How Oil Companies Spark Disputes in Nigeria: 
The Case of Energia and Ozegbe of Ogume

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Abstract:

The role that oil companies have come to play in their host families in the process of tapping oil has come up for close scrutiny in this study. So much of the social instability and disequilibrium that have been experienced in the host families is traceable to the methodologies that the oil companies have used in governing their operations within the host communities. This study which adopts the doctrinal method surveys and interrogates the circumstances in which one of the fiercest land disputes in Ogbole Ogume in Ndokwa West Local Government Area, Delta State was sparked by the appearance of Energia Nig. Ltd in the Ogume-Emu space. The dispute brought into collision course, the Ossai Ogboso Onah and Umu-Ozegbe families and in the process, dragged in Ogbole, Okololi, Obodougwa and Emu communities into one of the most pernicious native wars upon the Ukwuani space. This study is circumscribed within the facts that arose in NWACC/46/2012 Moses Asuai Onowu & 2Ors v. Onyekachi Ossai & 3Ors which was filed before the Ndokwa West Area Customary Court holden at Utagba-Ogbe, kwale. It went on appeal before the Delta State Customary Court of Appeal, Cable Point, Asaba as Appeal No: DCCA/28A/2016 Moses Asuai Onowu & 2Ors v. Onyekachi Ossai & 3Ors and eventual ended up presently at the Court of Appeal, Asaba as Appeal No: CA/AS/265/2016 Onyekachi Ossai v. Moses Asuai Onowu & 2Ors before Justices Ignatius Igwe Aguba, Abimbola Osargue Obaseki-Adejumo and Misitura Bolaji-Yusuff (JJCA) delivering the lead judgment. The parties mentioned in this study are not fictitious as such attempt shall be made to focus more on the facts than the personages. The reasons that gave rise to the dispute shall be highlighted more than the natural persons and communities involved. It is noted that even though Energia Nig. Ltd was not made a party in the dispute, its role was palpable and the influence it wielded against the rightful owners of the land in dispute was also touchable. The subterranean influence it had over the decision making process at the various stages of the dispute was dominant even though it was not openly acknowledged by the Judges and the parties. The study finds that oil companies are indictable for sparking off disputes in Nigeria. They seem to regale in it. They seem to set one brother against the other and while the litigation runs through the tortuous layers of courts in Nigeria up to the Supreme Court, they gain firm control over the subject matter (res) of the litigation and tap the resources to their hearts’ content and neutralize the parties in dispute. They use ‘divide and rule’ and sometimes plot the elimination of whole communities in order for mindless exploitation of mineral resources to take place.

Keywords: Energia Ltd, Oil and Gas, Land dispute, Ozegbe family, Ogbole Ogume, Court of Appeal, Delta State, Nigeria.
Introduction

The 2005 oil and gas acreage bid was said to have embraced the best global practices in oil business and transparency although it was boycotted by the major oil companies operating in Nigeria and about 60% of the blocks offered were sold and government raked in about 3 billion dollars on signature bonuses bringing in new investors consisting of Chinese, Koreans and others. The bid round introduced far reaching innovations including the reduction of block sizes in the deep-waters from 2,500 to 1,250 Sq km; collection of government entitlement in kind; introduction of production charge (royalty) in deepwater; introduction of a ceiling of 80% of production cost of oil recovery in the production sharing contract to provide government with early revenue from the first oil; award of licenses for private refineries etc (Bayo, 2005 p. 59).

However, the issue that arises over acquisition of licenses over oil blocks is what usage could be made of a license if not for the legitimate purpose for which it is obtained at a huge signature bonus. Experience has shown that acreages sold to some companies which got them through government patronage in place during the military era were in turn sold without due regard to the rules and regulations guiding such sales and eventually buyers with no valid contract with the Nigerian government agencies came in to prospect and mine oil without regard to the law and without any sanction being imposed on the companies (Bayo, 2005). Thus, the purchase of an oil block and acceptance of signature bonus is not a license for engagement in illegal activities or conniving with countries and organizations whose interests are not in tandem with national interests or which are known enemies of the country. Or does it involve the shortchanging of rightful owners of the lands and spurring them into interminable legal squabbles and native wars while the prospect continues under the reign of military supervision.

In view of the foregoing, Section 14 of the first schedule to the Petroleum Act (the old law) provided that without the prior consent of the Minister which may be granted on payment of the prescribed fee or such premium or both, the holder of an OPL or an OML shall not assign its license or lease, or any right, power or interest therein. Under Section 16, the Minister may refuse consent unless he is satisfied that the proposed assignee is of good reputation, or is a member of a group of companies of good reputation or is owned by a company or companies of good reputation; there is likely to be available to the proposed assignee, sufficient technical knowledge, experience and financial resources to enable it effectively carry out a programme satisfactory to the Minister in respect of operations under the license or lease.

Ogbole is one of the five communities that make up Ogume clan. The other communities are Ogbe-Ogume, Ogbagu-Ogume, Umuchime-Ogume, Utue-Ogume, Igbe-Ogume and Obodougwa-Ogume. Umu-Ozegbe family is a large extended family in Ogbole community of Ogume in Ndokwa West Local Government Area of Delta State. It has about five branches living harmoniously since the beginning of Ogume people who migrated from Benin Empire in 1400 to the current space they occupy (Ekele, 2000 p. 69). When the rubber boom came in the early 50s and 60s, one Ossai Ogboso Onah left his Umutu Community in Ukwuani Local Government Area to settle in Okololi in Ogbole community and was granted a large swathe of arable land measuring 2640 feet by 1329 feet (80 acres) to plant a rubber plantation. He built a household and married from the community and raised the defendants at their early stages in life in the plantation before they sojourned to the cities for greener pastures and became relatively wealthy and exposed in Port-Harcourt.

