

UK Supreme Court Confirms Jurisdiction Over Claims Brought Against UK Parent Companies for Acts Committed Abroad by Foreign Subsidiaries



On 12 February 2021, the UK Supreme Court (the **Supreme Court**) handed down judgment in the *Okpabi and others (Appellants) v. Royal Dutch Shell Plc and another (Respondents)*. The case follows from a decision of the English Court of Appeal (the **Court of Appeal**) on 14 February 2018 which was discussed [here](#).

The preliminary question before the Supreme Court regards the admissibility, before U.K. courts, of legal proceedings brought by a Nigerian farming and fishing community of approximately 40,000 individuals against *Royal Dutch Shell (RSD)* – a UK-domiciled parent company – for oil pollution in the Niger Delta allegedly caused by RSD's Nigerian subsidiary (*Shell Petroleum Development Company of Nigeria Ltd (SPDC)*).

In 2018, the Court of Appeal rejected the claim finding –

among other things – that the claimants had failed to demonstrate an arguable case that RDS controlled SPDC's operations in the Niger Delta or that RDS was otherwise responsible for the latter's failures.

In its decision of 12 February 2021, the Supreme Court rejected the decision of the Court of Appeal as having erred in law.

More particularly, the Supreme Court affirmed its decision in the *Lungowe v. Vedanta* case which deals with similar issues and is detailed [here](#). By way of background, in *Lungowe v. Vedanta*, the UK Supreme Court found that a parent company could be liable for alleged acts of environmental damage to the Nchanga copper mine in Zambia caused by its subsidiary *Konkola Copper Plc*. According to the Supreme Court in *Lungowe v. Vedanta*, liability is determined on the basis of whether the parent company availed itself “*of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary*”.

In *Okpabi*, the appellants relied on several arguments to advance their claim that there was ample control, direction and oversight exercised by the RDS in order for them to bear the burden of responsibility in respect of SPDC's pollution and environmental compliance and the operation of its oil infrastructure. Such factual claims for control of the subsidiary by the parent company, included, among others that:

- RDS took over the management or joint management of the relevant activity of SPDC;
- RDS provided defective advice and/or promulgated defective groupwide safety/environmental policies which were implemented by SPDC;
- RDS promulgated group-wide safety/environmental policies and standards and took active steps to ensure their

implementation by SPDC;

- RDS held out that it exercises a particular degree of supervision and control of SPDC.

Based on those considerations, the Supreme Court determined that the Court of Appeal had erred in its judgment and that the UK courts indeed had jurisdiction to hear Okpabi's claim for the following reasons:

- Contrary to the Court of Appeal's judgment, the Supreme Court found that there was no reliable principle to suggest that a parent company could never incur a duty of care in respect of the activities of a particular subsidiary merely by laying down group-wide policies and guidelines and expecting the management of each subsidiary to comply with them.
- The Court of Appeal had erred in generalising or presuming that there was no duty of care and therefore there was no reliable limiting principle of management and control.
- The liability of parent companies in relation to the activities of their subsidiaries was not, of itself, a distinct category of liability in common law negligence. In particular, the common law duty of care did not require any added level of rigorous analysis beyond that appropriate to any summary judgment application.

These errors in law relating to the control of RDS on the activities of SPDC now form the basis of formal legal proceedings which will take place in the English Courts.

This article was kindly drafted by Denise Osei (intern at Van Bael & Bellis).

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