

**Enablers of Delay in the Determination of Oil Pollution
Compensation Cases against Shell in Nigeria and
Recommendations**

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Abstract

The Nigerian law permits those affected by oil spill from the facilities of the multinational oil corporations, including Shell to seek compensation in a court of law. Furthermore, section 36 of the Nigerian Constitution requires the determination of civil and criminal cases within a reasonable time. However, oil pollution compensation cases against Shell which is one of the multinational oil corporations operating in Nigeria are always determined after a decade and in some cases after over three decades. As a consequence, the aims of the research are to discuss some of the features that enabled delay in the determination of oil pollution compensation cases against Shell in Nigeria and to make recommendations on how they can be addressed. One of the reasons for the research is the lack of any detailed study on the features that enable delay in the determination of a case and recommendations on how such factors can be addressed. Furthermore, delay in the determination of the compensation cases has had tremendous impacts on those affected by oil spills from the facilities of Shell. Also, those victims of oil pollution who resorted to courts in more developed countries, most especially the United States of America and England have had their cases thrown out due to certain procedural factors. The researcher analysed various materials, including verbatim record of court proceedings, reported decisions of court, civil procedure rule, journal articles and internet materials. As a consequence, it was found that low judicial sanction, inadequate judicial funding and judicial unwillingness to enforce the civil procedure rule enabled delay in the determination of oil pollution compensation cases against Shell in Nigeria. Furthermore, the researcher also recommended adequate rule on judicial sanction, thorough judicial recruitment procedure, adequate sanction for non-compliance with the civil procedure rule and enhanced court fees based. Finally, the thesis contributes to knowledge as it discusses some features that enable delay in the determination of a case that had been neglected in the relevant literature.

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Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References.

Chapter One: General Introduction

1. Background

Delay in the determination of a civil claim creates a wide variety of social costs. For example, it throws a person who had been deprived of his or her only means of subsistence into extreme poverty as it affects the capacity to afford the basic necessities of life such as food, accommodation and healthcare. This is why the European Court of Human Rights has held that 'an employee who considers that he had been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what was at stake for the person concerned, who through dismissal loses his means of subsistence'.¹ In addition to affecting the capacity of a person to afford the necessities of life, it also compels a party to either accept an inadequate sum as a final compensation or engage in self-help due to desperate or urgent need for money to buy or provide what he or she requires for his or her subsistence.²

Furthermore, it also escalates the cost of litigation as it often requires a lawyer to perform more work and the cost of legal services is usually charged according to the amount of legal services undertaken or time expended on behalf of a party.³ As a consequence, it prevents an injured person who cannot afford the additional cost of litigation and without access to any alternative source of litigation funding from either seeking redress or continuing with an ongoing litigation. The inability of such persons to seek redress or continue with an ongoing litigation in turn prevents the development of the law for the

¹ See *Frydlender v. France*, No.30979/96 (2000) (ECtHR) (GC), at para. 45. See also *Boyras v. Turkey* No. 61960/08, (2015), (ECtHR)

² See Higgins, A., 'Civil Justice in a Shrinking State', C.J.Q. (2015), 34(3), 221-228, at 227; Avraham, R & Wickelgrent, A., 'Third Party Litigation-A Signaling Model', 63 DePaul L. Rev. 233 (2014), at 234 & Higgins, A., 'CPR 3.9: Mitchell Guidance, the Denton revision, and why coded messages don't make for good case management', C.J.Q. (2014), 33(4), 412-426, at 383 & 390

³ See Lord Neuberger., "Framing a New Procedural Culture", C.J.Q. (2015), 34 (3), 237-243, at 238 & Ahmed, M., 'Rule Compliance, Default Judgment and Enforcement', C.J.Q. (2014), 33 (3), 254-260, at 254 See generally, Pardau, S, L., 'Bill, Baby, Bill: How the Billable Hour Emerged as the Primary Method of Attorney Fee Generation and Why Early Reports of Its Demise may be Greatly Exaggerated', 50 Idaho L. Rev. 1 (2014)

benefit of other members of the public. This is because the judgment of a court establishes a judicial precedent that can be used by a claimant or defendant in a similar case to prove or defend a compensation claim respectively. In addition to discouraging litigation and under-development of the law, the escalation of the cost of litigation also increases the financial loss on the part of a successful claimant in a jurisdiction which does not permit the recovery of litigation expenses as part of damages. The longer it takes to decide a case in such a jurisdiction, the more the financial loss on the part of a successful claimant. In fact, delay can eventually erode the damages awarded to a successful claimant in such a jurisdiction, most especially where the amount in contention is not very substantial as litigation is expensive. In essence, delay in the resolution of a case causes Pyrrhic victory on the part of a successful claimant.

Also, delay causes financial loss on the part of a successful claimant in a jurisdiction which does not permit the recovery of prejudgment interest as part of damages as the value of money depreciates with the passage of time.⁴ As with a jurisdiction which does not permit the recovery of litigation expenses as part of damages, the longer it takes to decide a case in such a jurisdiction, the more the financial loss on the part of a successful claimant. In other words, the more the delay in the resolution of a case in such a jurisdiction, the wider the difference between the potential damages and the current cost of the injury suffered since the value of money depreciates with the passage of time.

Additionally, it undermines the practical utility of a judgment as the judgment of a court may be grounded in fact and in law and yet come too late to be of any benefit to the successful party.⁵ As Zuckerman states, 'to enforce rights judgment need not only be correct in law and in fact but also be effective as remedies for wrongs. For a remedy to be effective it has to be administered

⁴ Prejudgment interest compensates a successful claimant for the decline or depreciation in the value of the damages between the time the injury complained of occurred and the time the judgment was delivered. See Pena, M., 'Prejudgment Interest in Construction Defect Litigation', 81 Def. Counsel J. 173 (2014), at 175 & Glick, M, A., Kearn J, R & Sinclair, C, D., 'The Economics and Perplexing Utah Law on Prejudgment Interest', Utah L. Rev 63 (2013), at 63

⁵ See Zuckerman, A.S, (ed), Civil Justice in Crisis (Oxford: Oxford University Press, 2000), at 6. See also Goelzhauser, G., 'Accountability and Judicial Performance; Evidence from Case Dispositions', 33 Just. Syst. J. 249 (2012), at 251 & William, J, R., *op cit*, at 398.

when it can still do some good'.⁶ In essence, legal remedies, just like medical remedies, should be administered when they can still provide a cure for the injury suffered otherwise it will be of no consequence. It follows that a judgment may be unjust not because it is erroneous in law or fact, but it comes too late to prevent or cure a wrongful act. This is the reason why it is often expressed that 'justice delayed is justice denied'. Remedying a wrongful act is one of the objects of the legal process; consequently, effective civil justice requires that a case should be determined at a time when a wrong can still be remedied and if the wrong has not yet occurred, at a time when it may still be prevented. Although justice delayed is justice denied, however, since the decision of a court establishes a judicial precedent, a delayed decision of a court can help guide future government action for the benefit of the members of the public or help a party to prove or defend a compensation claim. As Higgins argues, 'The civil justice is a vital public service for the benefit of all. The immediate benefits are derived from those who use it, but the legal guidance provided by the courts and their availability to resolve disputes should that become necessary, benefits everyone'.⁷

Finally, lack of prompt determination of a case causes waste of tax payer's money. This is because just as delay often compels a lawyer to perform more legal services on behalf of a litigant than a case requires, it also usually forces the court to perform more judicial services than it is necessary and as a consequence causes waste of judicial resources, most especially financial resources.⁸ Consequently, delay reduces the financial resources for the resolution of other pending cases in the queue since the financial resources at the disposal of the judiciary are not limitless. As Zuckerman compares, 'a doctor who spends too long with one patient has less time for others, perhaps suffering more serious conditions and needing more urgent treatment'.⁹ In

⁶ See Zuckerman, A., *op cit*, at 1

⁷ See Higgins, A., 'Civil Justice in a Shrinking State', C.J.Q. (2015), 33(3), 221-228, at 224. See also, Genn, H., Saving Civil Justice: Judging Civil Justice (Cambridge: Cambridge University Press, 2010), at 22

⁸ See Robert, J. T., 'Restoring the Gatekeeper: How Illustrative Notice Pleading Can Save the American Judicial System', 6 Liberty U. L. Rev. 243 (2012), at 244. See generally, Zuckerman, A., 'Civil Litigation: a public service for the enforcement of civil rights', C.J.Q. (2007) 26 (Jan), 1-9

⁹ See Zuckerman, A., 'The Revised CPR 3.9: a Coded Message Demanding Articulation', C.J.Q. (2013), 32(2), 123-138, at 130

essence, the more time a court spends in deciding a particular case, the lesser or fewer the financial resources for the resolution of other cases in the queue. As a result, a court will eventually be unable to decide some of the other cases in the queue where the resolution of some cases have been protracted for a significant period of time and as a result consumed substantial portion of its financial resources. As Higgins argues, 'litigants who take more than their fair share of court resources do so at the expense of others'.¹⁰ The inability of the court to determine such other cases as a consequence of lack of financial resources in turn affects the development of the law for the benefit of other members of the public. This is due to the fact that the judgment of a court establishes a judicial precedent that can be used to prove or defend a future compensation claim.

1.2. Delay in the Determination of Compensation Cases against Shell

Section 36 (1) of the Nigerian Constitution provides that 'in the determination of his civil rights and obligations...a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law...'. However, oil pollution compensation cases against Shell are always determined after over a decade and in some cases over three decades. For example, the case of *Shell v. Anaro*¹¹ was determined after over three decades of litigation.¹² Similarly, the compensation claim in the case of *Shell v Ambah*¹³ lasted for nineteen years before it was determined by the Supreme Court. Furthermore, the case of *Agbara v. Shell*¹⁴ has so far lasted for over fifteen years.¹⁵

The long delay in the determination of the compensation claims has had tremendous impacts on those affected by oil spills, including the successful claimants. For example, it increased the financial loss on the part of the

¹⁰ See Higgins, A., CPR 3.9: the Mitchell guidance, the Dento Revision, and why coded messages don't make for good case management', C.J.Q. (2014), 33(4), 379-393, at 385

¹¹ See *Shell Petroleum Development Company Nigeria Limited v. Joel Anaro* (2015) LPELR-24750 (SC)

¹² The cause of action was filed in 1983 while the Supreme Court delivered the final judgment in 2015.

¹³ See *Shell Petroleum Development Company of Nigeria Ltd v. Ambah* (1999), 3 NWLR

¹⁴ *Osaro Agbara v. Shell Petroleum Development Company of Nigeria Ltd*, Suit No. FHC/ASB/CS/231, 2001

¹⁵ This case is still being litigated at the Court of Appeal.

successful claimants. This is due to the fact that it escalated the cost of litigating the claims and the Nigerian law does not permit the recovery of litigation expenses as part of damages. For instance, it increased the financial loss suffered by the claimants in the case of Shell v. Anaro mentioned above as they had to hire a lawyer to respond to the groundless appeals engaged in by the defendant and the Nigerian law does not permit the award of expenses of litigation as part of damages. If the defendant had not engaged in groundless appeals, the financial loss suffered by the successful claimants would have been lesser as they would not have paid a lawyer to represent them at the Court of Appeal and the Supreme Court. Also, the escalation of the cost of litigation as a consequence of delay would have also prevented those victims of oil pollution who cannot afford the additional cost of litigation as a result of delay from either seeking redress or continuing with an ongoing litigation. The inability of such persons to seek redress or continue with an ongoing litigation as a result of the escalation of the cost of litigation in turn affects the development of the law for the benefit of other members of the public. This is because the judgment of a court creates a judicial precedent that can be used by a litigant to either prove or defend a compensation claim against him or her. Also, the judgment of a court can be used by the government for the benefit of other member of the society.

Furthermore, delay caused the under-compensation of all the successful claimants as the value of money depreciates with the passage of time and the Nigerian law does not permit the award of prejudgment interest on damages. For example, it caused the under-compensation of the successful claimants in the case of Shell v Anaro indicated above as they were awarded the same amount they claimed when the action was filed at the court of first instance despite the fact that the case lasted for over three decades and the value of money depreciates with the passage of time. Although it is difficult to determine the exact amount the successful claimants lost due to the non-availability of the relevant data, however, they would have lost very significant amount of money due to the fact that the case lasted for over three decades before it was determined by the Supreme Court.

