IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT COURT 3, IKPOBA HILL, BENIN CITY
ON MONDAY THE 14TH DAY OF NOVEMBER, 2005
BEFORE HIS LORDSHIP THE HONOURABLE
JUSTICE C.V. NWOKORIE
JUDGE

SUIT NO: FHC/B/CS/53/05

BETWEEN

MR. JONAH GBEMRE .... PLAINTIFF
(For himself and as representing Iwherekan Community in Delta State, Nigeria)

AND

1. SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LTD
2. NIGERIAN NATIONAL PETROLEUM CORPORATION

} DEFENDANTS

3. ATTORNEY GENERAL OF THE FEDERATION

P. Labah
Snr. Reg.
Certified True Copy
Federal High Court
BENIN CITY.
30/11/05

JUDGMENT

On the 21st of July 2005 this Court granted leave to the Applicants to apply for an order enforcing or securing the enforcement of their fundamental rights to life and dignity of human person as provided by Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999, and Arts 4, 16, and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9 Vol. 1, Laws of the Federation of Nigeria, 2004. By a further leave of Court I permitted the Applicant to commence these proceedings for himself and as representing the other members, individuals and residents of Iwherekan Community in Delta State of Nigeria, in view of the copious unwieldy list of members contained in an earlier application for leave they brought in respect thereof, which was withdrawn by their Counsel at the prompting of the Court.

The Reliefs claimed by the Applicants in their subsequent Motion on Notice filed on 29th July, 2005 include:-

1. A declaration that the Constitutionally guaranteed fundamental rights to life and dignity of human person provided in Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999 and reinforced by Arts 4, 16 and 24 of the African Charter on Human Procedure Rules (Procedure and Enforcement) Act, Cap A9, Vol. Laws of the Federation of Nigeria, 2004 inevitably includes the right to clean poison-free, pollution-free and healthy environment.

2. A declaration that the actions of the 1st and 2nd 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 their fundamental rights to life (including healthy environment) and dignity of human person guaranteed by Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999 and reinforced by Arts 4, 16 and 24 of the African Charter on Human Procedure Rules (Ratification and Enforcement) Act Cap. A9 Vol. 1 Laws of the Federation of Nigeria, 2004.

3. A declaration that the failure of the 1st and 2nd Respondents to carry out environmental impact assessment in the Applicant's Community concerning the effects of their gas flaring activities is a violation of Section 2(2) of the Environment Impact Assessment Act, Cap. E12 Vol. 6 Laws of the Federation of Nigeria, 2004 and contributed to the violation of the Applicant's said fundamental rights to life and dignity of human person.

4. A declaration that the provisions of Section 3(2)(a), (b) of the Associated Gas Re-injection Act Cap. A25 Vol 1 Laws of the Federation of Nigeria, 2004 and Section 1 of the Associated Gas Re-Injection (continued flaring of gas) Regulations Section 1. 43 of 1984, under which the continued flaring of gas in Nigeria may allowed are inconsistent with the Applicant's Right to life and/or dignity of human person enshrined in Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999 and Arts. 4, 16, and 24 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Cap. A9 Vol. 1 Laws of the Federation of Nigeria, 2004 and are therefore unconstitutional, null and void by virtue of Section 1(3) of the same Constitution.

5. An order of Perpetual Injunction restraining the 1st and 2nd Respondents by themselves or by their agents, servants, contractors or workers or otherwise howsoever from further flaring of gas in the Applicants said Community.

It is the case of the Applicants (as shown in the itemized grounds upon which the above-mentioned Reliefs are sought that:

a. By virtue of the provisions of Sections 33(1) and 34 (1) of the Constitution of Federal Republic of Nigeria, 1999 they have a fundamental right to life and dignity of human person.

b. Also by virtue of Arts 4, 16 and 24 of the African Charter on Human and Peoples Procedure Rules (Ratification and Enforcement) Act Cap A9, Vol. I Laws of Federation of Nigeria, 2004, they have the right to respect for their lives and dignity of their persons and to enjoy the best attainable state of physical and mental health as well as right to a general satisfactory environment favourable to their development.

c. That the gas flaring activities in their Community in Delta State of Nigeria by the 1st and 2nd Respondents are a violation of their said fundamental rights to life and dignity of human person and to a healthy life in a healthy environment.

d. That no environmental Impact Assessment was carried out by the 1st and 2nd Respondents concerning their gas flaring activities in the Applicant's Community as required by Section 2(2) of the Environmental Impact Assessment Act, Cap E 12 Vol. 6, Laws of the Federation of Nigeria 2004, and this has contributed to the unrestrained, mindless flaring of gas by the 1st and 2nd Respondents in their Community in violation of their said fundamental rights.

e. That no valid Ministerial Gas Flaring Certificates were obtained by any of the 1st and 2nd Respondents authorizing the gas flaring in the Applicant's said Community in violation of Section 3(2) of the Associated Gas Re-Injection Act, Cap A25 Vol. 1, Laws of the Federation of Nigeria, 2004.

f. That the provisions of Section 3(2) of the Associated Gas Re-Injection Act, Cap. A25, Vol. 1, Laws of the Federation of Nigeria, 2004 and Section 1 of the Associated Re-Injection (Continued Flaring of Gas) Regulations Section 1, 43 of 1984, under which gas flaring in Nigeria may be continued are inconsistent with the provisions of Sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria 1999 and Arts 4, 16, and 24 of African Charter on Human Procedure Rules (Ratification and Enforcement) are therefore unconstitutional, null and void.

g. That the provisions of both Sections 21(1) and (2) of the Federal Environmental Protection Agency Act (FEPA) Cap F10 Vol. 1 Laws of the Federation of Nigeria, 2004 makes the gas flaring activities of the 1st and 2nd Respondents a crime, the continuation of which should be discouraged and restrained by the Court.

It is also, in the case of the Applicants (as summarized in their Affidavit in verification of all the above-stated facts) that they are bonafide citizens of the Federal Republic of Nigeria.

