff instantly.

Secondly, where a particular legislation or administrative regulation imposes statutory duties on a defendant, the defendant may be expected to strictly comply with the provisions, otherwise he will be held liable to the plaintiff for damages suffered, due to non-compliance with such regulations. The general trend, vis-à-vis rules of evidence lies in the shifting of burden of proof in environmental litigations, from the plaintiff to the defendant. Reitze observed that "there had been a shift from bias against victims of environmental pollution to a more sympathetic treatment of their cases. Therefore, in matters of environmental protection, national legal systems of countries are shifting the burden of proof to the accused, once minimum standard of evidence is provided. In other words, based upon minimum acts, the presumption of guilt shifts to the accused to prove innocence.

Similarly, others have however applied the principles of nuisance which is based upon the intended conduct otherwise actionable under principles controlling liability for abnormally dangerous activities or conditions.

2.1 The Nigerian Environment

Nigeria is one of the countries that has suffered enormous effect of environmental degradation, every part of the country is bedevilled with one form of disaster or another accounting for series of human impact on the ecosystem. The adverse interactions of human activities with the natural world is a major threat to environmental failure in Nigeria. The Northern part of the country is devastated by desertification, the Eastern part of the country is fully gully erosion troubled and while the South-south part account for the worse senerio of Oil pollution and other disasters.

The Nigeria-Delta to be specific

The Niger-Delta is one of the largest wetland in the globe and it is covered of a region approximated at 70,000 square kilometres, comprising of a number of characteristic ecological zone ranging from the sandy coastal ridge barriers, brackish or saline mangroves, fresh water, permanent and seasonal swamp forest, to lowland rain forest [23]. The region is also entirely traversed and criss-crossed by a number of tributaries and distributaries to the main River Niger and within this region, very many folks are inhabitants, such as the Ijaws, Urhobo, Itsekiri, Ibibios, Orons, Anangs, among others and their means of livelihood sole depended on small scale fishing and farming, and the inhabitamts lived there for centuries. This region carries a massive reserves of oil, which amount to the nation's wealth and in this same region, Multinational companies majored in oil exploration which activities has infested negatively on the livelihood of the inhabitants.

The Royal Dutch Shell discovered crude oil in this region far back as 1956 in commercial quantity, since then the whole of that region had not known peace, and currently there are about 606 oil field in the Niger Delta; 360 of them are on shore while 246 are offshore with a daily production of about 2.5 million barrels per day and with a reserve of about 35.2 billions barrel [24].

In Nigeria, the activities of this major multinationals oil companies and others including Mobil, Chevron etc who came later to joined Shell B P brought immersed lost of Agricultural land, lost of drinkable water as well as lost of aquatic life to the region Niger Delta inhabitants in this region are impoverish and deprived of good living. There are oil spill all over the soil and life had become unbearable for the region Gas flare burns for 24 hours, depriving the communities of night's natural darkness. Niger Delta region is at "war" with oil exploration.

The Rule in *Rylands v Fletcher* in protecting the Nigerian environment

Many multinational companies in Nigeria particularly the oil and gas industries are aware of the implications of the rule of *Rylands v. Fetcher* in the protection of the Nigerian environments, they are also aware of the legal implications against any breach of the necessary laws aswell as other covenants with the inhabitants.

The rule imposes heavy liability on the defendant company who allowed his product to escape to the plaintiff discomfort as stated early. Under the rule, it is unnecessary to prove negligence on the part of the defendant company. The court will only require the plaintiff to prove that there was an escape of something dangerous from the defendant company's land or premises to somewhere outside his occupation or 'control [25]. The plaintiff will be further required to prove that there was an 'escape' of the dangerous thing which is a non-natural user of the land a special use which brings with it increased danger to others. Finally, the plaintiff will also be required to prove that he has 'suffered damage' as a result of the escape unto his land or property. It must be noted that whether the conduct or the thing which escapes is "dangerous" is a question of fact having regard to all the circumstances including the social utility of the activity and choice of the location [26] but to what extent has this rule helped in arresting this menace of these oil giants in Nigeria? How successful are Nigerian courts in giving judgments in favour of plaintiffs against these so called oil giants with ease?

Nigerian courts have up held the tenets of the rule against companies which caused industrial pollution to plaintiff's ponds, lakes and farmlands. In this regard, a couple of legislations such as the National Environmental Standards, and Regulations Enforcement Agency (NESREA) plethora of cases may have done some justices on the subject.