As a consequence of the delay in deciding the compensation claims and the consequent impacts, some injured persons have had to seek redress in

foreign jurisdictions, particularly in the United States of America, United Kingdom and The Netherlands. However, it has been difficult getting access to justice through such courts due to certain procedural difficulties. For example, in *Kiobel v. Shell*,¹⁶ the United States of America's Supreme Court dismissed the claim for compensation against the defendant on the basis that the Alien Tort Claims Act under which the action was founded cannot be relied upon by the claimants because all the relevant conduct took place outside of the United States of America and there is no indication that Congress intended the Alien Tort Claims Act to have an extraterritorial reach or application.¹⁷ According to the Supreme Court, 'To begin with, nothing in the text of the statute suggests that the Congress intended causes of action recognised under it to have extraterritorial reach. The Alien Tort Statute covers action by aliens for violations of the law of nations, but that does not imply extraterritorial reach...Nor does the fact that the text reaches 'any civil action' suggest application to torts committed abroad; it is well established that generic terms like 'any' or 'every' do not rebut the presumption against extraterritoriality'.¹⁸

Furthermore, the Supreme Court also held that multinational corporations are often present in many countries but that it would 'reach too far to say that mere corporate presence suffices'.¹⁹ Although the petitioners had argued that the Alien Tort Claim Act applies to conducts committed outside of the United States of America since it applies to pirates who normally carry out their acts on the high seas, beyond the territorial jurisdiction of the United States of America or any other country. However, the Supreme Court disagreed. According to the Supreme Court, 'Applying the U.S. law to pirates, however, does not typically impose the sovereign will of the United States onto the conduct occurring within the territorial jurisdiction of another sovereign, and therefore carries less direct foreign policy consequences. Pirates were fair

¹⁶ See *Kiobel v. Shell*, 133 S.Ct. 1659 (2013)

¹⁷ See Kohl, U., 'Corporate Human Rights Accountability: the objections of western governments to the Alien Tort Statute', *I.C.L.Q.* (2014), 63 (3) 665-697; Mora, D, P., 'The Alien Tort Statute after *Kiobel*: the possibility for unlawful assertions of universal civil jurisdiction still remains', *I.C.L.Q.* (2014), 63 (3), at 699-719; *Kiobel's Unintended Consequences: The Emergence of Transnational Litigation in State Court*, 41 *Ecology L.Q.* 243 (2014). The Alien Tort Claim Act, 28 U.S. Code S.1350, provides that the 'the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States'.

¹⁸ See *Kiobel v. Shell*, *op cit*, at 7

¹⁹ *Ibid*, at 14

game wherever found, by any nation, because they generally did not operate within any jurisdiction. We do not think the existence of a cause of action against them is a sufficient basis for concluding that other causes of action under the Alien Tort Statute reach conduct that does occur within the territory of another sovereign'.²⁰

Additionally, a compensation claim filed against Shell in a London High Court was recently dismissed by Justice Fraser on the basis 'The evidence before the court is that access to justice in Nigeria would not be denied to the claimants if these proceedings were not to continue in London'.²¹ This is however not a correct decision as no claimant has been able to secure access to justice in Nigeria against Shell. This is due to the fact that the claimants always spend significant amount of money on legal expenses as a result of dilatory tactics by Shell and the Nigerian law does not permit the recovery of the cost of litigation as part of damages. Furthermore, dilatory tactics by Shell always causes the under-compensation of the successful claimants as the value of money depreciates with the passage of time and the Nigerian law does not provide for the award of prejudgment interest on damages. For example, the case of *Shell v. Anaro*²² lasted for over three decades before it was determined by the Supreme Court and as a consequence the claimants were denied access to justice despite the fact that they successfully prosecuted the compensation claim. This is because they were awarded the same amount they claimed at the court of instance despite the fact that the value of money depreciates with the passage of time. As already indicated above, the reason why the court awarded the same amount they claimed at the court of first instance is because the Nigerian does not permit the award of pre judgment interest as part of damages despite the duration of a lawsuit or the fact that it was deliberately protracted by a party.

²⁰ Ibid, at 10-11

²¹ See 'Nigerian Oil Pollution Claims against Shell cannot be heard in UK, court rules', available online at <https://www.theguardian.com/business/2017/26/nigerian-oil-pollution-shell-uk-corporations> (Assessed on 5th July 2017)

²² *Shell v. Anaro*, *op cit*

1.3. Aims of the thesis

The aims of the research are to discuss some features that enabled delay in the determination of oil pollution compensation cases against Shell and to make some recommendations on how they can be addressed.

1.4. Research Methodology

One of the sources of information for the research is reported decisions of courts on compensation claims filed against Shell in Nigeria between 1980 and 2015. A total of 45 cases were filed against Shell within the above period and the researcher had access to all cases. The researcher found the reported decisions in the library of some law firms in Nigeria and he was allowed to photocopy them. The reported decisions of the courts contain the arguments of the contending parties as well as the judgments of the trial court as well as that of the Court of Appeal and the Supreme Court. It also contains the amount of damages awarded against Shell in all the cases where the claimants were successful as well as the sanction awarded by the court where Shell had engaged in a dilatory tactic to the detriment of the claimants. Furthermore, it also contains relevant dates such as the date a case was filed, hearing date as well as the date of judgment at the trial court, Court of Appeal as well as the at the Supreme Court. The researcher also used verbatim record of court proceedings. All the information in the reported decisions of courts are also contained in the verbatim record of court proceedings as well as other issues such as the reason for the adjournment of a case and the duration of the adjournment. In essence, the verbatim record of court proceedings is more detailed. The verbatim record of court proceedings was found in the various courts where the matter had been litigated. However, unlike the reported decisions of the courts, the researcher only read the verbatim records and noted some essential information.

In addition to reported decisions of courts and the verbatim record of court proceedings, the researcher also used Nigeria's Civil Procedure as well as internet sources and journal articles. The civil Procedure Rule as well as the internet sources and journal articles were found online.

The above sources of information were used because they contain detailed information that would enable the researcher to answer the research questions. Furthermore, access to the above sources of information was very easy. Additionally, they were also used because since they are already in a written form, it prevents a researcher from influencing the data generated and this in turn enhances the validity of the research.

Although other sources of information exists, however they were not considered appropriate due to several factors. For example, semi-structured interview and focus group were not considered appropriate because most of the cases were decided over a decade ago and as a consequence it would be very difficult or impossible to generate the required information. This is because some or all of those who can provide the required information may have died or unable to remember or provide accurate information due to passage of time. Also, observation was not used as a source of information for the research as the events being studied have already occurred.

After collecting the various sources of information above, the researcher read the above documents several times in order to understand the factors that enabled delay in the determination of the cases. Although the researcher identified several factors that enabled delay in the determination of the sampled cases, however, the three most significant features were selected for the research. Two of the three factors were considered significant because they enabled the delay in the determination of all the sampled cases for this research while the third factor was considered significant because it enabled delay in the determination of forty out of the five cases sampled for the research.

Furthermore, the researcher also identified how each of the three features that enabled delay in the determination of the cases can be addressed by reading several documents, including Nigerian appropriation bill and act, the Nigerian Constitution and internet materials.

1.5. Structure of the Thesis

The remainder of the thesis is divided into four chapters. Chapter two will review the relevant literature as well as set out the research questions. Chapter three will discuss some of the features that enabled delay in the determination of the compensation cases against Shell. Chapter four will make some recommendations on how the features that enabled delay in the determination of the compensation cases can be addressed. Chapter five will set out the general conclusion.

Chapter Two: Literature Review

2.1. Introduction

This chapter will review the relevant literature as well as set out the research question. The remainder of the chapter is divided into two sections. The first section will review the relevant literature while the second section will set out the research questions.

2.2.1. Delay due to Groundless Defence and Appeal

As indicated in the preceding chapter, oil pollution compensation cases against Shell are delayed for over a decade and in some cases for over three decades. As a consequence, Frynas assert that the compensation cases are protracted because of groundless defence and appeals by Shell.²³ This is due to the fact it always spent time arguing the groundless defence and appeals. Furthermore, the claimants also always spent time responding to the groundless defence and appeal by Shell. Additionally, it also forced the court to spend time undertaking the necessary research and writing the judgment of the court on the issues raised in the groundless defence and appeal. Also, the compensation cases are delayed because the groundless defence often engaged in by Shell are always in the queue in order to enable the court to determine other appeals filed before it as cases are heard on first come, first served basis. However, it is essential to note that other factors also make it possible for Shell to protract the determination of the compensation cases through a groundless defence and appeal. In essence, groundless defence and appeal are only contributory factors as it would be impossible for it to delay the determination of the cases without the aid of other factors such as access to financial resources to hire a lawyer and in some cases an expert witness. In *Shell v. Edamkue*²⁴ for example, the claimants brought an action for compensation against the defendant, contending that oil spill from its facility destroyed their means of livelihood. They supported their claim with the

²³ Frynas, G, J., *op cit*, at 111

²⁴ *Shell Petroleum Development Company Nigeria Limited v. Tigbara Edamkue* (2009) 47 W.R.N

evidence of an expert witness who testified that the oil spill was caused as a result of the defendant's negligence. They also relied on the evidence of another expert witness who testified on the amount of injury they had suffered.

On their part, the defendant contended that the oil spill in question was caused by the 'malicious act of a third party' as well as that the expert witness engaged by the claimant did not carry out a proper valuation of the injury caused by the oil spill. It also indicated that it will rely on the assessment carried out by its expert witness. However, after the claimants had concluded their case, the defendant filed an application, requesting the trial court to dismiss the compensation claim against it. It based its application on the ground that the claimants were not authorized to bring the action in a representative capacity. However, the trial court ruled that it lacks the capacity to challenge the claim on the basis of lack of proper authorization as only a member of the community affected by the oil spill in question is permitted under the law to bring such an application. As a consequence, the defendant argued that it was not negligent as the oil spill was caused by the malicious acts of a third party.²⁵ However, it failed to provide any evidence to support the criminal allegation. It also indicated that the expert witness called by the claimants did not undertake any proper assessment of the damage caused by the oil spill. It also failed to provide any evidence to support this claim. Although it indicated in its pleading that the expert witness called by the claimants did not carry out any proper assessment of the damage they suffered and that it will rely on the appraisal reports produced by its valuers, however, it failed to provide any report throughout the trial.

In 1999, the trial court found the defendant liable for the injury complained of as well as awarded damages to the claimants. It also held that the defendant failed to prove beyond reasonable that the oil spill was caused by the malicious act of a third party as it is a criminal allegation. The court also held the expert witness called by the claimants provided a detailed report of the injury suffered by the claimants.

²⁵ The statement of defence it filed in response to the claim against it had alleged that that the oil spill was caused by the malicious act of a third party as well as that the expert witness called by the claimants did not undertake any proper valuation of the injury caused by the oil spill in question.

After the judgment of the trial court, the defendant filed an appeal on various grounds. First, it contended that the trial court does not have the jurisdiction to permit the claimant to amend the capacity under which the action was brought. However, the claimants argued that the trial court has the jurisdiction to allow them to amend the capacity under which the claim was filed. They relied on the provision of Order 32 of the Federal High Court (Civil Procedure) Rules which clearly provides that a court can .permit a party to amend the capacity under which an action was instituted.²⁶

Second, the defendant requested the appellate court to dismiss the damages awarded against it on the ground that the claimant did not provide any credible evidence to justify it. The claimants on the other hand contended that they supported their claim with the evidence of an expert witness whose testimony was not contradicted by the defendant.

Third, the defendant asked the appellate court to dismiss the judgment of the trial court on the basis that the court was wrong in holding that its negligence caused the oil spill and not as a result of the malicious act of a third party. It also argued that expert witnesses called by the claimants were not qualified. The claimants on their part argued that they supported their claim with the evidence of an expert witness who established that the defendant was negligent and that it was not contradicted by the defendant with any evidence at the trial court.

In 2009, about fifteen years after the compensation claim was filed, the appellate court dismissed the appeal against the judgment of the trial court. On the first issue, it held that the trial court has the power to permit a party to amend the capacity under which the action was brought as Order 32 of the Federal High Court Rules relied on by the claimants is 'so clear that it needs no further interpretation'. The court also held that the defendant did not object to the application for an amendment of the capacity under which the action was brought at the trial court and as a consequence it cannot complain on appeal under the Nigerian law.²⁷

²⁶ The provisions provides that "The court may at any stage of the proceedings, either of its own motion or on the application of either part, order any proceedings to be amended or not...".

²⁷ The court supported its position on various decided cases including the case of *Olukade v. Alade* (1976) 1 ALL NLR 67

On the second issue, the court held that the claimants provided sufficient evidence as their estate surveyor produced a detailed report on the losses they suffered as a result of the oil spill. It also held that the defendant failed to contradict the evidence of the claimants' witness at the trial court and that the Nigerian law permits a court to rely on any evidence which had not been contradicted by the opposing party.²⁸

On the third issue, the court held that the claimants proved their claim that the oil spill was caused by its negligence. It also held that the evidence of the claimants was not contradicted at the court of first instance and as a consequence the trial court is entitled to rely on such evidence under the Nigerian law. Furthermore, it held that the claim of the defendant that the oil spill was caused by the malicious act of a third party is an allegation of a criminal act that requires proof beyond reasonable doubt under the Nigerian Law of evidence.²⁹

The defendant's argument that the claimants did not have the authorization to bring the action in a representative capacity is baseless as the Nigerian law clearly provides that only a member of the community or family affected by the injury in question can bring such an application. In essence, since the provision of the law on the issue is very clear, the defendant ought not to have requested the trial court to dismiss the compensation claim on the ground that the claimants do not have the authorization to sue in a representative capacity. Furthermore, the defendant's claim that the oil spill in question was caused by the malicious act of a third party is also baseless as it did not support it with any evidence.