1. That the 1st and 2nd Respondents are Oil and Gas Companies in Nigeria who are engaged jointly and severally in the exploration and production of Crude Oil and other Petroleum products in Nigeria.

2. That in further support of their rights to life and dignity of their persons they have the right to respect for their lives and dignity of their persons and to enjoy the best attainable state of physical and mental health as well as right to a general satisfactory environment favourable to their development.

3. That the 1st and 2nd Respondents have been engaged in massive, relentless and continuous gas flaring in their community and that the 2nd Respondent is a Joint Venture Partner with the 1st Respondent in its oil exploration and production activities, which includes gas – flaring, in Nigeria.

4. That the activities of the 1st and 2nd Respondents in continuing to flare gas in their community seriously pollutes the air, causes respiratory diseases and generally endangers and impairs their health.

5. That the 1st and 2nd Respondents have carried on gas flaring continuously in their community without any regard to its deleterious and ruinous consequences concentrating only on pursuing their commercial interest and maximizing profit.

6. That the 1st and 2nd Respondents do not like to find gas together with oil in their oil – fields (i.e. Associated Gas AG), but prefer to find gas without it being mixed up with oil – so called non-associated gas (non. AG), and that the attitude of the 1st and 2nd Respondents whenever they find oil mixed with gas is to dispose of the associated gas in order to profit from the oil (which is the more lucrative component) and this process of gas flaring is unrestrained and mindless.
7. That burning of gas by flaring same in their community gives rise to the following:-

    a. Poisons and pollutes the environment as it leads to the emission of carbon dioxide, the main green house gas; the flares contain a cocktail of toxins that affect their health, lives and livelihood.

    b. Exposes them to an in[illegible]d risk of premature death, respiratory illness, asthma and cancer.

c. Contributes to adverse climate change as it emits carbon dioxide and methane which causes warming of the environment, pollutes their food and water.

d. Causes painful breathing chronic bronchitis, decreased lung function and death.

e. Reduces crop production and adversely impacts on their food security.

f. Causes acid rain, their corrugated house roofs are corroded by the composition of the rain that falls as a result of gas flaring saying that the primary causes of acid rain are emissions of sulphur dioxide and nitrogen oxides which combine with atmospheric moisture to form sulphuric moisture to form sulphuric acid and nitric acid respectively. The acidic rain consequently acidifies their lakes and streams and damages their vegetation.

8. That the emissions resulting from the 1st and 2nd Respondents burning of Associated Gas by flaring in their Community in an open uncontrolled manner is a mixture of smoke more precisely referred to particulate matter, combustion by-products including sulphur dioxide nitrogen dioxides and carcinogenic substances, all of which are very dangerous to human health and lives in particular.

9. That no Environmental Impact Assessment (E.I.A) whatsoever was undertaken by any of the 1st and 2nd Respondents to ascertain the harmful consequences of their gas flaring activities in the area to the environment, health, food, water, development, lives, infrastructure etc, etc.

10. That if the 1st and 2nd Respondents had carried out environmental impact assessment in their community concerning this gas flaring as required by law, they would have known or found out that it is most dangerous to their health, life and environment and refrained from gas flaring and that they deliberately failed to do so out of their selfish economic interest.

11. That so many natives of the community have died and countless others are suffering various sicknesses occasioned by the effects of gas flaring by the 1st and 2nd Defendants.

12. That their community is thereby grossly undeveloped very poor and without adequate medical facilities to cope with the adverse and harmful effects on their health and lives occasioned by the unrestrained gas flaring activities in the area.

13. That the 1st and 2nd Respondents have not bothered to consider the negative unhealthy and very damaging impact on their health, lives,

and environment of their persistent gas flaring activities and have made no arrangements to provide them with adequate medical attention and facilities to cushion the adverse effects of their gas flaring activities.

14. That the constitutional guarantee of right to life and dignity of human person available to them as citizens of Nigeria includes the right to a clean, poison-free and pollution-free air and healthy environment conducive for human beings to reside in for our development and full enjoyment of life; and that these rights to life and dignity of human person have been and are being wantonly violated and are continuously threatened with persistent violation by these gas flaring activities.

15. That unless this Court promptly intervenes their said fundamental rights being breached by the 1st and 2nd Respondents will continue unabated and with impunity while its members will continue to suffer various sicknesses, deterioration of health and premature death.

16. And that the 1st and 2nd Respondents have no right to continue to engage in gas – flaring in violation of their right to life and to a clean, healthy, pollution-free environment and dignity of human person.

Finally, that the 1st and 2nd Respondents have no valid Ministerial Certificates authorizing them to flare gas in the Applicant's Community.

Now, before I consider the Counter-Affidavit and other processes of the 1st and 2nd Respondents, it is necessary for me to reproduce some of the statutory provisions mentioned so far and other relevant enactments for the Court's ease of reference.

Section 46(1) of the Constitution states that

> "Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him, may apply to a High Court in that State for redress".

Section 33(1) state that:-

> "Every person has a right to life, and no one shall be deprived intentionally of his life save in execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty in Nigeria".

Section 34(1) of the Constitution of Federal Republic of Nigeria, 1999 states:-

> "Every individual is entitled to respect for the dignity of his person and accordingly.
>
> (a) no person shall be subjected to torture or to inhuman or degrading treatment
>
> (b) no person shall be held in slavery or servitude
>
> (c) no person shall be required to perform forced or compulsory labour.

Article 4 of the African Charter on Human Procedure Rules states:

> "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right".

Article 16 of the African Charter on Human Procedure Rules states:-

> "Every individual shall have the right to enjoy the best attainable state of physical and mental health. State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick".

Article 24 of the Charter:

> "All peoples shall have the right to a general satisfactory environment favourable to their development".

