



Citation Number: [2021] EWHC 2121 (TCC)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Royal Courts of Justice
The Thomas Moore Building,
Fetter Lane, London
EC4A 1NL

Date: 21/07/2021

Before:

MRS. JUSTICE O'FARRELL

Between:

Claim no. HT-2017-000383

**(1) HARRISON JALLA
(2) ABEL CHUJOR
& OTHERS**

Claimants

-and-

**(1) ROYAL DUTCH SHELL PLC
(2) SHELL INTERNATIONAL TRADING
AND SHIPPING COMPANY LIMITED
(3) SHELL NIGERIA EXPLORATION
AND PRODUCTION COMPANY LIMITED**

Defendant

Between:

Claim no. HT-2020-000143

**THE 27,830 INDIVIDUAL CLAIMANTS LISTED
IN SCHEDULE 1 (“THE INDIVIDUAL CLAIMANTS”), on their own behalf and in the
representative capacities (CPR r.19.6) set out in the Claim Form dated 20 April 2020
THE 479 NIGERIAN COMMUNITIES LISTED
IN SCHEDULE 2 (“THE COMMUNITY CLAIMANTS”), represented pursuant to CPR
r.19.6 by: (i) their resident INDIVIDUAL CLAIMANTS, as set out in Schedule 1,
Column F; or (ii) where there is no resident INDIVIDUAL CLAIMANT those resident
representatives listed in Schedule 3; and/or (iii) HARRISON JALLA and ABEL
CHUJOR;
all as set out in the Claim Form dated 20 April 2020**

Claimants

-and-

**(1) SHELL INTERNATIONAL TRADING
AND SHIPPING COMPANY LIMITED
(2) SHELL NIGERIA EXPLORATION
AND PRODUCTION COMPANY LIMITED**

Defendants

**MR. GRAHAM DUNNING QC, MR. OBA NSUGBE QC, MR. STUART CRIBB and
MR. WEI JIAN CHAN (instructed by Rosenblatt LLP) appeared for the Claimants.**

**LORD GOLDSMITH QC, DR. CONWAY BLAKE and MR. TOM CORNELL
(instructed by Debevoise & Plimpton LLP) appeared
for the Defendants.**

APPROVED JUDGMENT

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MRS. JUSTICE O'FARRELL :

1. The defendants in this matter have raised an issue as to whether the claimants' purported legal representatives, Rosenblatt Limited, have authority to act in what is called Jalla 2 Proceedings, HT-2020-000143. The defendants have proposed that the issue should be dealt with by the court at a half-day hearing either in October or more probably next February, during the date of damage trial.
2. The issue of whether or not the claimants' representatives had authority to represent all of the individual claimants set out in the schedule to the particulars of claim, and/or the communities also set out in the schedule to the particulars of claim, was raised before this court at the CMC back in November 2020. As a result of that, in the order dated 18th December 2020, the court ordered the claimants to provide evidence of the basis on which Rosenblatt had authority to act, not only for the lead named claimant, Mr. Jalla, but also the other individual claimants and the communities purportedly included within the claim.
3. The court is satisfied that the claimants have complied with that order in that they have served evidence setting out the basis on which they contend Rosenblatts are authorised to act for the community claimants and the 27,830 individual claimants in the Jalla 2 proceedings.
4. Mr. Nsugbe QC SAN, leading counsel for the claimants, has taken the court to the statements of the Honourable Olayjemi Johnson Nanna and Chief Rumson Victor Baribote, together with the statement of Ms. MacLeod, in which the position is stated to be that under Nigerian native law or traditional law and custom, the King has paramount authority. The Kings in question (with authority over the communities the subject of the proceedings) have delegated that authority to the Bonga Oil Spill Steering Committee. As a result, it is not necessary under Nigerian law, which recognises traditional law and custom, for individual claimants to give separate authority to their legal representatives. Ms. MacLeod has explained that the Steering Committee, which has the delegated authority from the Kings, has expressly authorised Rosenblatt to act on behalf of all of the individual claimants and the communities.
5. Therefore, I am satisfied that the claimants complied with the order of 18 December 2020 by serving the evidence on which they rely, setting out the basis of their case that there is adequate authority for the Jalla 2 proceedings to continue.
6. The defendants do not accept that the evidence provided by the claimants is adequate and/or would be sufficient to satisfy the relevant requirements for authority for the purposes of Nigerian law. The defendants rely upon, in particular, the witness statement of Ms. Atemie, which states that under

Nigerian law, leaders cannot act on behalf of their communities and/or other individual claimants.

7. Therefore, the court is faced with a situation where the claimants and the defendants are in dispute as to whether Rosenblatts have adequate authority in order to act for the many thousands of individuals and communities identified in the Jalla 2 proceedings. It seems to me that issue does need to be grappled with by the court. It is a dispute that could affect the ability of the court to make judgments that would be binding on the many thousands of individuals and communities affected by the court's decisions.
8. It does seem sensible that the matter should be dealt with at the February 2022 hearing, rather than in October 2021. I accept Mr. Nsugbe's submission that October would be too soon. In any event it is unlikely that the court will have sufficient time available to deal with it at the October CMC. It would be very difficult to find another date prior to February, and also I am conscious of the fact that the parties have a huge task ahead of them in order to prepare for the February hearing.
9. Therefore, the sensible course is to order that this issue of disputed authority should be dealt with at the February 2022 hearing, so that preparation is not disrupted prior to the start of that trial.
10. I will order both sides to provide any further factual and/or legal evidence in relation to the issue. It may well be that some factual evidence might be required when dealing with the matters of delegation and authority, in addition to the issues of traditional law and custom and Nigerian law.
11. In terms of the date for service of that evidence, I am going to invite the parties to indicate what dates they think would be appropriate, but what I have in mind is that both sides will have an opportunity, if they so wish, to put in any further factual and/or expert evidence, perhaps by a date in October. I will then order any legal experts to have a discussion and produce a joint statement for the court setting out the issues of law on which they are agreed or not agreed, together with short reasons for any disagreement. That will enable the parties to identify any issues of law, whether traditional law or Nigerian codified law or common law, in advance and understand where the fighting ground lies.