Additionally, the defendant's argument that the trial court does not have the power to permit the claimants to allow them to amend the capacity under which the action was brought is also groundless. This is because the provision of the law cited by the claimants and relied on by the court is very clear on the issue. As the appeal court indicated in its judgment, the provision of the law on the issue is very clear that it does not need any interpretation. In fact, the

²⁸ The Court relied on several cases in support of this position, including the case of *Nwabuko v. Ottih* (1961) 2 SCNLR 232 & *Omoregbe v. Lawani* (1980) 3-4 SC 108, 117

²⁹ The court supported this position with various court decisions and Section 138(1) of the Evidence Act

defendant knew that the trial court does have the power to allow the claimants to amend the capacity under which the action was brought. This is the reason why it never objected to the application for the amendment as well as why it asked for and was granted cost by the court after the claimants filed an application for an amendment of the capacity under which the action was instituted. Also, the defendant's argument that the trial court does not have the power to permit the amendment under which the action was brought is also baseless. This is because the Nigerian law cited by the appeal court clearly prohibits a party from appealing against a process which he or she had failed to object to at a lower court. In other words, such a party is deemed to have accepted the process or procedure. As already indicated above, the defendant did not object to the application for an amendment. Furthermore, it also asked for and was awarded cost after the claimants had filed an application for the amendment.

Furthermore, the defendant's argument on the lack of any evidence in support of the damages awarded against it is also baseless as the claimants called an expert witness who produced a valuation report on the losses suffered by them. In fact, the defendant knew that the evidence of the experts was very credible. This is the reason why it never contradicted the evidence. Although it stated in its pleading that it will rely on the evidence of its valuation expert, however, it neither called any estate surveyor nor produced any valuation report. Furthermore, the argument is also baseless because the Nigerian law clearly provides that a party cannot appeal against any evidence which it had not contradicted at a trial court and the defendant did not contradict the evidence of the estate surveyor called by the claimants. Consequently, it should not have challenged the judgment of the trial court on this issue.

The groundless defence and appeal engaged in by Shell in the above case protracted the determination of the case. This is because it spent some time engaging in oral argument and the claimants had to also spend some time responding to its arguments despite the fact that they were groundless. Furthermore, the judges also spent time undertaking the necessary legal research and writing the judgment of the court on the baseless issues raised by the defendant and countered by the claimants. Additionally, the case was

on the queue at the Court of Appeal for sometime in order to enable the court to determine other appeals filed before it as cases are heard and determined on a first come, first served basis. If the defendant had not engaged in the groundless appeal, the determination of the case would have been faster as the judgment of the trial court awarding damages to the claimants would have been the final judgment of the court on the case. In essence, the trial would have terminated in 1999; however, the final judgment on the case was delivered in 2009 as the case was on the queue at the Court of Appeal for sometime before it could be heard and the contending parties also had to spend some time arguing for and against the groundless appeal. The justices had to also adjourn the case for sometime in order to enable them to undertake the necessary legal research and write the judgment of the court.

Although the groundless defence and the appeal engaged in by Shell protracted the determination of the case, however, other factors also made it possible. For example, in addition to the groundless defence and appeal, access to financial resources on the part of Shell also made it possible for it to delay the case. This is because it enabled it to hire a lawyer and expert witness to engage in the groundless defence and appeal on its behalf. In other words, one factor alone cannot enable a party to protract the determination of a case.

2.2.2. Central Role of Access to Financial Resources in Civil Litigation

Access to financial resources is very critical in civil litigation as it enables a person to either seek redress for the injury suffered and possibly recover damages or defend a compensation claim against him or her. This is because it enables such a person to hire a lawyer as well as an expert witness where the matter in question is too technical in nature. It also enables a person to pay for any other service that is necessary for the prosecution or defence of the case such as filing fee.³⁰ As a consequence, in the absence of access to financial resources, a person will be unable to seek redress and possibly recover compensation for the injury suffered or be able to defend a compensation claim against him or her. As Nash argues, 'numerous reviews and reports have highlighted the importance of access to finance in order to achieve effective access to justice...If neither party has adequate funding, the litigation will not happen. If only one party has adequate funding the litigation will be a walkover. Lack of access to funding is a fundamental barrier to those wishing to use the litigation system.'³¹ In other words, lack of access to financial resources prevents a person from seeking redress or defending a compensation claim against him or her.

Although private individuals are permitted to be self-represented, however, most persons cannot have access to the necessary legal materials such as the relevant laws or textbooks for the prosecution or defence of a claim. Also, some persons cannot represent themselves competently due to lack of any legal knowledge and skill. For example, some injured persons cannot draft a pleading or be able to undertake an effective cross-examination of a witness or discovery of documents due to lack of any legal knowledge and skill. As Genn contends, 'adversarial procedures are designed to be operated by lawyers representing lay persons rather than lay persons themselves. The law is often complex, legal procedures arcane, and legal professionals have their

³⁰ See generally, Yoon, A., 'The Importance of Litigant Wealth', 59 DePaul L. Rev. 649 (2010)

³¹ See Nash, R., 'Financing Access to Justice: Innovating Possibilities to Promote Access for All', 5 H.J.R.L. (2013), 5(1), 96-118, at 97-98. See generally, Lee, E. G., 'Law without Lawyers: Access to Civil Justice and the Cost of Legal Services', 96 U. Miami L. Rev. 499 (2015) & Gustafson, D., Gluek, K & Bourne, J., 'Pro Se Litigation and the Costs of Access to Justice', 39 Wm. Mitchell L. Rev. 32 (2013)

own culture, vocabulary and practices'.³² However, even where a person has the capacity to be self-represented, access to financial resources is still very crucial in civil litigation. This is because such a person still requires certain amount of financial resources for filing fees, travel expenses as well as for an expert fee where the matter in question is too technical in nature. In essence, self-representation does not make access to financial resources unnecessary for the prosecution or defence of a claim but only reduces the financial burden on a party.

Furthermore, while alternative means of litigation funding enables a person with a good claim or defence to seek redress or defend a claim, however, access to financial resources is still very essential. This is because alternative litigation funding providers such as civil legal aid providers and third party litigation funders expend considerable amount of financial resources on behalf of a litigant. In other words, an alternative method of litigation funding does not make the requirement for access to financial resources in litigation unnecessary but only transfers the financial burden to a third party. As a result, access to an alternative means of litigation funding such as a conditional fee lawyer also means access to financial resources. This is due to the fact that an alternative means of litigation funding provider such as a conditional fee lawyer or a third party litigation funder cannot prosecute or defend a claim on behalf of a party without access to certain amount of financial resources. For example, a civil legal aid provider such as a government or a third party litigation funder requires certain amount of financial resources to hire a lawyer as well as an expert witness in technical matters. Similarly, a conditional fee lawyer also needs certain amount of financial resources for travel expenses and for other expenses that are necessary for the prosecution of a case.

³² See Genn, H., 'Do it yourself: access to justice and the challenges of self-representation', C.J.Q. (2013), 32 (4), 411-444, at 425. See also Capie, J, M., 'Fools Rush in Where Lawyers would better Tread', 31 Touro L. Rev. 893 (2015), at 901.

2.2.2.1. Access to Financial Resources and Civil Litigation Delay

In addition to the central role of access to financial resources in civil litigation, it also plays a negative role. As Cohen argues, an organisational defendant protracts the resolution of a civil case because it has access to financial resources to prosecute the act.³³ Access to financial resources is a cause of delay by an organisational defendant as it enables it to hire a lawyer and an expert witness to engage in a dilatory act on its behalf. As Pinsler argues, '...in many respects, the incentive for experts to favour one party contrary to their actual belief are substantial. First expert witnesses are paid for their evidence'.³⁴ In essence, one of the reasons why an expert witness provides a dishonest testimony on behalf of a litigant is because such a party has the financial resources to pay for his or her services. This in turn protracts a civil proceeding as the witness will expend some time providing a testimony on behalf of the organisational defendant. Additionally, the claimant will also spend some time responding to the dishonest testimony. Also, the court will spend some time undertaking the necessary research and writing and delivering the judgment of the court. Furthermore, the case will also be on queue for sometime in order to enable the court to decide other cases which had already been filed before it. For example, in the case of *Shell v. Farah*,³⁵ the claimants brought an action against the defendant, requesting the court to compel it to pay them certain amount of money for the remediation of their farmland which it had polluted. The expert witness called by the claimants testified that the land had not been remediated. On the other hand however, the defendant's lawyer and expert witness argued that the farmland in question had been remediated. As a consequence, the court appointed two independent scientific experts to determine if the defendant had remediated

³³ See Cohen, T. H., 'Civil Trial Delay in State Courts: The Effect of Case and Litigant Level Characteristics', 95 *Judicature* 158 (2012), at 168-169. See also Heise, M., 'Justice Delayed?: An Empirical Analysis of Civil Case Disposition Time', 50 *Case W.R. L. Rev.* 813 (2000), at 825 & 845

³⁴ See Pinsler, J., 'Expert Evidence and Adversarial Compromise: A Re-Consideration of the Expert's Role and Proposal for Reform', 27 *S. Ac. L. J* (2015), at 56. See also, Finkelstein, R., 'The Adversarial System and the Search for Truth', 37 *Monash U.L. Rev.* 135 (2001), at 12 & Genn, D.H., 'Getting to the Truth: experts and judges in the hot tub', *C.J.Q.* (2013), 32(2), 275-2329, at 2-3

³⁵ See *Shell Petroleum Development Company Nigeria Limited v. Farah*, (1995) 3 *NWLR*

the farmland in question. After an extensive scientific investigation, the two independent experts found that the farmland was still polluted by crude oil. As a result, the court awarded the claimants the amount they had claimed for the remediation of the farmland. Consequently, the defendant filed an appeal, asking the Court of Appeal to set aside the judgment of the trial court on the basis that it does not have the power to appoint the independent experts who carried out the investigation. This is in spite of the fact that the trial court had cited the provision of the law which empowered it to appoint an independent expert in the event of a conflict in the evidence of the parties to a lawsuit before they were appointed without any objection. However, the Court of Appeal dismissed the appeal. The court held that the trial court has the power to appoint an independent expert in order to enable it to reach a correct decision, most especially in the event of a conflict in the evidence of the experts called by the contending parties.

The defendant's argument at the trial court was baseless as it did not remediate the farmland in question but it still argued that it had been remediated. Furthermore, the appeal to the Court of Appeal is also groundless. This is because the trial court had cited the provision of the law which empowered it to appoint an independent expert witness before the experts were appointed and as a consequence there was no basis for the appeal engaged in by the defendant.

The groundless litigation engaged in by the defendant at the trial court protracted the determination of the above case as it had to use some time to argue the defence and the claimants also expended some time responding to the frivolous defence. Furthermore, the scientific experts appointed by the court as a consequence of the frivolous defence engaged in by the defendant also expended some time undertaking extensive scientific investigation on the farmland in question in order to determine if it had been remediated. Additionally, the scientific experts also spent some time analysing the data obtained from the field as well as writing and presenting their report to the court. They were also examined extensively on the outcome of their investigation by the claimants and the defendant. Also, the judge had to adjourn the case for several weeks in order to enable him to study the report

of the independent experts as well as undertake the necessary legal research and write his judgment.

If the defendant had indicated at the trial court that it does not have any good defence, the resolution of the case would have been faster. This is because the trial court would have simply awarded the claimants the amount they had claimed for the remediation of the farmland or any other reasonable amount without any delay. However, as a consequence of the needless defence engaged in by the defendant, the determination of the case lasted for five years at the trial court.

Furthermore, the needless appeal filed by the defendant against the judgment of the trial court awarding damages to the claimant also protracted the legal proceeding. This is because the appeal was on the queue for some time until other appeals filed before it had been decided since cases are determined on first come, first serve basis. Also, the defendant had to use some time to argue its appeal and the claimants also expended some time responding to the frivolous appeal. Additionally, the justices of the Court of Appeal had to adjourn for several weeks in order to enable them to undertake the necessary legal research and to write their judgment dismissing the frivolous appeal. Again, if the defendant had not engaged in the groundless appeal, the case would have been decided earlier than it did as the judgment of the trial court which was delivered on 18 April, 1991 would have been the final judgment of the case. However, as a result of the groundless appeal engaged in by the defendant, the final judgment of the court was delivered on 7 December, 1994. In essence, the groundless appeal engaged in by the defendant prolonged the conclusion of the case by three years, seven months and nineteen days.