Ossai Ogboso Onah children claimed that their family was assimilated into the Ogbole Community. But while they claimed that they were fully assimilated into the Umu-Ozegbe family, the Umu-Ozegbe family on the other hand, vehemently denied the fact when dispute arose and claimed that they were not because in the final analysis, when Ossai Ogboso Onah grew old and became infirm, he returned back to
Umutu where he died and was buried and the Umu-Ozegbe paid condolences to the children at Umutu and even exhibited the burial programme that was shared at the ceremony as an Exhibit before the trial court. They claimed that Ossai Ogboso Onah came to Ogbole community and settled at Okolori purely as a plantation farmer and rubber produce buyer from which he made his fortune during his lifetime at Ogbole and trained his children in good schools at home and abroad. While the children tried to fix themselves into the Umu-Ozegbe family in order to justify the way and manner they dealt away with Umu-Ozegbe family land to Energia Ltd claiming that they had a 99 year lease, the Umu-Ozegbe family fought back tenaciously to extricate themselves from the vicious and subterranean schemes Ossai Ogboso Onah’s children in order to outwit and defeat them and Energia Ltd.

One of the children of Ossai Ogboso Onah who resided in Port-Harcourt got upwardly mobile and influential and on 3rd October, 2012 he got his Solicitor Stephen Arit & Associates (Obhe Chambers Port-Harcourt) to publish at page 16 of the Vanguard Newspaper a public notice to the effect that the land which Umu-Ozegbe family granted his father for 99 years belonged to their family and that anyone that wished to have anything to do with the piece of land should deal directly with Ossai Ogboso Onah family. The publication, from all intents and purposes, must have been prodded by Energia Ltd. The oil company must have challenged the children of Ossai Ogboso Onah to throw up their interest in the landed property into public domain in a national newspaper such as the Vanguard before Energia Ltd can deal affirmatively with the children of the rubber magnet. The notice hardly landed on the public space when the elites of Umu-Ozegbe family saw the handwriting on the wall. They read in-between the lines and concluded that Ossai Ogboso Onah children of Umutu were on a high wired scheme to oust Umu-Ozegbe family from the landed property and in turn lease same to the oil company which they knew to have been hovering in the skylines of Ogbole community. Before the time in question (3rd October, 2012) Energia Ltd had acquired the Emu-Obodougwa marginal field from Elf Petroleum Ltd.

Umu-Ozegbe family promptly summoned Ossai Ogboso Onah children before the family elders and instructed them to pull down the publication in the Vanguard and refute same in a similar manner in which they had published the notice. The children declined and the battle line was drawn. Umu-Ozegbe family commenced an action before the Area Customary Court, Kwale. In the suit, they requested from the trial court the following reliefs, ‘A declaration that the plaintiffs are entitled to the Customary Right of Occupancy of the leased land; An order of forfeiture of the land by the defendants and a revocation of the indenture dated 20th day of March, 1963; Perpetual injunction restraining the defendants their privities, assigns and servants from denying the plaintiffs’ ownership of the land and trespassing into the land; General damages in the sum of N500,000.00.’ Energia Ltd was not joined in the suit because there was no overt evidence of the oil company’s involvement in the activities of the children of Ossai Ogboso Onah. It was later to be found soon after the case commenced before the Area Court, Kwale that Energia Ltd had acquired the land which Ossai Ogboso Onah and his children had 99 year lease from them and commenced (overnight) the massive construction of an oil rig, a Base camp and other complimentary structures without regards to the Umu-Ozegbe family of Ogbole Ogume.

Statement of the Problem

Energia Ltd knew that the dispute over the land it built its gigantic oil rig and platform was pending before the Area Customary Court, Kwale. It did not join in the suit but chose to stand-by and it was not joined by the parties and it did not worry in so far as it had all the financial and security wherewithal at its disposal to plunder the land of the true owners without recourse to them for their consent. It had the backing of the State which is far more interested in oil companies bringing foreign currency to the table than the rights of ethnic families over their natural resources. Through a 99 year lease
holder, Energia Ltd dabbled into Umu-Ozegbe land knowing that the family is a weak entity and took title from Ossai Ogboso Onah children who migrated from Umutu in Ukwuani Local Government Area to Ogume in Ndokwa West Local Government Area of Delta State and became plantation tenants of the family. Energia Ltd and indeed all oil companies in Nigeria have mastered the failings of the land law of the country against its host families. The Land Use Act, 1978 has been enshrined into the 1999 Constitution of the Federation and its principal provision is that all land in a State belongs to the Governor of the State who holds it for the benefit of all the citizens of the Federation. In the foregoing scenario, the Umu-Ozegbe family holds the land in dispute as a ‘customary right of occupancy’ at the pleasure of the Governor of Delta State who has the right to revoke same for overriding public interest. The public interest of the Nigeria State is to tap and mine oil to sustain the profligate economy of the nation through Energia Ltd. What therefore is the gain of Umu-Ozegbe family in the Court of Appeal revocation of the indenture of 20th March, 1963 when Ossai Ogboso Onah children had already divested their interest to Energia Ltd for value unbeknown to Umu-Ozegbe family? This study will thus interrogate the many murky facets of the Nigerian land and oil law particularly, how on one hand the land belongs to Umu-Ozegbe family from time immemorial and how on the other hand the State has spuriously acquired eminent domain over the land in dispute to the extent that even as the court has ruled in favour of Umu-Ozegbe family, the family cannot perforce throw out Energia Ltd from the land which Ossai Ogboso Onah children fraudulently led them into possession leaving Umu-Ozegbe family with a pyrrhic victory. The study will also interrogate the circumstances that made Energia Ltd satisfied with the title of Ossai Ogboso Onah children over the land when it was extant from the face of the indenture of 20th March, 1963 that they were dealing with a lessee and without calling in the leasor and without doing a diligent search on the title over the land. It will interrogate the circumstances that led to the fact that up till the conclusion of this study, Energia Ltd has not been shaken and concerned about the outcome of the appeals that were made to the Delta State Customary Court of Appeal, Cable Point, Asaba which went in favour of the Umu-Ozegbe family and Court of Appeal, Asaba which Ossai Ogboso Onah children lost on 14th December, 2022. Why did Energia Ltd influence the decision at the Area Customary Court, Kwale before M. O. Ohohe Esq against Umu-Ozegbe family when their evidence was unchallenged and Ossai Ogboso Onah children rested their case on that of the Umu-Ozegbe family and why does it continue to deal with Ossai Ogboso Onah children till date instead of Umu-Ozegbe family the actual owners of the land?