Section 8 (e) (f) (g) of the National Environmental Standards, And Regulations Enforcement Agency Act (NESREA) is a *impari-materia* with the provisions of Section 1, 2 & 12 of the Harmful Waste (Special Criminal Provision etc.) [27] makes provisions for the protection of the environment in Nigeria. For example: S. 8 (e) provides:

"The agency shall conduct field follow-up Compliance with set Standards and take procedures prescribed by law against any Violator"

S. 8(f) provides:

"Subject to the provisions of the constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant authorities, establish mobile courts to expeditiously dispense cases of violation of environmental regulations

S. 8(g) provides further that the agency shall:

"Conduct public investigation on pollution and the degradation of natural resources, except investigation on oil spillage"

This Section is potent enough in minimizing the magnitude of environmental degradation. Its drawback lies in S. 8(g) for excluding investigations on oil spillage that has been a recurring plight of those living within the vicinity of polluters. The few cases with minimal compensations were:

In *Sam Ikpede v The Shell BP Petroleum Development Company Nigeria Limited* [28] the plaintiffs suffered damages as a result of the escape of crude oil and chemicals from oil pipelines of the defendant on to the land of the plaintiffs, thereby killing all the fish swamps, together with raphia palms. They claimed compensation; and in the alternative relied on the rule of *Ryands v Fletcher*. It was held by Ovie Whiskey, J (as he then was) that to lay crude oil carrying pipes through Swamp forest land is...a non-natural user of the land and that it is common Knowledge that crude oil causes great havoc to fishes and crops if allowed to being carried.

Notwithstanding the above finding, the rule was held not to apply because the acts of the defendants fell under the exception of statutory authority, since they had a licence to lay the oil pipes. Nevertheless, they were held liable to pay reasonable and adequate compensation under section 11(5) (c) of the Oil Pipelines Act (Cap 145 of 1958 now S. 145 Cap. 07 LFN 2004), on the basis of Statutory strict liability [29].

Similarly, in *Edhemowe v Shell BP Petroleum Development Company of Nigeria Limited* [30] the court held the defendant liable for damage caused to the plaintiff's fish pond by the oil which escaped from the defendant's waste pit, holding that the accumulation of crude oil in a waste pit was a non-natural user of land.

In *Umudje v Shell BP Petroleum Development Company of Nigeria Limited*, the plaintiffs claimed damages for the "escape" of oil waste from a pit in the control of the defendants which resulted in damage to the plaintiff's ponds, lakes and farmlands. The Supreme Court held the defendant company liable for the damage to the plaintiff's property under the rule in *Rylands v Fletcher*. According to ldigbe, J.S.C [31].

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 Rylands v Fletcher although the escape' had not occurred as a result of negligence on his part....the appellants cannot therefore avail themselves of any of the exceptions to the rule of (Rylands v Fletcher) for damages arising from the escape of oil-waste from the pit"

Recently in Nigeria, there has been the clamour for resource control by regions with natural resources, but with the instrumentalisation of the Petroleum Act of 1969 and the land use of Act of 1978 as well as the constitution of 1999, this agitation has not succeeded in the quest rather, the backing of Nigerian governments and the high level of international western states, with influenced in oil politics in the world market, the various ethnic groups in the Niger Delta are continued to be deprived of their natural resources, polatization of the whole oil saga in the Niger Delta has been a major hindrance in the effectiveness of the rule of *Rylands v Fletcher* and this has led to hindrances and inconsiderable court cases were brought yearly in Nigeria over pollution arising from oil spills yet only few cases gets significant compensation and oftentimes many petitions gets unawarded.

The following cases that failed woefully at the Supreme Court are examples of the inability of the rules of Rylands and Fletcher in granting adequate award to victims of environmental damages in Nigeria. These are some of the cases hereunder, and others are still pending in various courts. It is clear that the rule has lost its potency over the years

1. Chinda v. Shell – BP [32]
   Atubin and Ors. v. shell – BP [33]
   Ogiale v. Shell (1997) 1 NWLR (pt 480-148) [34]
   Amos and Ors. v. Shell BP (1977) 6 SC 109 [35].
   Seismograph Services Ltd. v. Onokpasa (1978) 4 SC 123 [36].

Chidinma v. Ors. v. Shell (1974) 2 RSLR I BP [37]

Oronto Douglas v. SPDC (unreported suit No FHC/L/Cs/573/93) [38].