One of the factors which enabled the defendant to protract the determination of the above case and indeed other compensation claims against it is because it had access to financial resources. This is because it enabled it to hire an expert witness to testify on its behalf that the farmland in question had been remediated despite the fact that it was still polluted at the time of the testimony. As discussed above, this in turn protracted the determination of the case as the expert witness had to spend some time testifying on behalf of the defendant. Furthermore, the claimants also

expended some time cross examining the witness in order to show that his testimony is not reliable. Also, the independent experts appointed by the court to determine if the land had been remediated also expended some time conducting the necessary investigation as well as analysing and writing their report. They also expended some time presenting their report to the court. In addition to the capacity to hire an expert witness to testify on its behalf, the defendant also impeded the resolution of the above compensation claim because it had access to financial resources to hire a lawyer to engage in a groundless defence and appeal on its behalf. As discussed above, the groundless defence and appeal by the lawyer in turn hindered the determination of the case due to several factors. Although legal fee is expensive, however, it is one of the largest companies in the world by revenue. In fact, it was recently ranked the third largest company in the world by revenue. As a consequence, it is very easy for it to hire a lawyer to impede the determination of a case on its behalf for several years and in some cases for over a decade.³⁶ If it did not have access to substantial amount of financial resources, it would have been disabled from hiring a lawyer to protract the determination of the above compensation claim and indeed other compensation claims filed against it by those affected by spills from its facilities.

³⁶ Most multinational oil corporations have access to substantial amount of financial resources and as a consequence they often delay the determination of compensation claims filed against them for several years or decades. See Joseph, S., 'Protracted Law fare: The Tale of Chevron Texaco in the Amazon', 3 J.H.R.E. 70-91 (2012) (This case has so far been delayed for two decades by Chevron Texaco and has so far been litigated in three jurisdictions, namely, United States of America, Ecuador where the alleged injuries occurred and The Hague). For other compensation claims which have been delayed for several years and decades by multinational oil corporations because of access to substantial amount of financial resources and other factors, see Joseph, S., Corporations and Transnational Human Rights Litigation (Hart Publishing: Oxford , 2004)

2.2.3. Absence of Judicial Control

In addition to access to financial resources, absence of judicial control also enables a party to protract the determination of a case. Gergely asserts that a party delays a case because of lack of judicial control.³⁷ A party can decide to engage in an act that protracts the resolution of a case because of several reasons. For example, a defendant who is full aware that he or she is legally responsible for the injury complained of can refuse to file the statement of defence in order to prevent the court from awarding damages against him or her. Such a person will escape liability if the only witness dies or the only available evidence deteriorates or is destroyed while the case is still being delayed. In such a case, delay enables a defendant to avoid paying for the injury he or she caused as a result of the inability of the injured to prove his or her case. As Legg argues, 'cost and delay are tactical weapons used to allow one side to obtain an advantage over another one. One side will be anxious to bring the case on as quickly and cheaply as possible. The other may have an interest in avoiding resolution.'³⁸

Furthermore, an organisation can decide to prolong the resolution of compensation claims filed against it for a significant period of time in order to be infamous for engaging in dilatory tactics for a considerable amount of time. This is because where a particular organisation is notorious for impeding the resolution of compensation claims that are usually filed against it for significant amount of time; it discourages some of those affected by its careless conduct or those who cannot engage in a protracted litigation from seeking redress against it. For example, this can be due to lack of adequate financial resources to engage in a prolonged litigation. It can also be as a result of the fact that the cost of prosecuting the claim for a significant amount of time will exceed the

³⁷See Gergely, C., 'Deterring Dilatory Tactics', 151 *Studia Luridica Auctoritate Universitatis Pecs* 9 (2013), at 14-15. See also Lord Justice Richards., 'The Mitchell/Denton Line of Cases: securing compliance with rules and court orders', C.J.Q. (2015) 34(3), 249-253, at 249; David, P., 'A New Model for Civil Case Management; efficiency through intrinsic engagement', 50 Ct. Rev. 174 (2014), at 175; Higgins, A., 'The Costs of Case Management: what should be done post-Jackson?' C.J.Q. 317 (2010), at 3, Kumar, V, A., 'Judicial Delays in India: Causes and Remedies', 4 J. L.P.G. (2012), at 18

³⁸ See Legg, M., 'Reconciling the Goals of Minimizing Cost and Delay with the Principle of Fair Trial in the Australian Civil Justice System', C.J.Q. (2014), 33(2) 157-174, at 172 See also, Wistrich, A, J & Rachlinski, J, J., 'How Lawyers' Intuitions Prolong Litigation', 86 S. Cal. L. Rev. 101 (2013), at 104

potential damages and successful claimants are not permitted to recover the cost of litigation as part of damages in the jurisdiction. The amount of financial resources that will be saved by such an organisation can be very substantial and more than the cost of prolonging the resolution of the compensation claims filed against it. This is especially so where most of those usually affected by its careless conduct lack access to substantial amount of financial resources or any alternative means of litigation funding to engage in a protracted litigation or any alternative source of litigation funding. In essence, delay enables a person to save some money or avoid paying for some of the damage he or she had caused.

As a consequence, the function of judicial control is to prevent a party with the necessary incentive and capacity,³⁹ from protracting the determination of a civil trial.⁴⁰ For example, reasonable time limit for oral argument prevents a party with the necessary incentive and capacity, such as access to financial resources from hiring a lawyer to engage in unnecessary argument for as long as he or she desires. Similarly, reasonable limit on the number of expert witnesses a party can invite to testify on his or her behalf prevents a party with the necessary incentive and capacity from prolonging the determination of a case by inviting unreasonable number of expert witnesses to testify on his or her behalf. Also, reasonable time limit for discovery of documents ensures that a party with the necessary incentive and capacity does not prolong the resolution of a case by engaging in endless discovery of documents.

On the other hand however, where the court fails to control the litigation process, it enables a party with the necessary incentive and capacity to protract a civil proceeding. This is because since there is no authority to ensure that a civil proceeding is conducted as expeditious or efficient as possible, a party with the necessary incentive and capacity will engage in dilatory

³⁹ Capacity refers to the necessary conditions or factors for prolonging the determination of a case. For example, access to financial resources to hire a lawyer or an expert witness to engage in dilatory tactics. As already indicated in the preceding section, delay is caused by multiple factors and as a consequence, a party cannot delay a case without the aid or support of all the necessary factors or conditions.

⁴⁰See Takeshita, K., 'Overcoming Judicial Reluctance to Secure Effective Case Management', C.J.Q. (2014), 33(3), 281-306, at 281; Zuckerman, A., 'No Justice Without Lawyers-the myth of an Inquisitorial Solution', C.J.Q. 355 (2014), at 359; Legg, M., 'High Court of Australia Employs Case Management and 'Overriding Purpose' to Resolve Dispute Over Mistaken Provision of Privileged Documents in Discovery', C.J.Q. (2014) 33(2), 115-123,

tactic(s).⁴¹ In essence, such a party will engage in dilatory tactics because of his or her selfish interest. This is why Zuckerman argues that 'where the court leaves control of the litigation process to the parties, each party is bound to pursue the course that best suits her interest, which may or may not be consistent with a fair and expeditious resolution of the case'.⁴² For example, in *Shell v Uzoaru*,⁴³ the claimants brought an action for compensation against the defendant, allegation that oil pollution from its facilities destroyed their only means of subsistence including farmlands and fish ponds. However, the defendant failed to file the statement of defence by the requisite deadline without any good explanation. Consequently, the claimants brought an application, requesting the trial court to award default judgment against it. As a result, the defendant brought an application, asking the trial court to grant it an extension of time to file the statement of defence and the court granted it fourteen days extension of time. This is in spite of the fact that it failed to provide any good explanation for failing to file the statement of defence by the deadline. Furthermore, the claimants had objected to the application for extension of time on the ground that the defendant threatened to engage in dilatory tactics if they filed a compensation claim against it. Rather than file the statement of defence as ordered by the trial court, the defendant filed another application, asking the court to dismiss the compensation claim against it on the basis that it is statute barred. This is in spite of the fact that the claim was brought under Nigeria's Petroleum Act of 1962 which does not provide any limitation period. Also, the Supreme Court had held in a similar compensation claim against it by some persons affected by oil spill from its facility that the Petroleum Act does not provide any limitation period for compensation claims brought under it.⁴⁴ However, after listening to the argument for and against the application, the trial court dismissed it on the ground that the Petroleum Act does not provide any limitation period for compensation claims brought under

⁴¹ See Wolf, H., Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales (HMSO: Norwich, 1995), at Ch. 3, para. 5. See also Zuckerman, A., 'A Tribute to Lord Dyson's Conception of a Just Process', C.J.Q. (2015), 34(3), 229-236, at 230. Zuckerman, A., 'The Challenger of Civil Justice Reforms': Effective Court Management of Litigation', 1 City U.H.K.L. Rev. (2009), at 56

⁴² See Zuckerman, A., 'The Challenge of Civil Justice Reforms: Effective Court Management of Litigation', 1 City U.H.K.L. Rev. (2009), at 56

⁴³ *Shell v. Uzoaru*, *op cit*

⁴⁴ See *Nwadiaro v. Shell* *op cit*

it. The court also held that the Supreme Court had already held in a similar compensation claim against it that the Petroleum Act under which the action was filed does not provide any limitation period. Furthermore, it also granted the defendant forty five days extension of time to file the statement of defence.

After the ruling of the trial court, the defendant filed an appeal, asking the Court of Appeal to declare the compensation claim against it statute barred on the ground that the cause of action had accrued for over six years before the claim was filed. However, the Court of Appeal dismissed the appeal on the basis that the Petroleum Act under which the compensation claim was brought does not provide any limitation period. The court also grounded its decision on the fact that the Supreme Court had already held in a similar compensation claim filed against it that the Petroleum Act does not provide any limitation period. Furthermore, it also granted it thirty days extension of time to file the statement of defence at the trial court. This compensation claim was eventually resolved in favour of the claimants after fifteen years of litigation due to dilatory tactics by the defendant, including groundless applications and appeals and unnecessary requests for adjournments as well as failure to file the necessary legal documents.

The defendant's application at the trial court requesting it to dismiss the compensation claim on the basis that it was statute barred is groundless. This is because the Petroleum Act under which the action was brought does not provide any limitation period. Furthermore, the Supreme Court had already held in a similar compensation claim brought against the defendant that the Petroleum Act does not provide any limitation Act for injuries arising from oil spills. In essence, the defendant should not have filed an application and appeal asking the trial court and the Court of Appeal respectively to dismiss the claim against it due to lack of any prospect of success.

The defendant's application for extension of time to file the statement of defence prolonged the determination of the case as the judge had to listen to the argument for and against the application. The judge also expended some time writing and delivering his ruling granting the defendant an extension of time to file the statement of defence. Furthermore, the groundless application by the defendant requesting the trial court to dismiss the compensation claim

against it also protracted the resolution of the compensation claim.⁴⁵ This is because the judge had to also listen to the groundless argument as well as the counter argument by the claimants. Additionally, he had to also adjourn the case for several weeks in order to enable him to undertake the necessary legal research as well as write the judgment of the court dismissing the groundless application designed to protract the resolution of the compensation claim.

Furthermore, the needless appeal by the defendant asking the Court of Appeal to dismiss the compensation claim on the ground that it is statute barred also impeded the resolution of the case.⁴⁶ This is because it was in the queue for several months until after other appeals filed before it had been concluded since cases are determined on first come, first served basis. Also, the justices had to spend some time listening to the argument for and against the appeal for a dismissal of the compensation claim on the ground that it is statute barred. Additionally, the case was also adjourned for several weeks in order to enable the justices to undertake the necessary legal research as well as write the judgment of the court dismissing the needless appeal.

Based on the above facts, it is very clear that the defendant did not have any good defence against the compensation claim but merely set out to impede the legal proceedings. In fact, it had accepted liability for the damage caused by the spill and agreed to compensate the claimants for the injury they had suffered. However, they had to seek redress when it failed to pay the agreed sum without any good reason. In essence, it knew it was legally responsible for the oil pollution complained of and the consequent damage. Furthermore, the court had held in a similar compensation claim against it that the Petroleum Act under which the action was brought does not provide any limitation period. Also, it had threatened to engage in dilatory tactics if a compensation claim was filed against it during informal negotiation with the claimants. As a consequence, if the defendant had not engaged in dilatory

⁴⁵ As indicated earlier, the application was frivolous because it was brought under Nigeria's Petroleum Act which does not provide any limitation period. Furthermore, the Supreme Court had held in a similar compensation claim brought against the same defendant that the Petroleum Act does not provide any limitation period for compensation claims brought under it.