Section 3(2) (a)(b) of the Associated Gas Re-Injection Act, Cap. A2,

Vol. Laws of the Federation of Nigeria, 2004 states that:-

<u>"Flaring of Gas to cease</u>

Section 3(2)

> "Where the Minister is satisfied after January 1, 1984 that the utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields he may issue a Certificate in that respect to a company engaged in the production of oil and gas
>
> –

(a) Specifying such terms and conditions, as he may at his discretion choose to impose, for the continued flaring of gas in the particular field or fields, or

(b) Permitting the company to continue to flare gas in the particular field or fields if the company pays such sum as the Minister may from time to time prescribe for every 28.317 cubic metre (SCM) of gas flared.

Provided that, any payment due under this paragraph shall be made in the same manner and be subject to the same procedure as for the payment of royalties to the Federal Government by companies engaged in the production of oil".

Section 4 of the Associated Gas Re-Injection Act makes provision for penalty and states in Section 4(1) as follows:

"Where any person commits an offence under Section 3 of this Act the person concerned shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed.

Section 4(2)

"In addition to the penalty specified in subsection (1) of this Section, the Minister may order the withholding of all or part of any entitlements of any offending person towards the cost of completion or implementation of a desirable re-injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oil-field practice".

Under the Associated Gas Re-injection (Continued Flaring of Gas) Regulations made under the Act, conditions for the issuance of certificate for continued flaring of gas was specified in Section 1:-

(a) Where more than 75% of the produced gas is effectively utilized or conserved.

(b) Where the gas produced contains more that 15% impurities such as N2 H2 S, Co2 etc. which render the gas unsuitable for industrial purposes.

(c) Where an on-going utilization programme is interrupted by equipment failure: Provided that such failures are not considered too

frequent by the Minister and that the period of any one interruption is not more than 3-months.

(d) Where the ratio of the Volume of gas provided per day is less than 3, 5000 SCF/bbl and that it is not technically advisable to re-inject the gas in that field.

(e) Where the Minister in appropriate cases as he may deem fit, orders the production of oil from a field that does not satisfy any of the conditions specified in the regulations.

Part 1 of the Environmental Impact Assessment Act states the General Principles of Environmental Impact Assessment and Section 1 thereof provide for the goals and objectives of Environmental Impact Assessment.

Section 1(a) –

The Objectives of any Environmental Impact Assessment shall be

(a) to establish, before a decision is taken by any authority, corporate body or unincorporated body, including the Government of the Federation, State, or Local Government, intending to undertake or authorize the undertaking or any activities those matters that may likely or to a significant extent affect the environment or have an environmental effect on those activities.

(b) To promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas, consistent with all laws and decision – making processes through which the goal and objective in paragraph (a) of this Section may be realised;

(c) To encourage the development of procedures for information exchange notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans – state or on the environment of bordering town and villages.

Section 2: Restriction on public or private project without prior consideration of the environmental impact;

(1) The public or private sector of the economy shall not undertake or embark on or authorize projects or activities without prior consideration, at an early stage, of their environmental effects;

(2) Where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Act;

(3) The criterion and procedure under this Act shall be used to determine whether an activity is likely to significantly affect the environment, and is therefore subject to an environmental impact assessment;

(4) All agencies, institutions (whether public or private), except if exempted pursuant to this Act shall, before embarking on the proposed project, apply in writing to the Agency (Federal Environmental Protection Agency) so that subject activities can be quickly and surely identified and environment applied as the activities are being planned.

Section 4 prescribes the minimum content of environmental impact assessment as follows:-

(a) a description of the proposed activities;

(b) a description of the potential of the affected environment, including specific information necessary to identify and assess the environmental effect of the proposed activities;

(c) a description of the practical activities, as appropriate;

(d) an assessment of the likely or potential environmental impacts of the proposed activity and the alternatives including the direct or indirect cumulative, short-term and long-term effects;

(e) an identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;

(f) an indication of the gaps in the knowledge and uncertainty which may be encountered in computing the required information;

(g) an indication of whether the environment of any State or Local Government Area or Areas outside Nigeria are likely to be affected by the proposed activity of its alternatives, and

(h) a brief and non-technical summary of the information provided under paragraphs (a) to (g) of this Section.

Section 20, Federal Environmental Protection Agency Act provides:-

(1) Any person who intentionally or accidentally spills or discharges or causes to be spilled or discharged any quantity of dangerous substances detrimental to public health or the environment shall (within 24 hours of the commencement of the spillage) notify the nearest Federal Environmental Protection Agency (FEPA) Office or State Environmental

Protection Body and Local Government Council of the area of the spillage.

(2) The Agency or any person or authority authorized in that behalf shall do any or all of the following, that is:-

(a) instruct the person responsible for the spillage or discharge to clean up all released dangerous substances within the time or days as may be specified;

(b) Designate and treat, store or dispose off all solids, water or other materials contaminated by the spillage or discharge in accordance with specific directives given in that behalf by the Agency, or any person or authority authorized in that behalf to issue the directive;

(c) Restore the area affected by the spillage or discharge and replenish resources in a manner acceptable to the Agency and any other person or authority authorized in that behalf by the Agency;

(d) Where immediate removal or temporary storage of spilled or discharged dangerous wastes or hazardous substances is necessary **to protect human health or the environment**, the Agency may direct that it be removed by competent transporters.

And Section 21(1) and (2) of the Federal Environmental Protection Agency Act provides thus:

(1) when measuring the weight of a dangerous waste, the Agency or any person or authority authorized by it in that behalf shall consider only the weight of the residues, and shall disregard the weight of the containers and inner liners thereof;

(2) A container or inner liner shall be considered to be "empty":-
(a) When all wastes in it have been taken out using practices commonly employed to remove materials from that type of container or inner liner, which ever quantity is least, until less than 2cm of waste remains at the bottom or the container of inner liner:-

(i) inner liner, the volume of waste remaining in the container or inner liner is equal to 1% or less of the container's total capacity, or

(ii) if the container's total capacity is greater than 416 litres the volume of waste remaining in the

container or inner liner is no more than 0.3% of the containers total capacity.

(b) When a container which holds compressed gas is empty, then the pressure inside the container equals, or nearly equals, atmospheric pressure.