**Conceptual Clarification**

### Ownership and Concessions

Ownership is the right to the exclusive enjoyment of a thing. It denotes the most comprehensive and complete relationship between a person and any right that is vested in him (Osborn, 1976 p. 244). It consists of innumerable rights over property including but not limited to the right of exclusive enjoyment, of destruction, of alteration, of alienation, and of maintaining and recovering possession of the property from other persons. Such rights are conceived not as separately existing but as merged in one general right of ownership (Banwell, 1969 p. 61). The right to enjoyment of income envisages user by other persons on terms of payment to the owner. The power to alienate includes the right to give out, lease, sell, mortgage and dispose of the property in any way the owner likes (Nwabueze, 1972 p. 7). The power of management implies the right to defend the enjoyment of the thing owned against unauthorized interference by others, upkeep and maintenance. It means that the owner’s title to the thing is superior and paramount over any right that may exist in the property in favour of other persons and therefore not dependent or subordinate to that of other persons.

In the paper, ‘State Participation in Mineral Exploration in Nigeria’, Okene (2006 p. 1-2) has opined that there was no visible participation of
the State in mineral exploration before 1963. The Nigerian oil industry was mainly dominated then by seven international oil companies. They were able to remain in control due largely to their sophisticated technology and competence with well developed integration of their operations both upstream and downstream. As it was put by Aboloje (2006 p. 2) these companies were vertically integrated, controlling most of their own requirements and facilities so that it was theoretically possible for a barrel of oil from an interest owned by one of the majors not to change ownership until it reached the final consumer in its processed form. In other words, most of the oil traded internationally flowed from the ground into the generators and the engines of the final consumers without leaving the ownership, management and control of these majors or seven sisters: British Petroleum, ExxonMobil, Gulf, Royal Dutch/Shell, Standard Oil and Texaco (Mikdashi, 1972 p. 35).

In the foregoing scenario, State participation consisted of the granting of traditional concession to the majors in return for mere receipts of royalties and other payments for crude oil leaving its territory. The traditional concession was an agreement whereby the oil company got the exclusive and extensive right to explore for petroleum and all other mineral deposits in the area which often extended over the entire national territory with a duration running into the neighbourhood of a century: usually, a lease of 99 years. The company was to explore, produce and dispose of the product in a manner it deemed fit and proper while the financial benefits accruing to the host State were usually minimal in form of specific costs, taxes, royalties, nominal rents and drinks usually based on output rather than value (Omorogbe, 2003 p. 39).

The traditional concession conveyed a relationship between the weak and the strong. It contained an element of a capitulation in the nature of a gift. As it was put by Okene (2006 p. 2) the one sided nature of the relationship between an ignorant party who knew nothing about the possibilities of the commodity and who was easily satisfied with his royalty and that of a rich, powerful and knowledgeable oil company led Atsegbua (2004 p. 34-35) to regard the transaction as that in which a monarch undermined the interest of his subjects, gave out too much for too little to foreigners who were only too eager to build a colonial system upon the grant. The characteristic features of the traditional concession were clearly inequitable and skewed in favour of the oil companies that the arrangement was unable to survive the furore of decolonization and the new international economic order. It was therefore discredited and gradually abandoned (Omorogbe, 2003 p. 40).

State participation in the oil industry is only inevitable given the importance of the industry and the developmental needs of the Nigerian State. Modern concession is directed therefore at increasing the State’s share of the earnings of the oil industry, giving the State a voice in the policy decisions in the industry and developing the technical and managerial skills of her human resources. State participation therefore is a partnership arrangement wherein the State, either directly or through its national oil company, receives an equity or participation interest in the rights and obligations of a contract or a concession.

In a typical concession, the State hands-off a concession and it is given to a consortium of companies and in most cases as in Nigeria, NNPC owns 55%, SPDC owns 30%, Elf has 10% and Agip has 5%. The concession in such a regard is that Shell would explore the concession and develop same to produce petroleum products and that is all the State asks from Shell (Wink, 2002 p. 40). It could be equity or non-equity. Equity participation or equity joint venture is usually by a majority shareholding of the State or its national oil company. Non-equity participation is the joint venture type agreement between the government and the oil company (Atsegbua, 2004 p. 86 & Barrows, 1983 p. 28).

The modern concession is essentially a radical variation of the terms of the traditional concession. The oil company retained the rights to explore, produce and sell but the State granted it the license or the lease to do so with a shorter but renewable duration of a year in the case of oil exploration license, 5 years in the case of oil...
prospecting license and 20 years in the case of oil mining lease. The area granted is drastically reduced with specific dimensions that must be mapped and surveyed with straight lines on the four cardinal points. The license or lease is no longer a blank cheque for all mineral resources but for specific products as in crude oil or natural gas. The financial obligations of the company are equally increased to cover not only rents, taxes, royalties but corporate social responsibilities towards the host communities in the form of manpower training, scholarship schemes, sustainable development projects and programmes and a policy thrust that makes the host communities stakeholders in the contractual joint venture.

Ownership Interest Theories

A more significant way of showing the pre-eminence of the State ownership theory in mineral resources is by having a close study of the acquisition of oil rights under the Petroleum Industry Act and its accompanying Regulations which set out the rules for the conduct of petroleum exploration and production in a more progressive manner in that they clearly defined the rights and obligations of the licensee and the lessee under the law (Etikerentse, 1985 p. 4 and Atsegbua, 2004 p. 61). Having vested the entire ownership and control of all petroleum resources in the State with only Nigerians or corporations incorporated in Nigeria like Energia Ltd having the right to licenses and leases granted by the Minister, the Petroleum Industry Act provides for three categories of interests: Oil Exploration License, Oil Prospecting License and Oil Mining Lease. The State is thus faced with the task of searching for and attracting foreign investment needed for the development of the sector in a Joint Venture Contract or Production Sharing Contract etc. In this rentier scheme between the State and Energia Ltd for instance, any attempt by the State to compel Energia Ltd to adopt the best practices in exploration and production will be pretentious and prevaricating as Energia Ltd would shift and impose the cost on the State (Okaba, 2005 p. 197-198).