⁴⁶ It was a groundless appeal because the Petroleum Act under which the action was brought does not provide any time limit under which a compensation claim must be filed. Furthermore, the court had held in a similar compensation claim against it that the Petroleum Act does not provide any time limit.

tactics, the claimants would not have been subjected to the detrimental impacts of delay such as abject poverty and loss of substantial amount of financial resources since the Nigerian law does not permit the recovery of litigation expenses and prejudgment interest as part of damages.

The defendant successfully protracted the resolution of the above compensation claim because of lack of effective judicial control over the conduct of the litigation. This is because if the trial judge had awarded default judgment against it on the first day of the legal proceeding for non-compliance with time limit without any good reason, it would have been disabled from protracting the determination of the case through an application for extension of time to file the statement of defence. This is because the default judgment of the trial court would have terminated the litigation.

Furthermore, if the trial court had awarded default judgment against the defendant for non-compliance with time limit, it would have also prevented it from impeding the resolution of the compensation claim by filing a groundless application and appeal requesting the trial court and the Court of Appeal respectively to dismiss the compensation claim against it. In essence, a default judgment by the trial court would have eliminated the opportunity to protract the civil proceeding since it would have terminated the litigation. Although the defendant may still want to impede the resolution of the case even if the trial court had terminated the litigation by awarding default judgment to the claimants such as by filing an application or appeal against the default judgment. However, an effective judicial control over the conduct of the litigation would have still prevented it from engaging in any dilatory tactic. This is because it would have been prohibited from filing any application or appeal against the default judgment of the trial court on any ground since it is very clear that it does not have any good defence to the claim against it but only set out to engage in dilatory tactics.⁴⁷ In essence, an effective judicial control over

⁴⁷One major indicator of the fact that the defendant did not have any good defense to the claim against it is that it had accepted responsibility for the oil pollution in question and the consequent damage as well as agreed to compensate the claimants for the damage they had suffered before the compensation claim was filed. In essence, the defendant knew that it was liable for the injury suffered by the claimants. This is the reason why it never denied liability throughout the litigation. Furthermore, one indicator of the fact that the defendant was only interested in delaying the case is that it had threatened to engage in dilatory tactics if the claimants filed a compensation claim against it for the injury they suffered as a result of oil spills from its facilities.

the conduct of the litigation would have ensured that the default judgment of the trial court was the final judgment of the court on the case as the conduct of the defendant clearly shows that it does not have any good defence to the claim against it but only interested in delay.

2.4. Conclusion

Whilst some writers have indicated that lack of judicial control over a civil litigation enables delay in the determination of a case, however, there is yet to be any detailed study on the issue. For example, sanction is one of the mechanisms used by the judiciary to control civil litigation; however, there is yet to be any detailed study on how low judicial sanction enables delay in the determination of a case. Furthermore, whilst lack of judicial control has been identified as an enabler of delay in civil litigation, there is yet to be any study on how inadequate judicial funding can further delay the determination of a case where a party had engaged in a groundless litigation as a result of lack of judicial control. Additionally, civil procedure rules are made to help judges to control civil litigation, however, the existing literature on lack of judicial control is silent on how judicial unwillingness to enforce the civil procedure rule enables delay in the determination of a case. Finally, the existing literature does not also make any recommendation on how the features that enable delay can be addressed.

As a consequence, the research questions for this thesis are:

- How does low judicial sanction enable Shell to protract the determination of oil pollution compensation cases in Nigeria?
- How does inadequate judicial funding enable delay in the determination of oil pollution compensation cases against Shell in Nigeria?
- How does judicial unwillingness to enforce the civil procedure rule enable delay in the determination of oil pollution compensation cases against Shell in Nigeria?
- How can the features above that enabled delay in the determination of oil pollution compensation cases against Shell be addressed?

Chapter Three: Enablers of Delay in Oil Pollution Compensation Cases against Shell

3.1. Introduction

This chapter will discuss some features that enabled delay in the determination of oil pollution compensation cases against Shell in Nigeria. The remainder of the chapter is divided into four sections. Sections two, three and four will discuss how low judicial sanction, inadequate judicial funding and judicial unwillingness to enforce the civil procedure rule respectively enabled delay in the determination of oil pollution compensation cases against Shell in Nigeria. Section five will conclude the chapter

3.2. Low Judicial Sanction

One factor that enabled delayed in the determination of oil pollution compensation cases against Shell is the low judicial sanction that is always imposed on it for deliberately engaging in a dilatory act. In the case of *Shell v Uzoaru*⁴⁸ for example, the defendant delayed the determination of the case as it spent time requesting the court to grant it an extension of time to file the necessary legal document that it had failed to file without any justification. Furthermore, it also prolonged the case as the claimants expended some time responding to the request for an extension of time to file legal documents. Additionally, Shell also protracted the determination of the above case because the court had to also use some time to rule on the request granting it fourteen days extension of time. In addition to the request for an extension of time, it also delayed the case by arguing at the trial court as well as at the Court of Appeal that the claim was statute barred. This is due to the fact that the Petroleum Act under which the action was brought does not provide for any limitation period. Also, a higher court had already held in a similar case against it that the statute of limitation does not apply to oil pollution compensation claims.⁴⁹ In addition to the time spent by the defendant engaging in the baseless argument at the trial court as well as at the Court of Appeal, the

⁴⁸ *Shell Petroleum Development Company v. Uzoaru* (1994) 9 NWLR

⁴⁹ See *Shell v. Nwadiaro*, *op cit*

claimants also spent some time responding to the argument that the claim had become statute barred. Also, the needless appeal was on the queue for some time as cases are heard on a first come, first served basis. Finally, the baseless appeal engaged in by Shell also protracted the determination of the case as the Justices of the Court of Appeal had to spend some time undertaking the necessary legal research and writing the judgment of the court dismissing the appeal. If the defendant had not engaged in the groundless appeal, the judgment of the trial court would have been the final judgment of the case. Consequently, the amount of financial resources lost by the claimants would have been limited to the expenses they incurred at the trial court. This is because they would not have expended any money hiring a lawyer to represent them on appeal as well as spent any money filing their response to the groundless appeal.

As with all the other claims against it, Shell deliberately protracted the determination of the above case. This is as a result of the fact that the Court of Appeal had held in a similar case against it that the statute of limitation does not apply to oil pollution compensation cases. Furthermore, it had agreed to compensate the claimants during an informal negotiation but it eventually refused to do so without any good reason. In essence, it knew that it was liable for the oil spill and the consequent damage but clearly set out to delay the determination of the case by engaging in baseless arguments as well through failure to file the statement of defence within the required timeframe. In fact, the defendant had threatened that it would use various tactics to prolong the determination of the case. However, despite the conduct of the defendant and the tremendous impact on the claimants, most especially the fact that it affected the eventual damages as the Nigerian law does not award the expenses of litigation and prejudgment interest as part of damages; the court awarded approximately £40 against it.

Furthermore, in the case of *Shell v. Farah*,⁵⁰ the defendant prolonged the resolution of the case by engaging in a groundless defence at the trial court. This is due to the fact that it argued that it had remediated the polluted land and that as a consequence it was not under any obligation to pay the claimants

⁵⁰ *Shell Petroleum Development Company v. Farah* 1995) 3 NWLR

for its remediation despite the fact it had not. This is because an expert investigation ordered by the trial court showed that the land had not been remediated. In essence, it knew that that it had not remediated the land in question but it still filed a statement of defence, arguing that it had remediated the polluted land. It also protracted the resolution of the case as the independent experts appointed by the court as a consequence of the baseless defence had to spend some time undertaking an investigation on the polluted land as well as in writing and presenting their report to the court. If it had indicated in its statement of defence that it had not remediated the polluted land, the court would not have appointed the independent experts to determine if the land had been rededicated. Furthermore, Shell also protracted the case as the judge had to adjourn the proceeding after the experts had presented their report in order enable him to undertake the necessary legal research and write the judgment of the court on the case.

Additionally, it also delayed the determination of the case by engaging in a groundless appeal. This is due to the fact that the appeal was on the queue for some time in order to enable the court to hear and determine other appeals filed before it as cases are heard and determined on a first come, first served basis in Nigeria. Also it spent time arguing that that the trial court does not have the power to appoint the independent experts despite the fact that the court referred to the relevant provision of the law before the experts were appointed. Furthermore, the claimants also spent some time responding to the baseless appeal. Also, the justices had to adjourn the case for some time after hearing the contending parties in order to enable them to undertake the necessary legal research and write the judgment of the court on the case. If the defendant had not engaged in the groundless appeal, the determination of the case would have been faster as the judgment of the trial court would have been the final judgment on the case. However, despite the fact that the defendant intentionally prolonged the resolution of the case and the consequent impacts on the claimants and waste of judicial resources, the trial court and the Court of Appeal awarded approximately £250 and £30 against it respectively. In fact, the sanction awarded in this case is the highest amount so far awarded against Shell for protracting the determination of any oil pollution compensation case against it.

As a consequence, it enabled delay in the determination of the compensation cases because it failed to discourage Shell from engaging in dilatory acts or conducts. This is because whilst the severity of a potential sanction dissuades a party from engaging in misconduct or a prohibited act, the sanction that is always imposed on Shell is too insignificant to inflict any severe pain on it and consequently deter it. The reason for this is because it has access to very significant amount of financial resources as it is one of the wealthiest companies in the world and as a result, the sanction that is always imposed on it failed to inflict any severe pain as it is a negligible portion of its financial resources. This is the reason why some organisations and jurisdictions often inflict significant amount of financial sanction on it and other similar organisations as a means of disabling them from continuing to engage in a particular conduct. For example, in 1991, the Brent Spar was considered by Shell to be of no further value. In 1995, the British government approved its application for the disposal of the Brent Spar in deep Atlantic waters at North Feni Ridge. As a consequence, on 23 May, 1999, Greenpeace and other organisations called for a boycott of its products in order to compel it to abandon its plan of disposing the Brent Spar offshore. On June 20, 1995, ten days after the boycott had commenced, Shell announced that its decision to dispose the Brent Spar offshore 'has become untenable' as it was losing millions of pounds worth of sales as a consequence of consumer boycott of its products.⁵¹ Also, it wrote a letter to its customers in several newspapers stating as follows: 'We are going to change. We have learned that for certain decisions, your (public) agreement is just as important as the opinion of experts or the approval of the authorities...it is not enough for a decision to conform to laws and international rules...acceptance by society is needed too.'⁵²

In the above example, Shell decided to dump its plan of disposing the Brent Spar offshore after ten days boycott of its products by consumers and agreed to a more expensive but environmentally friendly onshore decommissioning because of the huge financial loss or adverse impact the boycott was causing it. In essence, it was discouraged from disposing the Brent Spar offshore as

⁵¹ See 'The Environmental Conflict Surrounding the Decommissioning of Brent Spar', available online at www.iaea.org (Assessed on 3 August, 2014)

⁵² See Jordan, G, Shell, Greenpeace and Brent Spar. (Basingstoke: Palgrave, 2001), at 1

the financial loss it had suffered as a result of the boycott was significant and as a consequence it was deterred or disabled from continuing with its plan of disposing the Brent Spar offshore. If the amount of revenue lost as a result of the boycott was not significant, it would not have been discouraged from continuing with its proposed action. In essence, it would have enabled it to dump the Brent Spar offshore as the financial resources lost would not inflict any severe pain on it and consequently discourage it from engaging in the act.

Furthermore, Exxon spent over \$4.3bn as a result of the Exxon Valdez Oil Spill, including compensatory payments; clean up payments, settlement and fines.⁵³ As a consequence of the severity of the financial loss, Exxon implemented numerous safety measures in order to prevent future incidents.⁵⁴ As a result, it has not been involved in any oil spill in the United States of America since the Exxon Valdez Oil Spill Disaster.⁵⁵ In the above example, Exxon had to undertake various measures in order to prevent similar incidents in the future because of the severity of the adverse impacts of the financial expenses incurred as a result of the oil spill. In essence, the financial expenses it incurred as a result of the oil spill were adequate to discourage it from polluting the environment in the future.

Also, after the 2010 BP Oil Spill in the Gulf of Mexico in the United States of America, BP launched an internal investigation into the causes of the spill in order to enable it to improve safety of deepwater drilling.⁵⁶ The investigators 'found that a complex, inter-linked series of mechanical failures, human judgments, engineering designs, operational implementations and team interfaces, involving several companies including BP, contributed to the accident'.⁵⁷ As a consequence, the investigation team made 26

⁵³See 'The Exxon Valdez Oil Spill', available online at <http://coporate.exxonmobil.com/en/environment/emergency-preparedness/spill-prevention-and-response/valdez-oil-spill> (Assessed 15 March, 2016)

⁵⁴According to Exxon, 'in the aftermath of the accident, we also undertook significant operational reforms and implemented an exceptionally thorough operational management system to prevent future incidents ibid

⁵⁵ According to Exxon, 'This system (the safety measures) has been deployed globally and in the years since the accident, we have had nothing similar occur. We believe our subsequent record of safety stems primarily from disciplined and systematic improvements that we have made'. Ibid

⁵⁶ See 'BP: Investigations and Legal Proceedings', available online at http://www.bp.com/content/dam/bp/pdf/sustainability_/group-reports/investigations-and-legal-proceeding.pdf (Assessed 16 March, 2016)

⁵⁷ Ibid

recommendations specific to deepwater drilling and BP implemented all the recommendations.