Finally, I shall put at the back of my mind in the course of this Judgment relevant provisions of the Niger Delta Development Commission (Establishment) Act. Cap N86 Laws of the Federation of Nigeria, 2004. This Act merely provides for the repeal of the Oil Minerals Producing Areas Commission Act, 1998, and, amongst others, establish a new Commission with a reorganised management and administrative structure for more effectiveness, and for the use of the sums received from the allocation of the Federation Account for **tackling ecological problems which arise from the exploration of oil minerals in the Niger – Delta area and for connected purposes.** (emphasis mine)

Section 7 of this Act specifies the functions and powers of the Commission.

(1) The Commission shall –

(a) formulate policies and guidelines for the development of the Niger – Delta area;

(b) conceive, plan and implement, in accordance with set rules and regulations, programmes and projects for the sustainable development of the Niger – Delta area in the field of transportation, including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications.

(c) Cause the Niger – Delta area to be surveyed in order to ascertain measures which are necessary to promote physical and socio-economic development;

(d) Prepare master – plans and schemes designed to promote the physical development of the Niger – Delta area and the estimates of the costs of implementing such master plans and schemes.

(e) Implement all the measures approved for the development of the Niger – Delta area by the Federal Government and the member – states of the commission.

(f) Assess and report on any project being funded or carried out in the Niger – Delta area by Oil and Gas producing companies, and any other governmental organizations and ensure that funds released for such projects are properly utilized.

(g) Identify factors inhibiting the development of the Niger – Delta area and assist the member states in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger – Delta.

(h) Tackle environmental problems that arise from the exploration of oil mineral in the Niger – Delta area and advice the Federal Government and the member – states **on the prevention and control of oil spillages gas flaring and environmental pollution** (emphasis supplied).

(i) Liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control, and

(j) Execute such other works and perform such other functions which, in the opinion of the Commission, are required for the sustainable development of the Niger – Delta area and its people.

(2) In exercising its functions and powers under this Section, the Commission shall have regard to the varied and specific contributions of each member state of the Commission to the total national production of oil and gas.

(3) The Commission shall be subject to the direction, control or supervision in the performance of its functions under this Act by the President of the Federal Republic of Nigeria.

Finally; Order 54 of the Federal High Court Procedure Rules, 2000 is entitled "MISCELLANEOUS PROVISIONS" and provides in Rule 1 as follows:

> "Subject to particular Rules, the Court may in all causes or matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not"

Rules 8 states thus:

> "Where a matter arises in respect of which no provisions or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in the Rules as will, in its views, do substantial justice between the parties concerned."

On the 30th of August, 2005 and 16th of September, 2005 the 1st and the 2nd Respondents field two separate Counter-affidavits in opposition to the depositions of the Applicants' Affidavit in support of their claims in this suit and I wish to summarize the case of the Respondents contained there as follows:- (as both contain essentially the same facts).

1. That the named Plaintiff is not representing anybody in the Iwhrekan Community and was not authorized by the said community to commence this suit on their behalf.

2. That the 1st Respondents do not flare gas at Iwhrekan and the only facilities they have there are pipelines

3. That the Respondents gas plant is at Utorogun and it is a facility for the processing and distribution of gas to the National Electric Power Authority Station for the generation of electricity for national consumption. This Gas Plant was commissioned in 1985 and has been in operation since then without causing any damage or injury to any person or property of the Applicant Community or any one else, and that they do not flare gas in the facilities described above either as alleged or at all.

4. That the activities of the Respondents in relation to gas exploitation and processing has not caused any pollution of the air, or any respiratory disease, endanger or impaired the health of anybody including the Applicant or those whom he purports to represent.

5. That the Respondents' gas operation is carried out in accordance with the Laws, Regulations and Policy of the Federal Government and in conformity with International Standards and Practices and these standards have no ruinous

or adverse consequences to either health or lives as alleged or at all.

6. That it is not true that they do not like to find gas with oil in their exploration process. The gas found is not flared but harnessed and used for industrial and power energy or re-injected into underground reservoir to maintain pressure in the well; and that none of the incidents stated in paragraph 11(a) – (g) of the Applicant's affidavit occurred or is likely to occur as a result of the Respondent's operations.

7. That the incidents of death, respiratory illness, asthma, cancer, adverse climate change corroded corrugated house roofs, painful breathing chronic bronchitis, decreased lung functions, pollutions of food and water, are not the result of any of the Respondents oil and gas exploration activities and their gas and oil exploration activities have no causal connection with any of the alleged incidents, saying that they are not aware of any reported case of the alleged incidents.

8. That they do not flare gas in an open or uncontrolled manner and there exist no combustion by-products of sulphur dioxide, nitrogen dioxide or carcinogenic substances which is capable of having any dangerous effect to human health in the area or elsewhere.

9. That 37 years ago, when they commenced operation in the area, it was not the requirement by law in force to carry out environmental impact assessment and there has been no oil and gas development in the community which requires the carrying out of any Environmental Impact Assessment, and that their gas operation in the area has caused no harm to anybody in the community.

10. Notwithstanding the fact that their operations in the community pose no present or future danger to the Applicants, that 1st Respondent had contributed and has continued to contribute/support a sustainable development programme in the area such as establishing a Youth Model Farm, Cassava Processing Mill, Water Scheme, Post-Primary School Scholarship, Teachers' Quarters, Community Bus and a Primary Health Care Delivery Scheme.

11. That their operations have in no way affected the fundamental rights of the Applicant as alleged and that these oil and gas exploration activities are carried out in compliance with good oilfield practice and as permitted by the Laws of the Federal Republic of Nigeria.

12. That their operations have not in any way affected the health, air or environment, life or dignity of the Applicants to entitle them to bring this action under the 1999 Constitution or any International Convention.

13. That the 1st Respondent has both an oil Mining Lease and Flare Certificate where ever it has a flare site, and that they do not have a flare site in the Applicant's community.