Oil Exploration, Prospecting License and Lease

Granted for a period not exceeding a year but renewable for another one year, oil exploration license confers no exclusive right to Energia Ltd in that several licensees may be granted licenses in respect of the same area. It is granted for geophysical and geological surveys. It is not granted where a prospecting license or a mining lease already existed and it does not confer any of the rights conferred by them. It covers an area of not more than 12,950 kilometers and must be bounded on the four sides of the cardinal points by straight lines. Under the Petroleum (Drilling and Production) (Amendment) Regulations, 1996 no person shall carry out seismic data survey in any concession area unless the person or party has been issued a permit by the Director of Petroleum Resources. The application for a permit shall state the objectives of the proposed data acquisition and the location of the oil prospecting license or oil mining lease area; the density and quality of previous vintages on the area of the concession; the justification for the magnitude of subsurface coverage being applied for; the terrain and duration of the survey; the name of the geophysical party and location; the base map of the area; the equipment type and specification; estimated cost per kilometer and a copy of a similar letter of intent issued by the hydrographic officer of the Nigerian Navy in the case of a marine operation.

Granted for a renewable period not exceeding five years, an oil prospecting license to Energia Ltd, for instance, is granted for exclusive rights to explore and prospect for petroleum and win same provided obligations as to fees, rents and royalties are settled. It is granted for an area not exceeding 2,590 Sq Km bounded by straight line on all the four cardinal points. Oil Mining Lease is granted for an area not exceeding 295 Sq Km. It is granted only to a holder of Oil Prospecting License that has satisfied all the required conditions. Its duration is renewable but does not exceed 20 years and it confers exclusive rights over the leased area and the petroleum discovered therein should be in commercial quantities of at least 10,000 barrels of crude oil per day.
Rights and Powers of a Licensee

The licensee of an oil exploration license has the right, subject to the rights of the owners and occupiers of the area affected, to bring and erect upon the relevant area, temporary structures, machinery and other things necessary for its operations. However, for a licensee or lease of an oil prospecting license or oil mining lease, the rights and powers are more elaborate and includes cutting down and clearing timber and undergrowth, making roads, appropriating and using water found in the area, construction of industrial buildings and installations including drilling platforms, power plants, flow-lines, storage tanks, loading terminals harbours, jetties and derricks. Operating and maintaining means of communication, shipping and aircraft facilities, living accommodation for employees, chattels and effects. The rights and powers include dredging sand and gravel on condition that it is not for sale. These rights can be exercised by the agents and independent contractors of the oil prospecting company.

Pure and Risk Service Contracts

This is a simple contract of work with the host State bearing all the risks and the oil company, (in this study, Energia Ltd), performing all stipulated services and is paid a flat fee for the services. Under a service contract, according to Atsegba (2004 p. 117), the State hires the services of Energia Ltd as a contractor not as a concession holder or a partner but merely a hired agent. It is similar to production sharing contracts except in the mechanism of recovering cost oil and remuneration of the contract other than through the profit oil or production split. Thus, the essential features of a service contract is that the national oil company is the sole owner of the oil discovered and the role of Energia Ltd is limited to rendering financial and technical services and resources. But this does not imply a transfer of technology to the State.

The risk service contract is essentially the same as the pure service contract and if Energia Ltd for instance is involved in it, it provides the entire risk capital for exploration and production and if no oil is discovered, the contract ceases to exist with no obligation on either party. In the chance of a commercial discovery, the expenses of Energia Ltd are recouped and are equally paid for the services. In other words, all risks and investments are placed on Energia Ltd until commercial oil is discovered before it can be entitled to reimbursement of its financial investment in the venture. Upon the completion of the development or at the beginning of the commercial stage, the host State is authorized to take over the operations while Energia Ltd may provide for the payment of its contractor over a number of years. However, the risk or the pure service contract may be accompanied by a legally unconnected but parallel purchase contract for a part of the oil produced in the venture to be bought by Energia Ltd that may equally export same at world price.

Participation and Joint Ventures

State participation goes beyond State regulation of the activities of the industry to descending into the arena of the business enterprise as a partner. According to Omorogbe, the resultant effect of State participation is the emergence of a variety of contractual relationships between the State and the oil companies and more significantly, the establishment of a national oil company, in the case of Nigeria, the Nigerian National Petroleum Corporation. These contractual agreements can generally be referred to as joint venture agreements and concessions in the form of production sharing contracts, service contracts, and risk service contracts (Omorogbe, 2003).

Oil production through Joint Venture accounts for about 95% of Nigeria’s crude oil production. Shell, which operates the largest joint venture in Nigeria with 55% Government interest through the NNPC Ltd produces about 50% of Nigeria’s crude oil. ExxonMobil, Chevron-Texaco, Eni/Agip and Total/elf operate the other joint ventures in which the NNPC has 60% stake (Soeze, 2005 p. 56).

Production Sharing Contracts

In the oil industry, two major funding mechanisms exist. One is the Joint Venture (JV) arrangement where each equity holder contributes according to the level of ownership
to project funding. The other is the Production Sharing Contract (PSC) which allows the operator to fund all operations and is given time to recoup its money after the first oil (Yakubu, 2005 p. 1-2). By 1993, the first generation of Production Sharing Contracts (PSC) had been signed for a total of 12 blocks and by 2000, great discoveries had been made including Bongo (1996 with over 1.2 billion barrels); Erha (1997 with over 600 million barrels); Abo (1998 with over 800 million barrels); and Agbami (2000 with over one billion barrels) (Yakubu, 2004 p. 1-2).

Said to have been pioneered in Indonesia, Production Sharing Contract is a legal arrangement in which the crude oil is shared by the parties in predetermined ratio or proportion. It defines the relationship between the host State and the company. The company bears all the risks of exploration and is in charge of the operation and management of the contract area and when oil is struck, the company is entitled to recoup its investments from the oil produced from the contract area called the cost recovery oil and the remaining production is shared between the parties called the production split (Omorogbe, 2003 p. 41-42).