Seismograph Services Ltd. v. Ogbeni (1976) NMLR 290 [39].

Alar Irou v. Shell – BP Development Nigeria Ltd.

Theory of Causation and Strict Liability

Causality is a process or mechanism wherein one factor or set of factors is the determinant of another factor or set of factors. If x is the cause of y, then x is said to be determinant of y [40].

From the foregoing examination of the traditional rules of liability in tort, it has been established that the fault principle is gradually giving way for a theory of causation and strict liability through the following developments.

Firstly, an action on trespass arising from oil spillage does not require fault. What is needed to be proved is that there was an unjustifiable intrusion of the offending oil onto the plaintiff's land.

Secondly, foreseeability of liability is no more regarded to be the proper test in nuisance where extensive damage has been caused, as it takes the situation outsides its natural user. Causation and proximity are now the deciding factors.

Thirdly, in the case of liability for negligence, the traditional requirement of foreseeability of harm had given way for causation and proximity. What is now needed is proof of

sufficient relationship of Proximity and neighbourhood. Once substantial injury is done to the Plaintiff, as usually the cause in oil pollution cases, the plaintiff has the benefit of the doctrine of resipsa liquitur where the burden of proof shifts to the defendant, thereby making the liability strict. The requirement in *res ipsaloquitur* that the thing that inflicted the damage was under the sole management and control of the defendant, or of someone for whom he is responsible or whom he has a right to control, makes it to have a common front with *Rylands v Fletcher*.

The Way Forward

The first is section 11(5) (c) of the Oil Pipelines Act (cap 145 of1958 now S. 145 of the Petroleum Act Cap. 07 of 2004) has provided that the holder of a licence 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 or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good'. This is a good development. It is obvious that this is the statutory version of the rule in *Rylands v. Fletcher* as the liability to pay compensation is strict. The Burden of proof that the spillage was caused through the default of the plaintiff or the malicious act of a third party is on the defendant is not necessary. This section must be interpreted along with section 19 (2) (now 20(2) of the Petroleum Act Cap. 07 of 2004 which provides for the basis of assessment of compensation. This applies to only leakages from oil pipes.

The second is paragraph 36 of schedule 1 to the Petroleum Act 1969 (No. 51 of 1969 now S. 37 of the Petroleum Act Cap. P10 of 2004) which provides that 'the holder of an oil exploration licence, oil prospecting licence or oil mining lease shall in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair adequate compensation [41] for the disturbance of surface or other rights to any person who owns leased lands. This is at moment the general provision for compensation governing all activities in the petroleum industry where there is no specific provision thereto.

The third is Regulation 23 of the Petroleum (Drilling and Production) Regulations (now S. Regulation 7 of the Petroleum Act 2004) which provides for adequate compensations for the disturbance of fishing rights arising from pollution. This is more restrictive as it is confined to only fishing rights.

It is important that the theory of causation and strict liability, should de-emphasize the fault principle in tort and emphasize strict liability on offenders. Polluters must not be given any chance to go free, no matter his defence. It would not be reasonable to cast the burden of proof of an incident on a person who has the least technical know-how of the subject matter any incident. and who has no control over it, it should be sufficient that the (victim) be made only to prove that the defendant caused the pollution through the doctrine of *res ipsa loquito*.

The Human Right Approach as a way forward in Environmental Conservation in Nigerian

A part from the strict liability approach the human right approach has appeared to be worthwhile in the management of the environments. Diemer has observed that with "increasingly severe and widespread environmental degradation" on earth, "new tools are needed to respond to environmental harm" traditional international environmental law has little to offer individuals harmed by such damage" [42]. Moreover the learned scholar has rightly observed that individuals "whose health or livelihood" is endangered by environmental pollution, "have little recourse under international environmental laws" and those who are most negatively impacted by environmental pollution are often ethnic minority groups (like the Ijaws, itsekiris etc) Or indigenous peoples who are effectively excluded from political participation or redress under their nation's laws". He then posits that "linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its centre."

In the same vein, Bell and McGillivray have indicated the development of the language "rights" and environmental law as "a potential counterpoint to the discretionary, flexible basis of much of environmental law and decision making" in recent times. Cullet has also intoned that "the right to environment requires states" to abstain from "activities harmful to the environment, and to adopt and enforce policies" for promoting the conservation and improvement of the quality of the environment [43].