14. Finally, that there is an NNPC/Shell, Joint Venture Plant at Utorogun and that since 1985 the facility has caused no damage or injury to any person or property of the Applicant's Iwrekan Community or anywhere else.

Now, on the 31st of August, 2005, the 2nd Respondent filed a Motion on Notice wherein they prayed for the striking out of its name in this suit for lack of jurisdiction and/or the setting aside or the Order made Ex-Parte whereby the Applicants were granted leave to institute these proceedings for the enforcement of their Fundamental Right under Sections 33 and 34 of the Constitution.

Similarly, on the 12th of August, 2005, the 1st Respondent had filed a Motion on Notice praying for the setting aside of the Ex-Parte order granting the Applicant's leave to institute this action.

The gravamen of those applications as can be gathered from an examination of the grounds and affidavit in support are, amongst others:-

1. That the Applicant did not comply with the provisions of Section 12 of the NNPC Act by first giving 2nd Respondent notice (mandatory pre-action) in the manner prescribed by law.

2. That the originating processes in the suit were not served on the 2nd Respondent in the manner prescribed by Section 23 of the NNPC Act.
3. That there is no cause of action, against the 2nd Respondent.

4. That the Honourable Court lacked jurisdiction to grant the Reliefs sought in this action in that the application did not disclose when the event or matter complained of happened.

5. That the interpretation of Sections 33 and 34 of the Constitution of 1999 sought by the Applicant is not a fundamental rights cause contemplated by Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999.
6. That Gas Flaring (the existence of which the 2nd Respondent denies) is not a matter contemplated by Sections 34 of the Constitution.

7. That the Applicants action is incompetent, null and void in that none of the allegations raised therein fall within Chapter 4 of the Constitution, and the special procedure provided by the Rules made pursuant to Section 46 of the Constitution is inapplicable to this action.

Another Motion on Notice filed by the 2nd Respondent on 15th September, 2005 prayed for the striking out of the Motion on Notice of the Applicants with which this suit commenced with the leave of Court as being incompetent and incurably defective, the main grounds being that:-

1. The filing and/or fixing of the Motion on Notice violated the mandatory provisions of Order 2 Rule 2 of the Fundamental Right Enforcement Procedure Rules, 1979.

2. By Section 46 of the Constitution, 1999 the Motion on Notice cannot be prosecuted by the Applicant in a representative capacity and therefore it is bad for wrong joinder of action.

3. That Articles 4, 16, 24 of the African Charter for Human and Peoples Right (Ratification and Enforcement0 Act Cap. A9 Vol.1, Law of the Federation of Nigeria, 2004 do not create fundamental rights enforceable by the Fundamental Right Enforcement Procedure Rules.

When this suit eventually came up before me for hearing after all the processes filed so far had been duly exchanged by the parties that put up appearance and their Counsel, I heard the Preliminary submissions of the Learned Lead Counsel for the Applicant, B.E.I. Nwofor, SAN and Learned Lead Counsel for the Respondents, Chief T.J. Okpoko, SAN as prompted by the Court, and in a considered Ruling, merged and consolidated all the pending motions for purposes of entertaining them as

a single application and thereafter ordered Counsel for the Applicants to commence. In that Ruling, I held that "in view of the fact that all the applications are ripe for hearing, I have decided to take all the applications together, coupled with the fact that it is trite law that to determine whether it has jurisdiction the Court is empowered to assume jurisdiction even if to determine at the end of the day that it has no jurisdiction to hear the case. It is also settled law that the issue of jurisdiction can be raised at any stage of the proceedings. Counsel for Applicant is therefore to move the main application, whilst Counsel for the 1st and 2nd Respondents can rely on their affidavits in the course of their reply, as I intend to deliver a single ruling in respect of the matter, in the course of which Court would determine firstly the issue of jurisdiction. "ALL APPLICATIONS ARE HEREBY MERGED."

In his submission, the Learned SAN for the Applicants stated that his application was brought under Order 2 Rule (1) of the Fundamental Right Enforcement Procedure Rules 1979 pursuant to the Leave granted by this Honourable Court on the 21st of July, 2005. He restated the 5 Reliefs as contained in the Motion paper, and said that there is a Verifying Affidavit in support of the motion and the statement filed along with the application for leave and relies on all those processes.

He submitted further that Section 33(1) of the Constitution guaranteed the right to life and proceeded to the Black's Law Dictionary for a definition of life since there is nowhere in the Constitution the word "Life" is defined. Neither did the interpretation Act define Life in any of

its provisions. That therefore the definition of Life in the 6th Edition of Blacks Law Dictionary at pages 923 – 924 stress that life means:-

"a. the sum of all the forces by which death is resisted.

b. the state of the humans in which its organs are capable of performing their functions,

c. all personal rights and their enjoyment of the faculties."

He submits that this definition shows the wide scope of the right to life as it does not just portray a narrow meaning of the right – that is not just to have one's head cut or guillotined, but also more significantly, included the right of a human being to have his organs function properly and to the enjoyment of all his faculties. And refers to the relevant evidence before the Court.

Learned Counsel further argues that the substance of the alleged violation is that the 1st and 2nd Respondents are engaged in a massive gas flaring operation in the Applicants community of Iwherekan and that the flaring is relentless and continuous, and drew my attention to the various poisonous consequences of these activities as detailed in paragraphs 7, 11, 12, 13, 17 and 20 of the Affidavit in support of the substantive Motion on Notice. He urged me to hold that the sum total of these depositions have the effect of showing clearly that the gas flaring poisons and pollutes the air, water, food and vegetation of the Applicants' community and that they cause terminal diseases such as chronic bronchitis, decrease in lung functions, painful breathing and cancer.

He has also urged me to hold that the right to life will only have meaning if we remove the things that endanger or diminish it. That

having shown that the effect of this massive flaring endangers and diminishes life, and does not lead to its full enjoyment, I should also find that they impair the critical human organs and has led to death in many cases, and that it is inevitable that by the Respondent's action the Applicants' rights to life have been violated and refers to Section 3(1) of the Associated Gas Re-Injection Act (which I have quoted above).