In the above example, BP launched an internal investigation into the causes of the oil spill even before it had been sanctioned or paid any civil claim as well as implemented all the recommendations of the investigators in order to prevent a recurrence and as a consequence avoid the severe pain of the potential sanction. In essence, the severe impacts of the huge financial expenses it will incur as a result of the oil spill encouraged it to implement all the recommendations of the investigators in order to prevent a recurrence. In fact , it was eventually fined \$20.08 billion by the United States of America to cover damages caused by the oil spill and it also spent \$28 billion on clean up and compensation.

On the other hand however, the sanction that is always imposed on Shell enables delay as it does not discourage it from engaging in a dilatory conduct since it is a negligible portion of the amount of financial resources at its disposal. If significant sanction had been awarded against it for delaying a case, it would have been disabled from delaying other similar cases as it would be discouraged by the severe pain of the potential sanction. Although, Shell has delayed several oil pollution compensation cases and it has always been sanctioned by the courts, however, all the sanction so far awarded against it is also too insignificant to deter it. For example, about £3,200 was awarded against it in all the forty five cases sampled for this research , however, this amount is amount is still too insignificant to inflict any severe pain on it and consequently deter it from engaging in the dilatory acts in the future. As already indicated above, this is because it has access to very substantial amount of financial resources at its disposal as it is one of the wealthiest companies in the world.

3.3. Inadequate Judicial Funding

The Nigerian judiciary is not adequately funded as it lacks the necessary resources for the discharge of its services. For example, judges are often unable to sit due to insufficient courtrooms as well as forced to record court proceedings in longhand as a result of non-automation of the court system.⁵⁸ Furthermore, most courts are usually unable to afford electricity supply as well as furniture. Also, some of the courts lack libraries and the judges have had to depend on lawyers. According to one of the judges, "I want to state at this juncture that the...judiciary is in a very bad shape, all our courts are in a deplorable state and there are no good furniture...We have no standard library...therefore most of us depend on the authorities submitted by lawyers to write our rulings and judgments'.⁵⁹ Additionally, the judges lack legal research assistants.

As a consequence of judicial under-funding, the Rivers State government recently built a Federal High Court which is the court of first instance for compensation claims against Shell despite the fact that it is the responsibility of the central government. The state government has also commenced the expansion of the Court of Appeal where over ninety percent of the compensation cases against Shell are litigated in the second instance in spite of the fact it is the responsibility of the central government under the constitution. Furthermore, judicial staff workers have had to embark on strike action on several occasions due to the serious under-funding of the sector. For example, all the courts in Nigeria were shut for three weeks, one week and two weeks in 2015, 2014 and 2013 respectively as a result of strike action occasioned by inadequate judicial funding.

Additionally, judicial under-funding also enabled delay in the determination of oil pollution compensation cases against Shell as groundless defence and appeals often engaged in by Shell as a result of lack of judicial control are always on the queue or pending for a significant amount of time as a result of congestion of the courts occasioned by inadequate judicial funding. In

⁵⁸Agbonika, J., 'Delay in the Administration of Criminal Justice in Nigeria: issues from a Nigerian viewpoint, 26 J. L.P. & G. (2014), at p. 131

⁵⁹ See Daily Trust: 'Poor Court Funding and Judiciary's Independence', available online at <http://www.dailytrust.com.ng/daily/index.php/law/6604-poor-court-funding-and-judiciary-s-indepence> (Assessed on 20 May, 2017).

essence, inadequate judicial funding enabled delay in the determination of the cases as it prevented the judiciary from hearing and deciding groundless defence and appeals often engaged in by Shell promptly. For example, the case of *Shell v. Anaro*⁶⁰ was determined in 2015 after over three decades of litigation partly due to inadequate judicial funding. In that case, the defendant filed an appeal against the judgment of a trial court awarding damages to the claimants for the injury they had suffered on the ground that the trial court does not have jurisdiction over the subject matter. It argued that a new law which was enacted after the cause of action had accrued as well as after the litigation had commenced at the court of first instance ousted its jurisdiction. Furthermore, it also argued that the representative action was improper as the claimants lack common interest in the action. Finally, it contended that that there was no basis for the damages awarded against it by the court of first instance as the estate valuer engaged by the claimants did not provide sufficient evidence.

The above appeal is groundless as Section 6 of the Interpretation Act prohibits retrospective application of a new law. Furthermore, the Supreme Court had held that a change in a law does not affect any claim which had already been filed.⁶¹ As a consequence, the trial court clearly had jurisdiction over the subject matter as the cause of action had accrued and litigation had also commenced before the new law was enacted. In essence, there is no ambiguity in the provision of the law and as a result, the defendant ought not to have filed an appeal arguing that the trial court does not have jurisdiction over the claim.

Additionally, the defendant's argument that the representative action was not proper on the ground that the claimants did not have a common interest in the land polluted land is also frivolous. This is due to the fact that the claimants had adduced sufficient evidence showing that the defendant had acknowledged in several documents it issued to them that they have a common interest in the property. Also, the claimants had called traditional rulers of the community who testified that they have common interest in the

⁶⁰ See *Shell Petroleum Development Company Nigeria Limited v. Joel Anaro* (2015) LPELR-24750 (SC)

⁶¹ See *Otugor Oamioba v. Oghene* (1961) 1 SCNLR 115, at 66

polluted land. In fact, the defendant did not contradict the evidence of the claimants. As a result, there was no justification for any appeal on this issue as the claimants clearly demonstrated a common interest in the polluted land. Furthermore, the appeal on this issue is also groundless as the defendant failed to contradict the evidence of the claimants and the Nigerian law clearly provides that a party is deemed to have accepted any statement or argument he or she had failed to contradict.

Finally, the defendant's argument that there was no basis for the award of damages to the claimants by the trial court due to lack of any evidence was also baseless. This is because the claimants called several witnesses who testified on the amount of injury they suffered as a consequence of the oil spill. Furthermore, they also relied on the evidence of an expert witness who testified on how he calculated the injury they suffered as a result of the oil spill. In fact, the defendant did not contradict the evidence of any of the witnesses called by the claimants to testify on the amount of injury they suffered. It merely stated that the community did not have more than one hundred people without any evidence to support it. As indicated earlier, the trial court dismissed this claim as a mere guess.

Shell engaged in a baseless appeal in the above case and indeed in all the other sampled cases for this research due to lack of any effective judicial control. This is because if the judiciary had an effective control over the litigation, it would have prohibited or prevented it from filing the appeal. This is due to the fact that there was no basis for the appeal as it was clearly designed to protract the determination of the case. As a consequence, the judgment of the trial court would have been the final judgment of the court on the case if the judiciary had not provided it with the opportunity to engage in the baseless appeal.

Although the groundless appeal engaged in by Shell due to lack of judicial control protracted the determination of the above case as the actual trial lasted for nine weeks, however, inadequate judicial funding further delayed the hearing of the appeal for a decade. This is because it was in the queue or pending for ten years before the actual litigation commenced as a result of congestion of the court occasioned by inadequate funding. This is due to the fact that judicial under-funding prevents the courts from sitting or from hearing

and determining cases already filed. For example, cases are frequently adjourned in Nigeria due to the inability of the judiciary to afford electricity supply. In essence, it prevents the court from sitting or hearing a case. For example, lack of electricity supply forced the Chairman of the Code of Conduct Tribunal to adjourn the criminal trial of Nigeria's Senate President and the Head of the Legislative arm of government on 6 April 2016 to April 18, 2016.⁶² Similarly, lack of electricity supply forced a judge to adjourn a trial involving a former Governor of Nigeria's Central Bank for over a week.⁶³ It also forced the court to adjourn the criminal trial of a former managing director of a Nigerian Bank as well as a senior lawyer.⁶⁴ Additionally, the judges lack legal research assistants and as a result are compelled to spend some of their judicial time undertaking legal research. Furthermore, the courts in Nigeria are shut for several days and in some cases for several weeks each year due to strike actions occasioned by inadequate judicial funding. For example, all the courts in Nigeria were shut for three weeks, one week and two weeks in 2015, 2014 and 2013 respectively as a result of strike action occasioned by inadequate judicial funding. Additionally, some judges are unable to sit due non-availability of courtrooms.⁶⁵ This is in fact the reason why the Rivers State government recently built a new Federal High Court as well as commenced the expansion of the Court of Appeal despite the fact that they are the responsibilities of the central or federal government.⁶⁶

The inability of the courts to sit as a consequence of under-funding in turn causes congestion. This is largely because it prevents the judges from hearing and determining cases but does not prevent new cases from being filed, except during a strike action. This is the reason why very significant amount of cases are always in the queue or pending before a judge or a court. For example, a Senate Majority Leader and Vice Chairman on the Judiciary whilst calling for

⁶² The Cable: Power Failure Forces Judge to Adjourn Saraki's Trial', available online at <http://www.thecable.ng/power-cut-forces-judge-adjourn-sarakis-trial> (Assessed on 15 May, 2017)

⁶³ Premium Times: 'How Power Outage Forces Nigerian Judges, Lawyers to work in Terrible Conditions', available online at <http://www.premiumtimesng.com/news/158581-power-outage-forces-nigerian-judges-lawyers-work-terrible-conditions.html> (Assessed on 15 May 2017)

⁶⁴ Ibid

⁶⁵ See Agnonika, J, *op cit*, at p. 131

⁶⁶ Although the Federal High Court and the Court of Appeal are the responsibilities of the Federal or Central government, however, the courts are located in Rivers State and most of those who use the courts live and work in Rivers State.

the increased funding of the sector in order to enable the judges to hear and determine cases promptly indicated that a judge has at least seven thousand cases pending before him.⁶⁷ It is also the reason why the former Chief Justice of the Federation indicated that inadequate judicial funding 'is also responsible for the poor and inadequate judicial infrastructure, low morale among judicial personnel...delays in the administration of justice and judicial services'.⁶⁸

If the judiciary were adequately funded, the determination of the above case would not have lasted for over a decade at the Court of Appeal as it would not have been in the queue or pending for over a decade. In essence, the delay that would have been occasioned by the groundless appeal engaged in by the defendant would have been only the time it would take the judge to hear the contending parties as well as to undertake the necessary legal research and write the judgment of the court on the case.

Finally, inadequate judicial funding is a significant enabler of delay where Shell had engaged in a groundless argument as it protracted the determination of all the sampled cases for several years and in some cases for over a decade.

⁶⁷ See Authority Newspaper: '70 Billion Budgetary Allocation: Judiciary Groans', available online at <http://www.authorityngr.com/2016/05/N70-billion-budgetary-allocation-judiciary-groans/> (Assessed on 1 June, 2017)

⁶⁸ Ibid

3.4. Judicial Unwillingness to Enforce Civil Procedure Rule

Order 14 of the Federal High Court Civil Procedure Rules provides that a judge shall award damages to a claimant on the basis of the statement of claim where the defendant had failed to file the statement of defence within the required timeframe. It further provides that such a judgment awarding damages to the claimant shall be a final judgment and can only be set aside on the grounds of fraud, non-service and lack of jurisdiction. However, despite the clear provision of the above rule, judges are always unwilling to enforce it and as a consequence it enabled Shell to protract the determination of compensation claims against it through several ways such as groundless applications and appeals. For example, the case of *Shell v. Uzoaru*⁶⁹ was delayed because of the unwillingness of the judge to enforce the above rule as it afforded Shell an opportunity to conduct the litigation in a dilatory manner. In that case, the claimants brought an action for compensation against the defendant for injury suffered as a result of oil spill from its facilities. Although the defendant engaged a lawyer to represent it in court, nevertheless, it refused to require it to file a statement of defence in response to the claim against it without any good reason. As a consequence, the claimants brought an application, asking the judge to award them damages in accordance with the rules of court mentioned above. As a result, Shell requested for an extension of time to file the statement of defence. The judge granted Shell fourteen days extension of time to file the statement of defence.

