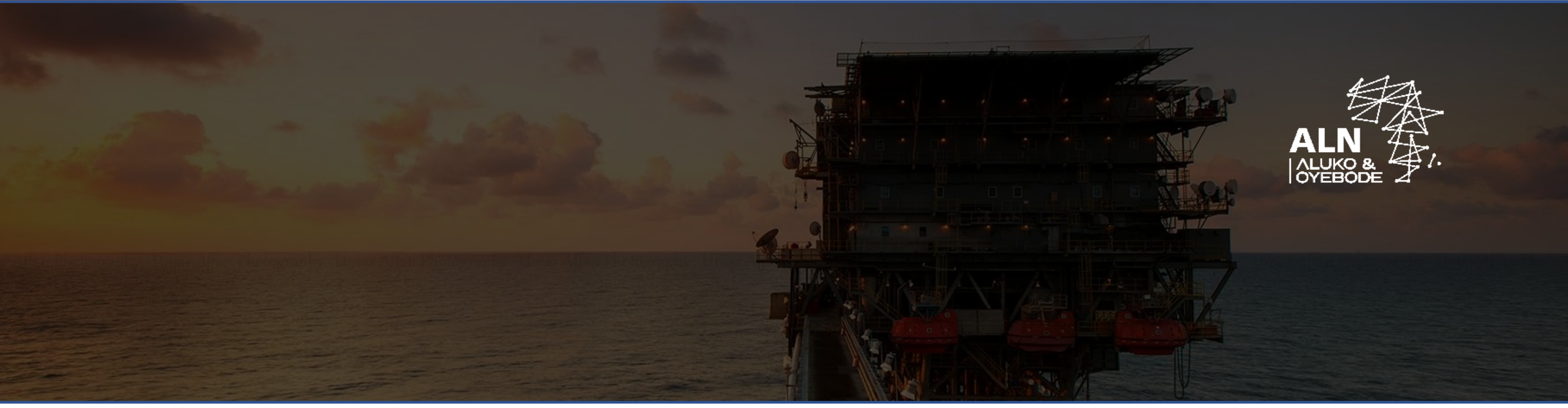

Petroleum Industry Act: Federal High Court of Nigeria Rules That Host Communities Lack Standing in Operators' Divestments

Introduction

The Petroleum Industry Act 2021 ("**PIA**"), signed into law in August 2021, marked a significant reform of Nigeria's petroleum sector. Repealing the Petroleum Act of 1969, the PIA introduced a comprehensive legal, governance, regulatory, and fiscal framework for the industry. Notably, the PIA introduced the requirement for specified petroleum industry operators to establish a Host Communities Development Trust (HCDT), aiming to enhance peaceful and harmonious co-existence between licensees or lessees and their host communities within the petroleum-producing areas and to aid the prosperity and the development of the economic and social infrastructure of these communities.

However, the rights granted to host communities under the PIA are not without limits. The PIA does not grant host communities a role in the decision-making processes of oil companies, particularly regarding divestment of shares or assignment of Oil Mining Leases (OMLs). This limitation was affirmed by the Federal High Court of Nigeria, Port Harcourt Judicial Division, in two similar rulings delivered on 15 November 2024, by the Hon. Justice S. Dalyop Pam in *Suit No: FHC/PH/CS/123/2022- Prince Barrister Opunabo Bourdillon Ekine & 5 Ors (For themselves & on behalf of members of OML 25 Host/Impacted Communities) v. The Shell Petroleum Development Company of Nigeria Limited & 2 Ors* and in *Suit No. FHC/PH/CS/124/2022 Chief Biokpomabo C.J.O. Ndewari & 3 Ors (For themselves & on behalf of members of OML 23 Host/Impacted Communities) v. The Shell Petroleum Development Company (SPDC) & 2 Ors.*

The facts of the cases

In *Suit No: FHC/PH/CS/123/2022,* the Plaintiffs, suing for themselves, and on behalf of the Belema, Ofoinama, and Oko-ama communities within the Kula Kingdom (otherwise referred to as the OML 25 Host/Impacted Communities) in Akuku Toru Local Government Area of Rivers State, Nigeria, filed an action against The Shell Petroleum Development Company of Nigeria Limited **("SPDC"),** Belema Oil Producing Limited, and the Attorney General of the Federation ("**AGF**") seeking *inter alia*, to restrain SPDC from divesting its interests in OML 25 without the consent and participation of the Plaintiffs, who are the landlords and host community of OML 25. Their contention was that SPDC's decision to divest its interests in OML 25 without consulting the affected host communities is an attempt to circumvent the host communities' right under the PIA, as (in their view) the PIA prohibits SPDC, as operator of the OML, from assigning or divesting its shares in OML 25 without the participation of the host communities.