Learned Counsel for the Applicants has also insisted that the 1st and 2nd Respondents have no valid Ministerial Certificate authorizing them to flare gas in the manner they are doing, and say that in view of Sections 2(a) and (b) of the Associated Gas Re-Injection Act, the action of the Respondents is punishable under Section 4 of the Act which prescribes it as a criminal offence with necessary penalties.

Section 2 of the Associated Gas Re-Injection Act is entitled: **Duty to submit Detailed Plans for Implementation of Gas Re-Injection** and states as follows:-

> "Not later than 1st October 1980, every company producing oil and gas in Nigeria shall submit to the Minister, detailed programmes and plans for either –
>
> a. the implementation of programmes relating to the re-injection of all produced associated gas; or
>
> b. schemes for the viable utilization of all produced associated gas"

The fact that some of the gas produced in association with oil has been earmarked for some alternative utilization shall not exempt compliance with Section 1 of this Act and sub section (1) of this Section.

He has also asked me to take judicial notice of the fact that laws are made to prohibit acts and activities that are criminal and harmful and that a conduct made criminal by the Legislature cannot become a good

practice that is advantageous to the Society. And that the Respondents did not effectively deny in their Counter-Affidavit, the Applicant's depositions on the harmful and ruinous consequences of gas flaring in their community. That paragraphs 5 and 6 of the Applicants Verifying Affidavit were not denied in any of the Respondents two Counter-Affidavits, and that being so, I should deem same as having been admitted and proceed to invoke Section 149(d) of the Evidence Act against the 1st and 2nd Respondents.

It is the further submission of the Learned SAN for the Applicants that, because of the wrong spelling of the name of the Applicants community by the Respondents in their Counter-Affidavits, I should hold they have not joined issues with the Applicants and that I should discountenance them. That names are sacrosanct and that affidavit evidence cannot be changed by any brilliant address by Counsel and this Court cannot now speculate as to whether the two sets of names are the same. Refers to the case of DASUKI V. MUAZU (2002) Vol. 16 NWLR Pt. 793 Page 319 Ratio 10 at paragraph 342 – (a) – (c).

He then concluded this point by saying that I should accept the unchallenged Affidavit evidence of the Applicants and hold that the Applicants Rights to life have been wantonly and brazenly violated.

On the issue of breach of the right to dignity of the human person, the Learned SAN for the Applicants refers me to Section 34(1) of the Constitution of Federal Republic of Nigeria, 1999 which came up for interpretation by the Court in the case of UZOUKWU V. EZEONU (1991) 6 NWLR Pt. 200 page 708 Ratios 10, 11, 12, 13, 14 and submits

that the right to dignity of human person includes the right not to inflict any inhuman or degrading treatment – which includes infliction of not only severe bodily harm, but also mental anguish and suffering.

Ratio 14 per Tobi JCA –

> "The word "in human" is the opposite of the word "human" It follows therefore that an inhuman treatment is a barbarous, uncouth and cruel treatment, which has no human feeling on the part of the person inflicting the barbarity or cruelty."

Ratio 12 per Tobi JCA –

> "The word dignity conveys the meaning or connotation of being degraded at least in one's exalted estimation of his societal status or societal standing. ..... And that the Court has jurisdiction to give broad and liberal interpretation to the Constitution particularly when the rights of the individual are involved in respect of matters provided for in the Constitution."

Ratio 11 per Nasir JCA –

> "The phrase "inhuman treatment" means in my opinion any barbarous or cruel act, or acting without feeling for suffering of the other, and the "Person" includes not only the physical body but includes the "psyche" and other mental attributes".

In the concluding portion of the Learned SAN's address, he submitted on the Constitutionality of the statute under which the Gas Flaring is being undertaken by the Respondents and said that Section 3 of the Associated Gas Re-Injection Act as well as the Regulations made thereunder are inconsistent with the rights to life as guaranteed in Sections 33 and 34 of the Constitution. And that it is clear that in the event of any inconsistency of an Act with any section of the Constitution,

the Constitution prevails and such an Act would be void to the extent of the inconsistency.

In clarifying this submission, the Learned SAN said that the inconsistency lies in the fact that the Constitution, having guaranteed rights to life (which includes right to a healthy environment), same cannot be wittled down by an Act of National Assembly, which allows for a continuation of gas flaring which pollutes the air, water and food. And that both statutes cannot stand side by side. The Learned SAN has therefore forcefully urged me to note that the Honourable Attorney-General of the Federation and Minister of Justice (3rd Respondent) was joined in this suit to come and explain and justify the constitutionality of the above enactment. And that having been served duly with all the processes, the Court should hold that he has no defence whatsoever as to the validity of these Enactments, having not even entered an appearance. And that I should declare the Associated Gas Re-Injection Act null and void and unconstitutional, referring me to a recent judgment of an Abuja Federal High Court which pronounced on the Constitutionality of the Public Order Act under which the Police could prohibit or ban public processions or Assemblies without permit.

Mr. B.E.I. Nwofor, SAN finally submitted that the Applicants prayer for an injunction is a consequential relief which flows logically from the other prayers and also urged me to hold that Gas Flaring has contributed to global warming of the Environment and depletion of the OZONE Layer. That I should grant all the Applicants reliefs and consequently dismiss the objections of the 1st and 2nd Respondents.

In his response the Learned Lead Counsel for the 1st and 2nd Respondents, Chief T.J. Okpoko, SAN submitted that this action is for the enforcement of the fundamental rights of one person (representing a community) and that Fundamental Rights Enforcement Proceedings are applicable to an injured individual, and not to a person that is well and healthy.