It is pertinent to state that adopting the human rights approach in tackling the challenges of environmental issues in the Niger Delta has proven to be potent and effective in a number of cases. For instance, in *Social and Economic Rights Action Center (SERAC)* and the *Centre for Economic and Social Rights (CESR) v. Nigerian* [44], the African Commission of Human and Peoples' Rights relied on *Article 24 of the African Charter on Human and Peoples' Rights*, in holding that Nigeria violated the right to a satisfactory environment by granting permission to Shell Corporation to disregard the health and environment of communities during exploration of oil in Ogoniland [45]. The African Commission decided that the Nigerian government permitted the contravention of international environmental standards by (i) providing military support to oil companies; (ii) failing to make provision for environmental impact studies; and (iii) refusing independent assessment of environmental damage.

It is interesting to note that the human rights approach to combating environmental degradation was successfully adopted for the first time in *Nigeria in Gbemre v. Shell* [46]. In this instant case, the Applicant requested the Federal High Court for the following reliefs:

1. A declaration that the constitutionally guaranteed rights to life and dignity of the human person provided in Section 33(1) and 34(1) of the Constitution includes the right to a clean, poison-free, pollution-free and healthy environment;
2. A declaration that the actions of the respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicant's community is a violation of the fundamental rights to life (including healthy environment) and the dignity of the human person guaranteed by Sections 33(1) and 34(1) respectively of the Constitution;
3. A declaration that the provisions of Section 3(2)(a) and (b) of the Associated Gas Re-injection Act and Section 1 of the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations, under which the continued flaring of gas in Nigeria may be allowed are inconsistent with the applicant's right to life and/or

dignity of the human person enshrined in Section 33(1) and 34(1) of the Constitution and therefore are unconstitutional, null and void; and

4. An order of perpetual injunction restraining the respondents by themselves or by their agents, servants, contractors or workers or otherwise howsoever from further flaring of gas in the applicant's community [47].

The court decided inter alia that the constitutionally guaranteed rights to life and dignity of the human person inevitably includes the rights to a clear, poison-free, pollution-free, and healthy environment; the actions of the respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicant's community is a gross violation of the community members (including the applicant's) fundamental right to life (including healthy environment) and dignity of the human person as enshrined in the constitution of Nigeria 1999.

The court further ordered the respondents to take immediate steps to stop further gas flaring in the applicant's community. On the significance of this judgment, Ebeku has observed that:

…this is the first case in which a Nigerian court has expansively interpreted the right to life guaranteed in the 1999 Constitution of Nigeria to include the right to a healthy and clean environment and also upheld or enforced the legal right to a satisfactory environment protected in the African Charter on Human and Peoples' Rights as incorporated into Nigerian domestic law (the judge partly relied on this legal right in reaching his decision in the case). Importantly, this judgment is consistent with the jurisprudence of other jurisdictions as seen above and can therefore be counted as a new example of the increasing tendency across the world to enforce the constitutional right to healthy and clean environment [48].

Conclusion

The creation of good environment is a must for every society who takes the welfare and health of her citizens sacrosanct. Environmental matters are serious matters, human survival depends on the environment so closely that relevant laws and legislations such as NESREA and other regulatory bodies are put in place in Nigeria to function in this regards. It is worth mentioning that the old rules of Rylands v Fletcher which deals on strict liability in environmental issues evolved in 1868 in England has outlived its usefulness in contemporary times where legal technicalities and modern technology domiciled. Important approach in combating environmental menace in Nigeria without fear or favour is recommended, offenders of environmental law should be criminally liable to serve as deterrence to others. This would prevent imminent destruction of our environments. The political will power of our leaders is highly solicited within their capacity to create an enabling environment with which future generation will be sustained for a better environment. The enforcement of environmental laws in New South Wales and United States of America recorded impressive achievements to be emulated. Nigeria should emulate countries with good environmental policies like New South Wales and the United States of America. The Nigeria environmental protection rules should be activated through the various agencies of environmental protections in Nigeria. In this focus, the National Environmental Standards and regulations enforcements Agency Act NESREA 2007 must play its regulatory role in environmental laws to create enduring achievements for the next generation.

Nigerian leaders must realise that the protection and preservation of the environment is for the present and future generations and a *sine quanon* in the enforcement of strict liability and other human right laws as a tool for environmental conservation in the country.

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