The basic features of a production sharing contract are that the oil company is appointed by the host State as a contractor on a certain area definite, it operates at its sole risk and expense under the control of the host State, the production if any belongs to the host State, the company is entitled to a recovery of its operating cost out of the production from the contract area as the cost oil, and thereafter, the profit oil is shared in predetermined percentage split between the parties called the production split. The company’s income is available for taxation and the equipment and installations are the property of the host State either from the onset or as the contract progresses (Atsegba, 2004 p. 117).

Joint Venture and Production Sharing Contracts have their own purposes as petroleum arrangements. A production sharing contract essentially means the State cannot fund its own part of the venture for the time being. The contractor therefore takes the risk of exploration, development and production. If oil is not found, the contractor takes all the losses. If oil is found, then the State will have an arrangement with the contractor whereby the contractor recovers costs, taxes, royalties and all other fiscal arrangements, the balance, which is the profit oil, would be split in agreed ratio. Such a ratio would ensure that the contractor earns a reasonable return on its capital invested. Thus, if the State can fund, it is better because even the equity share of crude could be lopsided in favour of the PSC contractor which has to lift crude to reflect all that it had invested including cost oil, profit oil and royalty oil. When all these are aggregated, the contractor’s lift-able oil becomes substantially disproportionate when compared to a Joint Venture petroleum arrangement (Kupolokun, 2005 p. 56-57).

For Sibinga Mulder, (cited in Yakubu, 2005 p. 56-57) of Addax Petroleum, Nigerian production sharing contracts encourage investment in oil exploration and development; it provides for commercial clarity and development of oil reserves. It is transparent and commercially acceptable for the mature fields in operation but any new venture particularly in the light of the new fiscal regime for gas, has to be appraised in its entirety. The more difficult the development of oil and gas is, the more marginal the economics, the more favourable the production sharing contract terms need to be.

Yet, it is difficult to convert from one arrangement to the other because of the inherent peculiarities of each arrangement. Conversion would involve a consideration and evaluation of the potentials and volatility of the reserve; what future production would be; what future crude prices would be; whether the fiscal incentives would change and motley of other intangible and subjective variables. Thus, every project must be looked at from its own merit and each project, depending on the issues and its surrounding circumstances, there is a suitable mechanism or petroleum arrangement. ‘If you are talking of high cost project in difficult terrain, in frontier areas, I have no doubt in my mind I will go with a Production Sharing Contract and will let somebody take all the risk on my behalf. But if you are talking of low cost scheme, easy to produce or a producible acreage in shallow
water, I will rather fund it myself. So you would want to look at the project on its own merit. And if I have the funding, I will put it in’ (Kupolokun, 2005).

However, conversion is not impossible. Over the years, since the inception of the joint venture funding arrangement in the 1970s, the State had tended to fall behind on its share of cash-calls standing at about 9 billion dollars annually in the 2007s. In order to ensure continued growth in the sector while attempting to reduce the funding burden on NNPC Ltd, the State began to pursue alternative measures that progressively converted the existing joint venture arrangements to production sharing contracts which were basically designed to pursue a high-case activity programme without the constraint of cash-call developing same to a standard commercial arrangement for the upstream oil and gas sector (Dankoru, 2006 p. 42-43).

Theoretical Framework

Ownership Theories of land and Oil

Several theories of ownership in land, oil and gas have been developed. In D. O. Idundun & Ors v. D. Okumagba & Ors the five ways of proving title to land were identified by the Supreme Court as traditional evidence; documents of title; lengthy and positive transactions involving the land; long possession and enjoyment; and proof of ownership of connected land. These have largely proved to be ineffectual in the relationships and attendant conflicts between native families like Umu-Ozegbe, oil companies and the State in Nigeria. The decision of the Supreme Court caters for native families like Umu-Ozegbe and Pa Ossai Ogboso Onah children in their disputes inter se and thus, completely outside the radar of their relationship with the oil companies like Energia Ltd and the Nigerian State. The decision of the Supreme Court caters for native families like Umu-Ozegbe and Pa Ossai Ogboso Onah children in their disputes inter se and thus, completely outside the radar of their relationship with the oil companies like Energia Ltd and the Nigerian State. The land tenure law in Nigeria has been deliberately undeveloped or has been largely developed to the detriment of the families and to the advantage of the State and oil companies. No aspect of the Nigerian legal system has been so cannibalized or un-streamlined with so many issues capable of generating conflict amongst the native families and between them, the State and the oil companies as the land law: It has become the source of underdevelopment of the peoples. It is so confusing that there are different laws for different citizens, sections, regions, peoples, families and cultures. Attempts at uniformity have compounded the situation than healing the wounds of underdevelopment of the land law.

For Brian Youngman (as cited in Mudiaga-Odje, 2006 p. 85) mineral workings before the industrial revolution were governed mainly by the principles of common law being that un-worked minerals lying in their natural position and condition are, with minor exceptions, subject of private ownership by the surface owner; and thus, the owner is entitled to exploit them to his best advantage subject to any constraints imposed by law. This is the position in the United Kingdom as in Nigeria until 1969 when the Petroleum Act was promulgated and in 1978 when the Land Use Act was promulgated in Nigeria. To add finishing nail to the coffin, the Land Use Land got entrenched into the 1999 Constitution (as amended). Addressing the lingering issue of how to find lasting solutions to the Niger Delta crises at a forum organized by the Nigerian Institute of International Affairs and the Royal Institute of International Affairs, Omoweh (as cited in Popoola, 2005 p. 6) had called for a well-developed law on the relationship between native families and host-communities, oil companies and the State with regards to ownership, assess and exploitation of oil and gas resources. The rights of the families to natural resources and the issues of land have remained unaddressed as the State had vested on itself the title to land including oil and gas giving the industry the excuse that since the land belongs to the State and it had fulfilled its obligations to the State, it is the responsibility of the State to maintain and develop the land and the communities as against the social responsibilities of the companies involved.