As a result of the fact that it was not interested in the prompt determination of the case, the defendant, rather than file the statement of defence within the extended timeframe, filed an application, asking the court to dismiss the compensation claim against it on the basis that it is statute barred. This is in spite of the fact that the claim was brought under Nigeria's Petroleum Act of 1962 which does not provide any limitation period. Also, the Supreme Court had held in a similar compensation claim against it that the Petroleum Act does not provide any limitation period for compensation claims brought under it.⁷⁰

⁶⁹ See *Shell v. Uzoaru*, *op cit*

⁷⁰ See *Nwadiaro v. Shell* *op cit*

However, after listening to the argument for and against the application, the trial court dismissed it on the ground that the Petroleum Act does not provide any limitation period for compensation claims brought under it. The court also held that the Supreme Court had already held in a similar compensation claim against it that the Petroleum Act under which the action was filed does not provide any limitation period. Furthermore, it also granted the defendant forty five days extension of time to file the statement of defence.

After the ruling of the trial court, the defendant filed an appeal, asking the Court of Appeal to declare the compensation claim against it statute barred on the ground that the cause of action had accrued for over six years before the claim was filed. However, the Court of Appeal dismissed the appeal on the basis that the Petroleum Act under which the compensation claim was brought does not provide any limitation period. The court also grounded its decision on the fact that the Supreme Court had already held in a similar compensation claim filed against it that the Petroleum Act does not provide any limitation period. Furthermore, it also granted it thirty days extension of time to file the statement of defence at the trial court. This compensation claim was eventually resolved in favour of the claimants after fifteen years of litigation due to dilatory tactics by the defendant and other factors such as judicial under-funding.

The defendant's argument at the court of first instance and the appeal court that the claim is statute barred is baseless. This is because the Petroleum Act under which the action was brought does not provide any limitation period. Furthermore, the Supreme Court had already held in a similar compensation claim brought against the defendant that the Petroleum Act does not provide any limitation Act for injuries arising from oil spills. In essence, the defendant should not have filed an application and appeal asking the trial court and the Court of Appeal respectively to dismiss the claim against it due to lack of any prospect of success.

The defendant's application for extension of time to file the statement of defence prolonged the determination of the case as the judge had to listen to the argument for and against the application. The judge also expended some time writing and delivering his ruling granting the defendant an extension of time to file the statement of defence. Furthermore, the groundless application by the defendant requesting the trial court to dismiss the compensation claim

also protracted the resolution of the compensation claim.⁷¹ This is due to the fact that the judge had to also listen to the groundless argument as well as the counter argument by the claimants. Additionally, he had to also adjourn the case for several weeks in order to enable him to undertake the necessary legal research as well as write the judgment of the court dismissing the groundless application designed to protract the resolution of the compensation claim.

Additionally, the needless appeal by the defendant asking the Court of Appeal to dismiss the compensation claim on the ground that it is statute barred also impeded the resolution of the case.⁷² This is due to the fact that it was in the queue for several months until after other appeals filed before it had been concluded since cases are determined on first come, first served basis. Also, the justices had to spend some time listening to the argument for and against the appeal for a dismissal of the compensation claim on the ground that it is statute barred. Additionally, the case was also adjourned for several weeks in order to enable the justices to undertake the necessary legal research as well as write the judgment of the court dismissing the needless appeal.

One factor which enabled Shell to protract the determination of the above case is the unwillingness of the judge to terminate the litigation on the first day of the trial by awarding damages to the claimants. This is because it enabled it to file the application for extension of time as well as the groundless application and appeal. In essence, the unwillingness of the judge to end the litigation by awarding damages to the claimants provided Shell the opportunity to engage in dilatory conduct. As already indicated above, the application for extension of time and the groundless application and appeal filed after the judge had refused to comply with the above civil procedure rule in turn delayed the determination of the case. If the judge had complied with the rule of court mentioned above by granting a final judgment to the claimants, the defendant would have been disabled from delaying the case through baseless

⁷¹ As indicated earlier, the application was frivolous because it was brought under Nigeria's Petroleum Act which does not provide any limitation period. Furthermore, the Supreme Court had held in a similar compensation claim brought against the same defendant that that the Petroleum Act does not provide any limitation period for compensation claims brought under it.

⁷² It was a groundless appeal because the Petroleum Act under which the action was brought does not provide any time limit under which a compensation claim must be filed. Furthermore, the court had held in a similar compensation claim against it that the Petroleum Act does not provide any time limit.

applications and appeal. This is essentially because the judgment of the court would have terminated the litigation without any right of appeal and as a consequence prevented it from filing the baseless applications and appeal that prolonged the determination of the case.

Although the civil procedure rule mentioned above provides that a final judgment awarded as a result of the failure of a defendant to file the statement of defence can be set aside on the grounds of fraud, non-service and lack of jurisdiction. However, a judiciary which exercises effective control over the conduct of civil litigation would not have permitted the defendant to appeal the final judgment of the court on any of the above grounds if a final judgment had been granted. This is because there was no evidence of fraud. Furthermore, the defendant was properly notified of the case claim against it as it hired a lawyer to appear in court on its behalf on the first day of the hearing. Additionally, the court clearly has jurisdiction over the subject matter as the Federal High Court is the court of first instance on oil pollution compensation cases. In essence, the claimants would have had access to compensation on the first day of the trial if the court had exercised effective control by enforcing the relevant rule.

Furthermore, whilst other factors also made it possible for Shell to protract the determination of the above case, such as access to financial resources, however, the defendant would not have been able to delay the case if the judge had enforced the relevant rule. For example, whilst access to financial resources enabled Shell to hire a lawyer to file the groundless applications and appeal, however, it would not have been able to do this if the court had awarded final judgment against it on the first day of the trial for failure to file the statement of defence without any justification. In essence, it would have been disabled from delaying the case if the court had enforced the relevant rule despite the fact that it has access to significant amount of financial resources to hire a lawyer to delay the case on its behalf. This is because the judgment of the court on the first day of trial would have terminated the litigation. As already indicated above, such a judgment would not have been set aside on the grounds of fraud, non-service or lack of jurisdiction.

Finally, as with inadequate judicial sanction and judicial funding, the unwillingness of judges to enforce the above rule of court is a significant

enabler of delay by Shell in oil pollution compensation cases This is because it enabled it to engage in dilatory tactics in forty out of the forty five cases sampled for this research.

3.5. Conclusion

The discussion in the preceding sections has shown that low judicial sanction, inadequate judicial funding and judicial unwillingness to enforce the civil procedure rule enabled delay in the determination of oil pollution compensation cases against Shell. Low judicial sanctioned enabled delay in the determination of the compensation cases because the sanction often awarded against Shell is too insignificant to deter it from engaging in the same conduct in the future due to the large of amount of financial resources at its disposal. Furthermore, inadequate judicial funding enabled delay in the determination of the compensation cases because it caused the congestion of the courts and as a consequence prevented the judiciary from hearing and determining groundless litigations by Shell promptly. Finally, judicial unwillingness to enforce the civil procedure rule enabled delay in the determination of the cases as it provided Shell with the opportunity to engage in dilatory tactics.

Chapter Four: Recommendations

4.1. Introduction

This chapter will proffer some recommendations on how the enablers of delay discussed in the preceding chapter can be addressed. The remainder of the chapter is divided into four sections. Sections two, three and four will explain how the enablers of delay in the determination of oil pollution compensation cases against Shell discussed in the preceding chapter can be addressed. Section five will conclude the chapter.

4.2. Adequate Rule on Judicial Sanction

Adequate sanction is one of the most effective mechanisms often used to deter a person from engaging in a particular conduct. For example, Shell was discouraged from dumping the Brent Spar offshore and it agreed to a more expensive but environmentally friendly onshore decommissioning as a consequence of the significant amount of financial resources or revenue it lost as a result of consumer boycott of its products. As already indicated in the preceding chapter, it dumped its plan of disposing the Brent Spar offshore because the financial resources it lost due to the consumer boycott was adequate or because it inflicted severe pain on it. Furthermore, Exxon was discouraged from engaging in oil pollution as a result of the significant amount of sanction inflicted on it by the United States of America's government after the Exxon Valdez Oil Spill Disaster. Also, Exxon was deterred because the sanction inflicted severe pain on it. However, despite the effectiveness of adequate sanction, Nigeria does not have any adequate rule on the award of judicial sanction against a party for protracting the determination of a case. In fact, the award of sanction against a party, including the amount appears to be based on the discretion of the judges. For example, the Supreme Court recently awarded about £20,000 against a party for delaying the determination of a case for a few weeks through a groundless appeal.⁷³ On the hand

⁷³See 'Senior Nigerian Lawyer Stripped of SAN Title Over Ondo PDP Crisis', available online at <http://thenigerialawyer.com/senior-nigerian-lawyer-stripped-of-san-title-over-ondo-pdp-crisis/> (Assessed on 4th July 2017)

however, the total amount awarded against Shell in all the forty five cases sampled for this research is only about £3, 500 despite the tremendous impacts of the long delays on the claimants and the need to discourage it from engaging in the conduct.

As a consequence, a rule should be made providing for adequate sanction against a party that delays the determination of a case, including Shell. For example, Rule 11 of the United States of America's Federal Civil Procedure provides that the sanction to be imposed for a dilatory conduct must be sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. However, as a consequence of the fact that some judges may not have accurate information that would enable them to impose an amount sufficient to deter a similar misconduct in the future, it is essential that the rule also contains a detailed explanation of how the amount to be imposed can be determined or how much to be imposed on certain categories of litigants. For example, the amount to be imposed on Shell and other similar organisations can be set out in such a rule and this can be determined based on the amount that was sufficient to deter it or a similar organisation in other jurisdictions. For example, since over \$4bn sanction was sufficient to deter Exxon after the Exxon Valdez Oil disaster, the rule can provide a similar amount that must be imposed on Shell for delaying the determination of a case since they are similar companies in terms of financial resources at their disposal. The amount can also be determined based on the amount of profit it generates every year. The amount to be awarded against it must be very significant before it can be deterred from delaying the determination of a case as it is one of the wealthiest companies in the world. In essence, it must inflict very severe financial pain or impact on it before it can be deterred.

4.3. Thorough Judicial Recruitment Procedure

Even where a rule is made providing for adequate sanction against Shell and indeed other litigants for engaging in dilatory acts, there is no guarantee that it would be applied if Shell were to engage in a dilatory tactics. Furthermore, some judges have failed to enforce the civil procedure rule by awarding final judgment against Shell for refusing to file a statement of defence within the required timeframe; consequently, in addition to an adequate rule on the award of sanction, there is also a need for a thorough judicial recruitment procedure. This is because the constitutional requirement for appointment as a judge and the current practice do not ensure that only those who will enforce the civil procedure rule and consequently prevent delay in the determination of a case are recruited as judges.

In Nigeria, the only constitutional requirement for appointment as a Justice of the Supreme Court, Justice of the Court of Appeal and Judge of the Federal High Court is that such a person must have been qualified to practice law in Nigeria for at least, fifteen years, twelve years and ten years respectively.⁷⁴ In essence, anyone who can show that he or she has been called to the Nigerian Bar for the required number of years is qualified to be appointed as either a Justice or Judge regardless of the fact that he or she had been convicted of any criminal conduct or lacks the capacity to enforce the civil procedure rule. This is the reason why a Nigerian and an English lawyer who was struck off the roll of solicitors in England for fraud and described by the Law Society of England and Wales as lacking the 'integrity, probity and trustworthiness' expected of a legal practitioner was recently nominated as a justice of the Court of Appeal, Nigeria's second highest court.⁷⁵

As a result, there is a need for a thorough judicial recruitment procedure. For example, it must be determined that a person will enforce the civil procedure rule at all times before he or she can be appointed as a judge. In essence, the character of an individual who seeks to be employed as a judge

⁷⁴ See sections 231, 238 and 250 of the 1999 Constitution of the Federal Republic of Nigeria.

⁷⁵ See 'Investigation: Lawyer Indicted for Fraud in the UK nominated as Judge of Nigeria's Court of Appeal', available online at <http://www.premiumtimesng.com/news/headline/226809-investigation-lawyer-indicted-fraud-uk-nominated-judge-nigerias-court-appeal.html> (Assessed on 5th July 2017)

or justice must be scrutinized in order to ensure that he or she will enforce the civil procedure rule at all times before such a person can be appointed as a judge or justice. This will in turn ensure that adequate sanction is awarded against Shell if it engages in a dilatory tactics. The severity of such sanction will in turn disable it from engaging in a dilatory tactic in the future. Furthermore, the appointment of such judges would also ensure that final judgment would be awarded against Shell if it refuses to file the statement of defence within the required timeframe and as a consequence prevent it from delaying the determination of a case. For example, before 2001, fake foods and drugs were sold everywhere in Nigeria and most Nigerians lost their lives due to consumption of fake food and drugs. Although there is a law against fake foods and drugs as well as an agency of government, the National Agency for Food and Drug Administration that is vested with the responsibility of enforcing the law by arresting and prosecuting the perpetrators, however, the law was ineffective as it was never enforced. As a consequence, a former Nigerian President, in 1999, after a thorough search, appointed Dora Akunyili to head the agency as the Director General. As a consequence of the fact that she has the necessary or right qualities for the job, she enforced the law by prosecuting the perpetrators of the criminal conduct. The incidence of fake foods and drugs was in turn drastically reduced as the agency secured the conviction of almost all those who were prosecuted. In fact, she was given hundreds of local and International awards as well as appointed a Cabinet Minister because of her outstanding achievements.⁷⁶ She successfully tackled the problem of fake foods and drugs because she has the right or necessary qualities for the job.