At this stage, the Learned SAN applied for an adjournment to enable him continue his reply, which application was promptly granted, and by agreement of both Learned SANs, this suit was adjourned until the 14th of October, 2005 for continuation of Reply. On the said 14th October, 2005, rather than proceed with the reply, Mr. Dafe Akpedeye, SAN who appeared for the 1st and 2nd Respondents (holding the brief of Chief Okpoko, SAN) argued a Motion on Notice for a Stay of proceedings which he filed on the 11th of October, 2005. The said Motion on Notice and the Notices of Appeal on the basis of which the motion were brought were, in a considered Ruling, struck out by me as being an abuse of the process of this Court and the process of the Honourable Court of Appeal, having been brought in bad faith, especially in view of the fact that pleadings had been exchanged, the Applicants had closed their case and addressed the Court, whilst the 1st and 2nd Respondent's Lead Counsel had commenced his reply to the submissions of the Learned Lead Counsel for the Applicants on the last adjourned date. This Court in the said considered Ruling dismissed the said submissions of Mr. Dafe Akpedeye, SAN on the Motion for Stay of Proceedings, and adjourned

until the 24th of October, 2005 for continuation of Reply of the Learned SAN.

On the 24th of October, 2005, rather than proceed with his Reply as ordered by the Court on the last adjourned date, the Learned Lead Counsel for the 1st and 2nd Respondents, Chief J.T. Okpoko, SAN made a very lengthy application for an adjournment on the ground that he had filed two Notices of Appeal at the Court of Appeal against my decision of the 14th October, 2005 and that he had also filed a Motion on Notice for Stay of Proceedings at the Court of Appeal, Benin Division. After hearing arguments by both Learned Lead Counsel on the application for an adjournment, I ordered that we proceed with the Reply of the Learned SAN for the Respondents, since the mere pendency of a Notice of Appeal as well as Motion for Stay of Proceedings at the Court of Appeal, WITHOUT MORE, does not constitute a stay by operation of law as I was being forcefully urged to hold by the Learned SAN for the 1st and 2nd Respondents.

The dramatic reaction of the Learned Lead Counsel for the 1st and 2nd Respondents was to announce the withdrawal of his appearance for his clients in the suit, which request was not opposed by the Learned SAN for the Applicants, following which I ordered Chief J.T. Okpoko SAN to file a Notice of withdrawal in Court Registry after consulting with his clients to enable them brief another firm of Solicitors to continue with their defence in this suit. I also held that the said withdrawal affected all other Counsel in his Law Firm.

At the resumed hearing of these proceedings on the 8th of November, 2005, the Learned Lead Counsel for the 1st and 2nd Respondents dramatically announced his appearance for the 1st and 2nd Respondents, having not filed a Notice of withdrawal as I ordered on the last adjourned date. His sudden re-entry as Counsel, not being opposed by the Learned SAN for the Applicants, made Court to promptly discharge the enrolled drawn-up order of 24th November, 2005, and thereby permitted the Learned Lead Counsel for the 1st and 2nd Respondents to proceed with his Reply to enable this Court speedily dispose of this matter (which is clearly a Fundamental Rights Enforcement Procedure Proceedings, a peculiar time based specialized kind of action emanating from special rules made by the Chief Justice of Nigeria pursuant to Section 46 of the Constitution of the Federal Republic of Nigeria, 1999, whereby the Courts final decision is essentially a Final Judgment (and not a Ruling) for purposes of Appeal or otherwise.

But in a much more dramatic application, the Learned Lead Counsel for the 1st and 2nd Respondent again applied for yet another adjournment on the ground that he had just filed yet another Motion on Notice at the Court of Appeal, Benin for an order restraining this Court from proceeding with the hearing of this suit until the hearing and determination of the said Motion on Notice for Stay of Proceedings pending at the Court of Appeal. He also made an oral application for the transfer of this suit to another Judge of this Court, and after hearing the very lengthy submissions of the two Learned Senior Advocates of Nigeria, I foreclosed the 1st and 2nd Respondents and adjourned until

today for Judgment following which the Learned Lead Counsel for the 1st and 2nd Respondents and all his juniors walked out of the Court, without the usual courtesy of bowing to the bench. It is appropriate therefore that I adopt the crucial proceedings of the 8th of November, 2005 as part of this Judgment. In the brief Ruling of 8th November, 2005 I said: "I have listened carefully to the submissions of both Learned Lead Counsel on the issue of the transfer of these proceedings to another Judge of the Federal High Court, Benin Division, at this stage.

The issue of transfer under Order 35 of the Federal High Court Civil Procedure Rules, 2000, is a matter within the absolute discretion of the Judge, whether or not the application is made by either of the parties, and the Court can also make an order of transfer suo motu, if it deems it necessary:

Order 35(1): states that a cause or matter, may, before evidence is taken and at the request of either party to the suit, be transferred by a Judge before whom the cause or matter is proceeded to another Court of the same Division (emphasis mine).

Order 35(2): A cause or matter may act any stage of the proceedings be reassigned to another Judge of the same Division or of any other Division by the Chief Judge whether or not the cause or matter is being heard before him (underlining mine).

Order 35(3): if for any reason a Judge hearing a cause or matter and who has taken step in the proceedings considers it necessary either at his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another Court, the Judge shall refer the

cause or matter to the Chief Judge for such necessary action as the Chief Judge may think expedient (emphasis supplied).

I entirely agree with the submission of Learned Counsel for the Applicant that the Affidavits and Counter-Affidavits filed by the parties shows that evidence has been taken and pleadings duly exchanged, so that Order 35(1) of the Rules is inapplicable.

There being no Order of this Court or of the Court of Appeal in place staying these proceedings, it is in the interest of justice that this matter should proceed accordingly. The application for the transfer of these proceedings to another Court of this division at this stage is hereby refused, and having discharged my order on the withdrawal of Respondent's Counsel's which I made on the last adjourned date, he is therefore ordered to proceed with his reply which he commenced on the 16th of September, 2005.

In view of the reaction by the Learned Lead Counsel for the 1st, and 2nd Respondents to my refusal to grant yet another application for yet another adjournment (even though he has other Counsel in his team which includes a Senior Advocate of Nigeria), I hereby adjourn this matter for Judgment. This is because there must be an end to litigation, especially in this kind of specialized proceedings brought under the Fundamental Rights Enforcement Procedure Rules made specially by the Chief Justice of Nigeria under Section 46 of the Constitution.

