

?Resource Control? Judgement ? Attorney General of The Federation of Nig. V. Attorney Generals of 36 States

There arose a dispute between the Federal Government of Nigeria (?FGN?) and the eight littoral States of Akwa Ibom, Bayelsa, Cross Rivers, Delta, Lagos, Ogun, Ondo and Rivers State as to the seaward boundary of each of these littoral States (?the States?) in view of the fact that the determination of this issue would resolve whether or not these States were entitled to a minimum of 13% of all revenue accruing to the Federation Account on the basis of the derivation of natural resources from each of these littoral States.

It was the case of the FGN that the natural resources located within the continental shelf of Nigeria are not derived from any of these States as their boundaries ends at the low water mark of the land surface of each of such littoral States. On the other divide, the case of the States, especially the littoral States, was that their territories extended beyond the low water mark, unto the territorial waters and also unto the continental shelf and the exclusive economic zone. They therefore contended that natural resources from both offshore and onshore are derivable from the respective littoral States territory and in respect of which each State is entitled to ?not less than 13%? allocation of all revenues derived from these natural resources.

The principal issue before the Supreme Court of Nigeria for resolution between the disputants was ?A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from natural resources derived from that State pursuant to the proviso to Section 163 (2) of the Constitution of the Federal Republic of Nigeria, 1999?. In simple English, this issue was what is the southern or seaward boundary of each of the eight littoral States.

Note that Section 162 (2) of the Constitution of the Federal Republic of Nigeria (?the 1999 Constitution?) empowers the National Assembly to determine the formular for distribution of funds in the federation account provided that not less than 13% of the revenue accruing to the Federation Account are paid directly to the State from which the natural resource is derived directly.

The Supreme Court in the leading Judgement of M.E. Ogundare, JSC held amongst others as follows: -

- That the Black's Law Dictionary defines natural resources as "any material in its natural state which when extracted has economic value." The Supreme Court held that whilst natural resources like coal, natural gas, crude oil, potassium, etc fall within this definition, other items like ports, wharves, agricultural products, etc are not natural resources.
- That the southern boundaries of all the eight littoral defendant States must be the southern boundaries of the old Western and Eastern Regions as defined in Laws of Nigeria of 1954, i.e. the sea. This is also defined in Section 11 of the Nigeria Protectorate Order in Council, 1922 and of Lagos State as defined in the Colony of Nigeria (boundaries) Order in Council, 1913.
- On what was the boundary mark of the sea and the sea States, i.e. littoral States, the Supreme Court held that "if the boundary is with the sea, then, by logical reasoning, the sea cannot be part of the territory of any of the old regions ." The case of the States that the boundary extended to the exclusive economic zone or the continental shelf of Nigeria was therefore rejected as untenable on this ground.
- That the States as riparian owners, are entitled to the seaward extent of their land territory because at Common Law, all of the sea shore i.e. the seaward limit of their internal waters, belongs to the Crown.
- Finally held on the FGN's claim, that the seaward boundary of a littoral State for the purpose of calculating the amount of revenue accruing to the Federal Account directly from any natural resources derived from that State "is the low water mark of the surface thereof or " the seaward limits of the inland waters within that State for a State like Cross Rivers State that has a lot of Islands.

The littoral States in turn also filed Counter Claims against the Federal Government. A counter claim is similar to an independent action; the rules of our judicial system however allows it to be heard together with the main claim where the disputes between the parties are similar and so it would be more economical to hear the claim and counter-claim together.

On the littoral States counter claims, the Supreme Court held as follows: -

- That the Federal Capital Territory is not a State or a Local Government within a State as defined in the 1999 Constitution and accordingly, they were not qualified for distribution

of moneys deriving from the Federation Account.

- That the 13% basis for computing the derivation to the States and upon which the States are counter claiming against the FGN could not be upheld by the Supreme Court as the 1999 Constitution gives the appropriate authority, in this case the President, pending a resolution by the National Assembly, a discretion on the percentage to apply provided that it is not less than 13%.
- That the FGN, as a trustee to the States of the Federation, was liable to render an account to all the States. To be entitled to an order of the Supreme Court compelling the FGN to render an account of all revenue deriving from all natural resources, the States must have firstly demanded for the accounts and the FGN after the demand or repeated demand has failed, refused or neglected to provide the accounts.
- That the FGN was constitutionally not empowered to deduct as a first charge from the Federation Account sums of money to service the country's external debts.
- That it was unconstitutional for the FGN to pay moneys directly to the Local Governments from the Federation Account to cater for primary education as by the 1999 constitution, the primary responsibility for this function is with the States and Local Governments.
- That it was constitutionally wrong for the FGN to charge the salaries, allowances and recurrent expenditure of the judiciary to the Federation Account in stead of the Consolidated Revenue Fund.
- That charging of the funding of the joint venture contracts and the Nigerian National Petroleum Corporation priority projects to the Federation account are inconsistent with the provisions of the 1999 Constitution and therefore invalid and unconstitutional.

The Supreme Court further held that the under listed policies of the FGN are unconstitutional:

- The exclusion of natural gas as a constituent part of derivation in computing natural resources.
- Non-payment to States of proceeds from the Capital Gains Tax and Stamp Duties tax revenues.
- Unilateral allocation of 1% of the revenue accruing to the Federation Account, to the benefit of the Federal Capital Territory , Abuja.
- The 1999 Constitution having come into force on May 29 th , 1999, the principle of derivation also came into force on the same date, i.e. May 29 th , 1999. The FGN is

therefore obliged to comply forthwith with the Constitution from that date.

General Comments & Conclusion

Many commentators have argued that the issue for determination before the Supreme Court in this case was not about resource control but about the onshore/offshore dichotomy, particularly when it comes to the distribution of revenue accruing to the Federation Account. Retired Justice

of the Supreme Court of Nigeria, Karibi-Whyte, JSC ruled in an interlocutory decision before the final decision of the Supreme Court in this case that "I therefore am of the firm opinion that the Plaintiff's claim is limited and confined to the determination of the seaward boundary of littoral States. I so hold. Any other consideration will be preposterous and manifestly inconsistent with the fundamental principles of adjudication".

There is a difference between derivation from natural resources on the one hand and the control of natural resources existing in a State, whether littoral or not, on the other. Derivation according to a legal commentator is "the recognition of a prior beneficial right that was subsequently expropriated. Thus, the principle of derivation is a form of compensation and/or reparation for an expropriated interest". Resource control on the other hand covers a much more wider sphere. Also, resource control is a politically sensitive matter.

The differences on whether the issue that was for determination was one of resource control or that of the dichotomy between onshore and offshore revenue would be avoided if a better appreciation of Nigeria's adjudicative legal system is understood.

Under our adjudicative system, our courts are only permitted to adjudicate over legal issues, and not political or academic issues, properly brought before it. A misunderstanding of this fundamental function may have led to the confusion that presently exist. With more enlightenment, it is believed that greater understanding will prevail eventually.

[^ Return to top](#)

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