The Plaintiffs also contended that they were entitled to 35% of the bid amount for OML 25 as host communities and insisted that the lease should only be sold to a company, such as the 2nd Defendant, Belema Oil Producing Limited, that understands local sensitivities and can address the community's concerns. The Plaintiffs also sought declaratory and injunctive reliefs compelling the AGF, the Federal Ministry of Petroleum Resources, the Nigerian Upstream Regulatory Commission and the Nigerian National Petroleum Company Limited to withhold regulatory approval for SPDC's divestment to any bidder other than Belema Oil Producing Limited.

Similarly, in *Suit No FHC/PH/CS/124/2022,* the Plaintiffs instituted the action on behalf of the Soku communities, (otherwise referred to as the OML 23 host communities) in Akuku Toru Local Government Area of Rivers State seeking similar reliefs as *Suit No: FHC/PH/CS/123/2022.*

The issues before the court

SPDC filed a Notice of Preliminary Objections in both suits on 15 February 2023, contending that the court lacked jurisdiction inter alia as the Plaintiffs' suit did not disclose any enforceable or justiciable rights under Nigerian law and that the Plaintiffs lacked locus standi, as they had no legal authority to dictate the terms of SPDC's divestment of its interests in the OMLs.

The decision of the court

In a considered ruling, the court upheld SPDC's objection that the reliefs sought by the Plaintiffs did not disclose any enforceable or justiciable rights under Nigerian law. According to the court, while the PIA grants host communities specific rights, such as economic benefits, it does not confer a right to participate in the assignment of OMLs or divestment of shares. The court highlighted that OML assignments involve the transfer of rights between companies, subject to ministerial approval, and do not require host community involvement in the process. Since the Plaintiffs sought to assert a right not recognised by the PIA or any law, the court concluded that the right was not legally enforceable.

This determination, according to the court, therefore, also affected the Plaintiffs' locus standi to initiate the suit, as the lack of legal backing for their claims rendered the suit incompetent. Consequently, the court declined jurisdiction and struck out the suits.

The implications/comments

This decision which is one of the few pronouncements by Nigerian courts on the PIA, underscores the limited scope of host community rights under the PIA. While host communities play an important role in the success of petroleum operations in Nigeria, the PIA primarily seeks to foster cooperation between these communities and petroleum operators. Through the establishment of the HCDTs, the PIA provides a framework to ensure economic benefits, promote development, and protect the environment within the host communities. However, the Act stops short of granting communities direct participation in the divestment or assignment of OMLs. This interpretation clarifies that host communities' involvement is primarily focused on benefit-sharing and development initiatives rather than operational decision-making.

For operators in the oil and gas sector, the ruling provides a measure of certainty regarding their ability to divest assets without needing to secure community consent. However, companies must remain mindful of their obligations under the PIA to engage and support host communities through the mandated Trusts, ensuring they meet their developmental and environmental responsibilities.

From a legal perspective, the court's emphasis on the need for a legally recognisable cause of action and the Plaintiffs' lack of *locus standi* reinforces the importance of clear statutory or contractual rights when asserting claims under the PIA. This decision serves as a precedent, limiting similar claims by host communities attempting to assert rights not explicitly provided for in the PIA or other Nigerian petroleum industry laws.

In a broader context, the suit highlights the ongoing evolution of judicial interpretations of the PIA, setting the tone for future litigation and judicial pronouncements and interpretation concerning the PIA's provisions.

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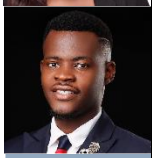

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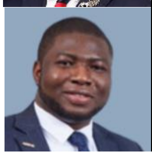

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