



Legislation update: May 2017

HRH Emere Godwin Bebe Okpabi & Ors v Royal Dutch Shell Plc & Anor [2017] EWHC 89 (TCC)

Case on UK Jurisdiction over Nigerian Oil Pollution Claims against Shell

The Facts

In 2015, Royal Dutch Shell plc (RDS), the ultimate holding company of the Shell Group worldwide and its Nigerian subsidiary, the Shell Petroleum Development Company of Nigeria Ltd (SPDC) were sued before the English Court by two Nigerian communities for oil pollution that has ravaged the Niger-Delta region for years.

Two separate claims concerning about 42,500 individual claimants was brought on behalf of the Ogale Community in Ogoni land and the Bille Kingdom seeking for damages arising out of oil spillage in the community, damages for clean-up and remediation costs, and injunctive reliefs. The claims against RDS are founded upon the tort of negligence under the common law of Nigeria while SPDC was sued based on relevant causes of action under Nigerian statute and common law.

While both parties agreed that the oil pollution in the Niger Delta is extremely harmful, RDS contested the jurisdiction of the court arguing that it has a separate legal personality from the SPDC and as such does not exercise any supervision over its operations. It further argued that the claims have nothing to do with the UK jurisdiction and should proceed in Nigeria since it concerns Nigerian plaintiffs and a Nigerian company. The claimants, on the other hand submitted that the RDS is the parent company of the defendants and has control over their operations, thus, both defendants are legally responsible for the oil pollution and

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the chances of redress rest substantially on the ability to bring proceedings in the English Court.

The Decision

After considering the enormous evidence presented before the court, legal principles and previous cases on legal liability of parent companies, the Court held that based on the corporate structure of the Shell Group since 2005, the RDS is just a holding company with the sole purpose of holding shares in other companies. It did not hold any shares directly in SPDC and they both operated as separate legal entities, thus, it is not responsible for the acts and/or omissions of its operating subsidiary and owes no duty of care to the claimants to raise a tort of negligence. The judge struck out the claims against RDS and SPDC, but gave the communities permission to file an appeal.

Lessons for Businesses

The key lesson highlighted in this judgment is the fact that membership of the same group of companies does not automatically clothe a parent company, with responsibility for acts or omissions of subsidiary companies within the group. This is a fundamental principle of the law of England concerning the separate legal personality of subsidiary companies.

One avenue parent companies can use to avoid incurring liability from its subsidiaries is by establishing a well defined company structure where subsidiary companies are allowed to operate as separate legal entities. However, this does not suggest that parent companies should turn a blind eye to the operations of its subsidiaries, because where they are sued alongside their subsidiaries as in the instant case, the reputation of the company is likely to be impacted, the company incurs a lot of cost and invests time which otherwise could have been saved.

Mr. Justice Fraser clearly pointed out that from the massive documents and bulky evidence tendered by parties, the cost burden on parties was enormous. As a result of this judgment, the Shell Group may want to review its oil operations in Nigeria to avoid similar lawsuits. This case may not be the end of the road for Shell as the communities still have an option to file an appeal.



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