Accordingly, the 1st and 2nd Respondents are hereby foreclosed from presenting any further Reply owing to the observed pattern of their Learned Lead Counsel, Chief J.T. Okpoko, SAN in coming up with fresh

applications on each and every adjourned date, all of which are designed only to abort proceedings for that day after unduly lengthy submissions on miscellaneous issues like adjournment, transfer, stay of proceedings, stay of execution, notices of appeal, motions for stay at the Court of Appeal to restrain Judge from sitting, etc.

As this Court is convinced that he has no further submissions to make in reply to the submissions of the Applicants' Lead Counsel on the substantive application, this matter is hereby adjourned finally until the 14th of November, 2005 for Judgment."

Upon a thorough evaluation of all the processes, submissions, judicial and statutory authorities as well as the nature of the subject matter, together with the urgency which both parties through their Counsel have observably treated the weighty issues raised in the substantive claim, I find, myself able to hold as follows: (after a thoroughly painstaking consideration)

1. That the Applicants were properly granted leave to institute these proceedings in a representative capacity for himself and for each and every member of the Iwherekan Community in Delta State of Nigeria.

2. That this Court has the inherent jurisdiction to grant leave to the Applicants who are bonafide citizens and residents of the Federal Republic of Nigeria, to apply for the enforcement of their fundamental rights to life and dignity of the human person as guaranteed by Sections 33 and 34 of the Constitution of the Federal Republic of Nigeria, 1999.

3. That these constitutionally guaranteed rights inevitably includes the rights to clean, poison-free, pollution-free healthy environment.

4. The actions of the 1st and 2nd 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 their fundamental right to life (in[illegible]g healthy environment) and dignity of human person as enshrin[illegible]the Constitution.

5. Failure of the 1st and 2nd Respondents to carry out Environmental Impact Assessment in the Applicants Community concerning the effects of their gas flaring activities is a clear violation of Section 2(2) of the Environmental Impact Assessment Act, Cap. E12 Vol. 6, Laws of the Federation of Nigeria 2004 and has contributed to a further violation of the said fundamental rights.

6. That 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. Section 1.43 of 1984, under which gas flaring in Nigeria may be allowed are inconsistent with the Applicant's rights to life and/or dignity of human person enshrined in Sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9, Vol.1, Laws of the Federation of Nigeria, 2004 and are therefore unconstitutional, null and void by virtue of Section 1(3) of the same Constitution.

Based on the above findings, the Reliefs claimed by the Applicants as stated in their motion paper as 1,2,3,4 are hereby granted as I make and repeat the specific declarations contained there as the Final Orders of this Court.

1. **DECLARATION** that the Constitutionally guaranteed fundamental rights to life and dignity of human person provided in Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999 and reinforced by Arts 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9, Vol. 1, Laws of the Federation of Nigeria, 2004 inevitably includes the right to clean poison-free, pollution-free and healthy environment.

2. **DECLARATION** that the actions of the 1st and 2nd 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 their fundamental rights to life (including healthy environment) and dignity of human person guaranteed by Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999 and reinforced by Arts 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9, Vol.1, Laws of the Federation of Nigeria, 2004.

3. **DECLARATION** that the failure of the 1st and 2nd Respondents to carry out environmental impact assessment in the Applicant's

Community concerning the effects of their gas flaring activities is a violation of Section 2(2) of the Environment Impact Assessment Act, Cap. E12 Vol. 6 Laws of the Federation of Nigeria, 2004 and contributed to the violation of the Applicant's said fundamental rights to life and dignity of human person.

4. **DECLARATION** that the provisions of Section 3(2)(a), (b) of the Associated Gas Re-injection Act Cap. A25 Vol. 1 Laws of the Federation of Nigeria, 2004 and Section 1 of the Associated Gas Re-Injection (continued flaring of gas) Regulations Section 1. 43 of 1984, 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 human person enshrined in Sections 33(1) and 34(1) of the Constitution of Federal Republic of Nigeria, 1999 and Arts. 4, 16, and 24 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Cap. A9 Vol. 1 Laws of the Federation of Nigeria, 2004 and are therefore unconstitutional, null and void by virtue of Section 1(3) of the same Constitution.

5. **I HEREBY ORDER** that the 1st and 2nd Respondents are accordingly restrained whether by themselves, their servants or workers or otherwise from further flaring of gas in Applicant's Community and are to take immediate steps to stop the further flaring of gas in the Applicant's Community.

6. The Honourable Attorney-General of the Federation and Ministry of Justice, 3rd Respondent in these proceedings who, regrettably, did not put up any appearance, and/or defend these proceedings is **HEREBY ORDERED** to immediately set into motion, after due consultation with the Federal Executive Council, necessary processes for the Enactment of a Bill for an Act of the National Assembly for the speedy amendment of the relevant Sections of the Associated Gas Re-Injection Act and the Regulations made there under to quickly bring them in line with the provisions of Chapter 4 of the Constitution, especially in view of the fact that the Associated Gas Re-Injection Act even by itself also makes the said continuous gas flaring a crime having prescribed penalties in respect thereof. Accordingly, the case as put forward by the 1st and 2nd Respondents as well as their various preliminary objections are hereby dismissed as lacking merit.

7. This is the final Judgment of the Court and I make no award of Damages, costs or compensations whatsoever.

C.V. NWOKORIE
JUDGE

14th NOVEMBER, 2005

B.E.I. Nwofor, SAN for the Applicants with him Chima Williams Esq., Mike Karikpo Esq., G.T. Ogara Esq. and O.A. Oriabure (Mrs) for the Applicants.

Chief J.J.O. Okpoko, SAN with Dafe Akpedeye Esq. SAN, Miss B.o. Abolodje and J.N. Omonigho (Mrs) for the Respondents.