It is argued polemically by Energia Ltd and its ilk that they do not recognize families as the Nigerian law does not have family templates to deal with and as such it does not recognize the
existence of Umu-Ozegbe family or Pa Ossai Ogboso Onah children but can afford to deal with the Ogbole Community. While the Okolololi land houses ‘Oil Well B 8 & 9’ Energia Ltd spurred the Pa Ossai Ogboso Onah children which was in actual possession to publish in Vanguard that they should be sought after with regards to the ownership of the land because they had a 99 year lease in their kitty and deliberately sidelined the over lordship of Umu-Ozegbe family on the land because their reversionary right was many years into the future and before that could have come for determination, Energia Ltd could tapped all the oil that was needed to be tapped from ‘Oil Well B 8 & 9’ and left the vicinity like was done to Oloibiri by Shell.

But, in the interim, Energia Ltd prodded Pa Ossai Ogboso Onah children to resist and deny the title of Umu-Ozegbe family in a national daily and empowered them by taking over the lease of the land and the rubber plantation from them in substantial monetary term and prepared their morale to withstand any dispute that may come their way from the Umu-Ozegbe family. Energia Ltd further placed a swift tab on Umu-Ozegbe family after auditing the family to the conclusion that the family had no ‘father-figure’ to fight and stand for it. It even found out that the seed money to issue a writ of summons against their opponents was not forthcoming until the Umu-Ozegbe family had to scale down their legal action and commence it at the Area Customary Court instead of the High Court of Justice, Kwale. Energia Ltd became largely fortified when it was not joined as a party in the suit thus yielding the oil company sufficient elbow of influence the decision of the Area Customary Court, Kwale from behind.

There are some aspects of the Nigerian oil industry which form the basis for government’s official actions and policy matters (Oropo, 2006 p. 24). First, the entire ownership of all mineral oil and gas is vested in the Government. Second, any organization or group interested in undertaking any activity for the exploration or production of minerals or natural gas requires a formal authorization by the Federal Government and legion of such permits, authorizations, licenses, and certificates exist. Third, owing to the dearth of managerial expertise and technological know-how, which is not improving soon, the nation’s petroleum resources are largely developed and controlled by the multinational oil companies and or local content vehicles like Energia Ltd. Four, and arising from the three foregoing elements, the Federal Government plays a dual role in oil matters: It formulates policies and lays down rules which regulate the operations of the industry on the one hand, and is a party to all petroleum contracts through the NNPC Ltd. Five, Nigeria exhibits a classic case of an oil dominated economy requiring maximum returns from its operations as a top priority policy. Thus according to Eke (2006 p. 24), in an effort to maximize proceeds from oil in pursuit of its developmental objectives, government stipulated a condition for securing acreage in the lucrative deep offshore to be investment in the downstream sector by the new entrants like Energia Ltd by undertaking to build refineries, power plants and rail lines among other investments and to refine 50% of their oil locally.

**Absolute Ownership Theory**

This theory postulates that the owner of the land (in this case, Umu-Ozegbe family) is regarded as the owner of the petroleum lying underneath the land. This theory largely derives its strength from the common law maxim that whatever is affixed to the soil belongs to the soil. But Atsegbua (2004 p. 5) has countered the argument of this school that since oil and gas are fugacious substances wondering from one place to another beneath the surface of the earth, the absolute ownership theory is weak. This criticism forms the touchstone of the second unscrupulous theory of non-ownership. It is to the effect that since oil is fugacious and changes position constantly, it is incapable of ownership and therefore belongs to God. The qualified interest theory has also been advanced to the effect that oil is like a wild animal and is incapable of ownership until it is captured and reduced into possession. The qualified interest theory can equally be regarded as the touchstone of the investor ownership theory. It is to the effect that Energia Ltd that has invested in the exploration
and exploitation of ‘Oil Well B 8 & 9 and Well 6 & 7 Ekolo and Ogbe Imo in Okololi Ogbole Ogume’ and which captured and reduced them into its possession is the owner. There is no doubt that the investor ownership theory which favours Energia Ltd holds a lot of water in the light of the prevailing dominance of Local Content Vehicles like Energia Ltd in the Ndokwa space. But there is no doubt that the State has made significant inroad and presence in the sector. There is equally no doubt that the industry is not only competitive but that that requires cooperation and partnering. This has led to the development of the joint venture ownership theory which has arisen from the partnering and between the State and Energia Ltd and amongst the Local Content Vehicles themselves.

Statutory Law Ownership Theories

Statutory laws can also be termed the state ownership theory. This theory is perhaps the most contemporary since the United Nations Resolution 1803 of 1962 which recognized the right of peoples and nations to permanent sovereignty over their natural resources and which must be exercised in the interest of national development and the well being of the people of the nation concerned. The Resolution further provided that exploitation of resources should be on freely negotiated agreements and nationalization and expropriation should be based on public utility, security, national interest and appropriate compensation in accordance with national and international law.

But the theory has dealt the worst blows on families like Umu-Ozegbe and native communities. No concrete templates have been developed as noted earlier in this study for their benefit. Even the three percentage that was grudgingly approved in the Petroleum Industry Act 2021 was to be deducted from the annual expenditure of Energia Ltd in so far as ‘Oil Well B8 & 9’ are concerned. And even the three percent is to be paid into a Trust Fund that the Umu-Ozegbe family had no capacity in determining the membership or its annual workings. If Energia Ltd determines that no activity shall take place in the said ‘Oil Well B8 & 9’, nothing comes into the kitty of the Umu-Ozegbe family and that is in the event that the family gets recognized instead of Ossai Ogboso Onah children from Umuputu in Ukwuani Local Government Area.

Analyzing the consequences of the Resolution in his paper, The United Nations Organization and Mineral Resources Legislation and Exploitation, Aboloje (2006 p. 2-3) submitted that apart from leading to a New World Economic Order and renegotiation of contracts leading to joint ventures, equity participation, nationalization and establishment of national oil companies, the Resolution led to a shift from investor ownership to national or State ownership of mineral resources. The learned scholar canvassed that the adoption of the principle of permanent sovereignty over natural resources can be seen in national legislations and constitutional provisions entrenching State ownership theories. For instance, while Section 1 of the Land Use Act provides that all lands comprised in the territory of each State in the Federation are vested in the Governor of that State and such lands shall be held in trust and administered for the use and common benefit of all Nigerians, Section 1(1) of the Petroleum Industry Act 2021 provides that the entire ownership and control of all petroleum in, under or upon any lands to which the section applies shall be vested in the State. And Section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that the entire property in and control of all minerals, mineral oils and natural gas in, under, and upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall be vested in the government of the Federation.