Furthermore, before 1999, Nigeria was notorious for economic and financial crimes, including advance fee fraud and money laundering. Some Nigerians engaged in the crime without any control despite the existence of adequate laws against their actions and the fact that the Nigerian Police is required under

⁷⁶ For example, she was conferred with an honorary doctorate degree (Doctor of Laws) by the University Of Bristol, England in 2006, Pharmacist of the Year Medal Award by the International Pharmaceutical Federation in 2005, Grassroots Human Rights Campaigner Award by Human Rights Defense Organization in British House of Commons in 2005, Special Award for Combating Economic Crime by International Chamber of Commerce-Commercial Crime Services, in 2004

the Nigerian law to enforce all the criminal laws. The activities of the criminals dented the image of the country as well as affected foreign direct investment and consequently the development of the country. As a consequence, a former Nigerian President, in 2002, established the Economic and Financial Crimes Commission as well as appointed a very tough Police Officer and a lawyer, Nuhu Ribadu to head the Commission as the Chairman. The Commission was given the powers under the law establishing it to enforce the criminal laws relating economic and financial crimes. As a result of the fact that he was appointed to head the Commission based on his exceptional qualities and not based on how many years he had served as a Police Officer, he successfully prosecuted the perpetrators of the crime, including a former Inspector General of the Police.⁷⁷ As a result of his sterling performance, he was given several national and international awards by several organisations, including United Kingdom based organisations. In fact, several international institutions which had sanctioned Nigeria had to lift the sanction as a result of outstanding achievements of the Chairman of the Commission. For example, the Financial Action Task Force lifted the sanction it had imposed on Nigeria. Similarly, a thorough judicial recruitment procedure would ensure that the right individuals are appointed as judges. This will in turn ensure that they enforce the new rule on adequate sanction against Shell if it were to engage in dilatory tactics and it will in turn discourage it from engaging in the same or similar conduct in the future. Furthermore, it would also ensure that final judgment is awarded against Shell whenever it fails or refuses to file a statement of defence within the required timeframe. The award of final judgment in such cases will in turn prevent Shell from delaying the determination of the case as it will terminate the litigation.

⁷⁷ The Inspector General is the head of the Nigerian Police Force and it was the first time a former or serving Inspector General of Police was prosecuted.

4.4. Enhanced Court Fees

In Nigeria, insignificant amount of money is paid by litigants as the filing fee at the trial court as well as the Court of Appeal and the Supreme Court is about £10 regardless of the amount in contention and the economic status of a party. The filing fee and other revenues generated by any other arm or agency of government are paid into the Consolidated Revenue Fund of the Federation in accordance with section 80 of the Nigerian Constitution. Furthermore, section 81 of the Constitution requires the President to prepare and submit an appropriation bill every year, including the capital expenses of the judicial arm of government.

Although the Constitution grants the president the power to prepare and submit the appropriation bill, each arm of government including the judiciary and the legislative arms prepare and submit their proposed expenditure for each fiscal year to the Ministry of Finance which is part of the executive arm of government. The executive arm of government can alter any proposed capital expenditure before the appropriation bill is submitted to the National Assembly which is the legislative arm of government for consideration and enactment into a law. The amendment can be as a result of several factors, most especially lack of sufficient revenue or financial resources to fund the proposed expenditure. Additionally, the National Assembly also often amends the appropriation bill before it is passed into law and in some cases certain capital projects have either been removed entirely from the appropriation bill or the amount allocated to a project increased or reduced. Also, in cases, certain capital projects were included in the appropriation bill before it is passed into law. For example, the second Abuja Airport runway was included in the 2017 appropriation sent to it by the executive arm of government before it was passed into law.

As with several other sectors such as the health and educational sectors, the funds allocated for capital projects in the judicial arm of government, including the courts has often been inadequate as some of the judges have been complaining and the courts lack the necessary facilities for the efficient discharge of their constitutional responsibilities. In fact, less than one percent of the national budget is often allocated for capital expenditure in the judicial

arm of government and the amount has been decreasing. For example, ninety five billion naira was allocated for capital projects in the judicial arm of government in 2010 while eighty five billion naira and seventy five billion naira were allocated in 2011 and 2012 respectively despite the fact they have always requested for at least one hundred fifty billion naira each year.⁷⁸

Whilst it is difficult to determine how much the judicial arm of government contributes to the Consolidated Revenue Fund of the Federation, however, its yearly allocation is clearly beyond what it contributes to the account as the filing fee is only about £10 for each litigant. In essence, the judicial arm of government is not self-financing as it does not generate all the required financial resources for the efficient determination of cases filed before it. Furthermore, the amount allocated for judicial capital expenses has been inadequate and as a result, cases are delayed, including compensation cases against Shell due to lack of sufficient courtrooms, non-automation of the court system as well as lack of electricity supply and other essential facilities.

As a consequence, the government should increase the court fees to complement the financial allocation to the judicial arm of government in the appropriation act. To this end, section 80 of the Constitution referred to above should be amended in order to enable the judicial arm of government to use the extra money to be generated as a result of the increase for the development of the judiciary such as for the construction of courtrooms and automation of the court system. Additionally, the increase in the court fees should be to such a level that would enable the government to provide the necessary facilities and services for the efficient determination of cases, including oil pollution compensation cases against Shell.

Furthermore, it is also essential to note that this recommendation is not new as other jurisdictions have since increased the court fees in order to enable the judiciary to generate sufficient funds for its services. For example, the government of England and Wales recently increased the Court fees in order to enable the courts generate sufficient funds that would enable it to discharge

⁷⁸Isah, A, Y, 'Can We Reform the Judiciary with 70b Budget?', available online at <http://supremecourt.gov.ng/Doc/CAN%WE%20REFORM%20JUDICIARY%WITH20N70bBUDGET.pdf> (Assessed on 30 June, 2017).

its responsibilities efficiently. However, unlike in Nigeria where the aim of the increase should be to generate additional funds, the aim of the increase in England and Wales is to enable the judiciary to be self-financing.

Some may argue that an enhanced court fees would dissuade some potential litigants from seeking redress. In fact, the major criticism against an enhanced court fees in England and Wales is that it would dissuade potential litigants from seeking redress. It is very doubtful if an enhanced court fees would dissuade potential litigants from seeking redress because legal representation is very expensive and as a consequence any person who can afford to hire a lawyer should be able to pay a reasonable amount of money as filing fee. Additionally, the government can reduce the amount of court fees to be paid by certain categories of people, including those who have lost their means of subsistence such as the victims of oil pollution. For example, certain categories of persons in England and Wales such as those who earn less than £1, 245 a month and those who receive some types of benefits such as income-based jobseekers allowance and income credit are either exempted from paying court fees or do get some money off.⁷⁹

Furthermore, the government can also make wealthy litigants, such as multinational corporations to pay significant amount of money as filing fees while others are made to pay a little more than the current filing fee. In essence, the increase in the court fees can be done in such a way that the wealthy litigants such as multinational corporations and financial institutions bear more of the financial burden.

Additionally, it is also essential to note that it is in the best interest of litigants, most especially claimants to pay an amount that would ensure adequate funding for the judicial arm of government. This is because inadequate judicial funding delays the determination of a case and delay denies a successful party access to justice. This is because delay erodes the compensation awarded to a successful party in a jurisdiction like Nigeria which does not permit the recovery of prejudgment interest as the value of money depreciates with the passage of time. For example, all the successful claimants in compensation claims against Shell did not have access to justice

⁷⁹ See 'Get Help Paying Court and Tribunal Fees', available online at <https://www.gov.uk/get-help-with-court-fees> (Assessed on 2 July, 2017).

because the cases always last for a decade and in some cases over three decades and the Nigerian law does not permit the recovery of prejudgment interest as part of damages. In essence, it is in the best interest of the litigants that an enhanced court fees is paid to ensure that they are restored to their former position or as near as possible.

Finally, whilst there is no evidence to suggest that any financial allocation for capital and recurrent expenses in the judicial arm of government has ever been misappropriated, however it is also necessary that a mechanism is put in place to ensure that the revenue generated as a result of the increase in court fees and the allocation to the judiciary for capital expenses are only used for the development of the judiciary. In essence, the government must also ensure that the money generated as a result of increased court fees and the financial allocation for capital projects in the appropriation act are not misappropriated or stolen.

4.5. Conclusion

As stated earlier, the aim of this chapter is to make some recommendations on the features that enabled in delay in the determination of the oil pollution compensation cases can be addressed. As a result, the chapter recommended an adequate rule on judicial sanction against dilatory tactics as well as thorough judicial recruitment procedure and enhanced court fees. While an adequate rule on judicial sanction and a thorough judicial recruitment procedure will solve the problem of low juridical sanction, an enhanced court fees will enable the judicial arm of government to generate additional financial resources for the development of the judiciary such as for the construction of courtrooms as well as automation of the court system.

Chapter Five: General Conclusion

5.1. General Conclusion

It was indicated at the outset that the aims of the thesis are to discuss some of the features that enabled delay in the determination of oil pollution compensation cases against Shell and to make recommendations on how they can be addressed. Consequently chapter three of the thesis discussed how low judicial sanction, inadequate judicial resources and judicial unwillingness to enforce the civil procedure rule enabled delay in the determination of oil pollution compensation cases against Shell in Nigeria. Whilst the above factors enabled delay in the determination of oil pollution compensation cases against Shell, however, other factors also played very crucial role or also enabled delay. For example, the lack of consumer boycott of Shell due to its dilatory tactics also enabled delay in the determination of the compensation cases against it. As indicated in chapter three and in the preceding chapter, consumer boycott of its products compelled it to drop its plan of disposing the Brent Spar offshore and agreed to a more expensive but environmentally friendly onshore decommissioning. This is due to the fact that the consumer boycott inflicted very severe financial pain on it. Consequently, if it had been boycotted over its activities in Nigeria; it would have disabled it from delaying the determination of the compensation cases against it regardless of low judicial sanction and judicial unwillingness to enforce the civil procedure rule. However, in order for such a boycott to be effective in disabling it from engaging in dilatory tactics, it must cause it very heavy financial loss. This is due to the fact that it has access to significant amount of financial resources and as a consequence it cannot be deterred by the loss of an insignificant amount of money. This is in fact one of the reasons why it has continued to engage in dilatory tactics in Nigeria as the judicial sanction often awarded against it does not have any impact on it or make it to think twice before taking any step in the compensation litigation.

In addition to the enablers of delay discussed in chapter three, the preceding chapter recommended an adequate rule on judicial sanction as well as a thorough judicial recruitment procedure as a means of ensuring that Shell is

disabled from delaying the determination of oil pollution compensation cases due to low judicial sanction and judicial unwillingness to enforce the civil procedure rule. As already indicated, an adequate rule would ensure that the sanction sufficient to deter it from engaging in dilatory tactic in the future is imposed on it. Additionally, a thorough judicial recruitment procedure would also disable it from engaging in dilatory tactics. This is because it would ensure that the right judge or those legal practitioners who will enforce the recommended rule on adequate sanction as well as award final judgment where Shell had failed to file the statement of defence within the required timeframe are appointed as judges to handle the cases and indeed other cases. Also, the preceding chapter recommended an enhanced court fees as means of generating more funds for the development of the judiciary since the allocation to it in the appropriation act has been inadequate and as a consequence enabled delay in the determination of oil pollution compensation cases against Shell. The generation of more funds through an enhanced court fees would in turn ensure that oil pollution compensation cases and indeed other cases are determined within a reasonable time as required by section 36 of the Nigerian Constitution. This is because it would be used for the construction of more courtrooms, automation of the court system and for other essential services and facilities required for the prompt determination of a case. An effective mechanism is however needed to ensure that the generated funds as well as the allocation in the appropriation act are not misappropriated.

One area that can be explored in a future research is an investigation on why the judicial arm of government is under-funded in Nigeria and semi-structured interviews can be used to generate the required information. The potential research participants include former and current members of the National Assembly as the National Assembly is charged with the responsibility of passing the appropriate bill into law. Some former and present members of the executive arm of government, most especially ministers of finance and budget can also be interviewed. A research can also be undertaken to find out from judges why they do not award final judgment against Shell where it had failed to file the statement of defence within the required timeframe. As with the reasons for the under-funding of the judicial arm of government, semi-structured can also be used to generate the required information. However,

some or most of the judges may however be unwilling to participate in such a research. Furthermore, a researcher may also be unable to generate sufficient information for the research as most of the judges may have died due to passage of time.

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