While the Federal government has arrogated the ownership of the oil in Okolori land to itself, Energia Ltd on ‘Oil Well B 8 & 9 and Igbe Imo Wells 6 & 7’ in Okolori Ogbole Ogume is drilling the wells under the permission of the Federal government and its surrogates while the Umu-Ozegbe family (the owners of land since time out of human memory) had been shortchanged by Energia Ltd by dealing with Pa Ossai Ogboso Onah children who can afford to also
shortchange their overlords in Umu-Ozegbe family. On legal templates, the same Umu-Ozegbe family is shortchanged by Ogbole Community which is better recognized by Energia Ltd instead by donating a commercial bus to the community and paying same royalties annually and otherwise.

Literature Review
Umu-Ozegbe Experience with Energia Ltd
Energia Ltd is essentially an oil company on a marginal field that was largely abandoned by Elf Petroleum Ltd. Although there is a reported huge reservoir of marginal oil fields in Nigeria conservatively estimated to contain over 2.3 billion barrels of Stock Tank Oil Initially in Place (STOIP) strewn over 183 marginal fields, no fixed rules have been laid down for a universal definition of the term marginal field. This is because technical, strategic and economic variables guide the categorization of an oil field as a marginal one. However, marginal fields are such fields as the President of the Federal Republic of Nigeria may, from time to time, identify as such. A holder of an Oil Mining Lease such as Elf Petroleum Ltd the original owner of Emu-Ebendo-Obodogwua field may, with the consent of and on such terms and conditions as may be approved by the President, farm it out to Energia Ltd. A farm-out is an agreement between the holder of an Oil Mining Lease (in this study, Elf Petroleum Ltd) and a third party (in this instance Energia Ltd) to explore, prospect, win, work and carry away any petroleum encountered in a specific area during the validity of the lease. The President may cause the farm-out of a marginal field if the field has been left unattended for a period of not less than 10 years from the date of the first discovery of the marginal field. However, the President may refuse consent unless he is satisfied that it is in the public interest so to do and, in addition, in the case of a non-producing marginal field, that the field has been left unattended for an unreasonable time not being less than 10 years and the parties are acceptable to the Federal Government.

A marginal field is thus a non-producing field whose economics is not considered robust enough using conventional development methods under the prevailing fiscal regime (Omorogbe, 2003 p. 170-172 &174). Arguments against a marginal field centre on the fact that it is uneconomic and that the Nigerian State or its proxies may not be actually involved in the production and development of the field and the positive externalities that ought to accrue may not because the production and development are further leased or assigned to foreign companies or Local Content Vehicles like Energia Ltd and it is difficult to enact a legislation prohibiting such assignments. However, Omorogbe argues that if truly indigenous or Nigerian Independent Oil Companies emerge from the operations of marginal fields, such as Energia Ltd, it would make the industry more vibrant to the advantage of the economy instead of the prevailing weak National Oil Companies and strong Multinationals. Marginal field operation creates significant opportunities for local participation in the delivery of production capacity growth. It also creates opportunities for support service providers in the areas of procurement, construction works and delivery slots. However, in the case under close scrutiny, Umu-Ozegbe family has been undermined and the question of benefiting from externalities has been out of the issue and despite the huge successes the family has made in the Court of law up to the Court of Appeal, Asaba in CA/AS/265/2016 Onyekachi Ossai & 3Ors v. Moses Asuai Onowu & 2Ors delivered on 14th December, 2022 mute is the character and countenance of Energia Ltd presumably holding the irregular view that it was not a party to the dispute and thus not bound by same.

Yet, marginal field development is an offshoot of the Federal Government’s policy to kick-start indigenous participation in the upstream sector of the petroleum industry (Onyekwu, 2005 p. 70). The government sought to achieve this objective by ensuring the farm out of marginal fields within the concessions of the major multinational oil operators to the indigenous ones. Putting it in almost the same terms, Kupolokun (as cited in Niyi, 2004 p. 79) had
canvassed that in order to increase indigenous participation in the upstream, marginal fields were awarded to competent local entrepreneurs who were expected to form alliance with their foreign partners.

The objectives of the marginal field development include engaging the pool of high level technically competent Nigerians in the oil and gas business and producing a spring board for development of indigenous companies which would over time venture into operations in less conventional terrain. It also provides greater opportunities for technological generation among Nigerians. It is thus essentially a local content development initiative. For Sibinga Mulder (as cited in Yakubu, 2005 p. 56-57) the local content development ensures the realization of identifying areas of production with high potential for increasing participation of local companies, promoting technology transfer and increasing current level of participation of local companies in terms of value of contracts. Considering the low per capita income level of most local companies and the difficulties in raising funds for project execution, the initiative evolves measures to facilitate the performance of local firms to participate in operations.

The 2001 Guidelines for Marginal Field Development made regulations on the nature of companies that can participate in the marginal fields. Unlike the 1996 Guidelines released by the DPR that permitted 40% maximum foreign ‘equity’ participation, the 2001 Guidelines did not provide a ceiling on the extent of foreign investors’ participation. Instead, the farmee company (in this case Energia Ltd) was required to be ‘substantially Nigerian’ and registered solely for exploration and production. However, what is ‘substantially Nigerian’ is a conjecture. In practice, the operators seem to use the 40% rule as a benchmark for determining the question of what a Nigerian farmee like Energia Ltd is (Onyekwu, 2005). In 2003, the State awarded 24 marginal fields to 31 indigenous companies (including Energia Ltd) in a series of bid rounds with hope that the exercise would add value to existing proven reserves essentially with the obvious fact that the deeper waters and inland basins held the greatest possibilities for significant additional reserves with the creeping depletion in the traditional terrains of land and shallow waters. The policy thrusts were actuated towards more prudent management of existing oil and gas reserves, opening up and marketing without delay, new potentially high-reward assets within a framework of transparent, investment-friendly policies; aggressive pursuit of gas development policies as a major energy resource of the future (Dankoru, 2006 p. 42-43).

Despite these laudable policies, the success of the indigenous players’ incursion into the upstream sector could be said to be very ‘marginal’ as not many have made appreciable progress with their farmed-out concessions being that financial demands of oil exploration and production are extremely high and funding capacity of the indigenous marginal field owners was low (Onyekwu, 2005) or have families like Umu-Ozegbe which are the ancient owners of these ancestral land anything good to write home about. Rather, they have been plodded into interminable disputes with even parties who in traditional settings are basically tenants but who out of greed have chosen to challenge their overlords. However, given the foregoing constraints, financing marginal fields through foreign investments have become an attractive option for indigenous companies like Energia Ltd but the perceived high risk factors associated with marginal fields investment in Nigeria (youth restiveness and native wars as being currently experienced in Ogume space) has caused potential foreign investors to seek legal structures that provide some assurance on the security of their investments.

Three legal frameworks and structures of securitizing foreign investments in marginal fields have been advanced (Onyekwu, 2005). Firstly, is the ‘equity plus participation option’; under this regime, a foreign investor is called upon to finance more than 40% of the production cost and that being the case, it becomes an issue how such an investor can be restricted to less equity participation than the expected investment. The equity plus participation option is therefore a mode of operation that allows the investor (in this case
Energia Ltd) to inject more than 40% of the project cost and in return, Energia Ltd gets the minimum of 40% participation plus other compensations. The plus variables may differ from deal to deal and may include board positions in the company reflective of the level of investment.

Secondly, is the ‘special purpose vehicle option’ which would be an agent of the Joint Venture Partners and would be delegated the rights and obligations of the farmee under the farm-out agreement. In that way, the ‘special purpose vehicle’ has the de facto managerial control of the marginal field operations with the potentials of having a production sharing contract factored into the mainstream of the farm-out agreement. Thirdly is the ‘crude off-take and sales agreement option’. This could provide for an irrevocable assignment of crude to the foreign investor or its assigns as the sole buyer, reserving for it the rights of pre-emption with due regards to the level of its investments, the prevailing world market prices of oil, and the peculiar circumstances of the region or the potential hardship suffered from force majeure due to the peculiarities of the region like the volatile Ogume in Ndokwa spaces of the Niger Delta. The bid to attract foreign investors for marginal fields in Nigeria would be given a better impetus by creative legal engineering that seeks to find options or hybrids of options that would make for the workability of the intentions of the parties (Onyekwu, 2005).

The major plank of the oil and gas sector reform was the Local Content Vehicle (such as Energia Ltd) which was introduced for the first time in 2005 and focused on the deep offshore of the Joint Development Zone with Sao Tome and Principe in which over 70 oil blocks had been awarded between 2000 and 2005 (Eke, 2006 p. 24). Local Content Vehicle is a framework that guarantees active local participation without compromising standards; to promote value addition in Nigeria through utilization of local raw materials and human resources and promote steady, measurable and sustainable growth of Nigerian content. The idea is to introduce Nigerian indigenous operators like Energia Ltd, Mid-Western Oil and gas, Connoil, Mon Pulo, AMNI etc, to high technology areas like the deep waters where they cannot operate on their own to partner the big ones and further build capacity and widen their horizon.

**Energia Qualification for the Farm-out**

Granted only to Nigerians or companies incorporated in Nigeria, like Energia Ltd, the applicant licensee completes Form A with the payment of the sum of N100 in the case of an oil exploration license, N200 in the case of an oil prospecting license and N400 in the case of an oil mining lease together with 10 copies of the map of the area affected and details of the work the applicant is ready to do. Details of the data on which the applicant is prepared to start operations will equally show evidence of the financial status and technical competence of the applicant together with an annual report of the activities of the applicant in oil exploration for the past 3 years. The application will equally show details of annual expenditure, details of scheme of employment and training of Nigerians and evidence of the applicant’s ability to market its products.

Now, Energia Ltd has been on the Emu-Ebendo-Obodougwa field for over two decades, it is only the Umu-Ozegbe family of Ogbole Ogume that is in the best position to aver to what they have gained in terms of employment and training as rising from Energia Ltd’s presence on Oil Well B 8 & 9 and Well 6 & 7 in Ekolo and Igbe Imo bush in Okololi, Ogbole Ogume. But what this research has yielded is lack, native war, conflicts and court cases and as these are happening, Energia Ltd is smiling to the bank while Umu-Ozegbe family is seething with internal wrangling foisted on it by issues not unconnected with Energia Ltd’s activities on their land. For instance, when NWACC/46/2012 was underway before the trial Area Customary Court, Kwale, the second and third plaintiffs were advised to withdraw from the suit after enticing overtures were made to them by Energia Ltd and the Obodougwa community to the extent that the said second and third plaintiffs eventually initiated moves to not only to sabotage the suit but went on to propose and propagate the fact that Okololi...
Ogbole which had since time outside human memory been part and parcel of Ogbole Ogume was no longer so but part of Obodougwa Ogume. On the other hand, the remaining plaintiff fought the suit to the hilt and proposed and propagated the fact that by virtue of the Supreme Court decision in SC/80/1997 Chief D. M. Okochi & 2Ors v. Chief Amukali Animkwoi & 2 Ors (2004) 114 LRCN 2925 – 2948 there was no community known as Obodougwa Ogume since the judgment decided that Obodougwa Ogume was living on their land as customary tenants of Emu Ebendo community. The remaining plaintiff went on to sue in the mother of all the cases in HCK/33/2013 High Chief Vincent Ugbo & 5Ors v. High Chief Ochakpor & 20 Ors that Okololi was in common boundary with Emu Ebendo by virtue of the litigation survey plan in the Supreme Court decision in SC/80/1997.

What is noteworthy from the facts available in the litany of court disputes on the table of this research is that none (except HCK/33/2013 involving over 25 separate parties and all in representative incapacities) is Energia Ltd a party yet all the disputes are actuated towards the land that Energia Ltd is drilling oil and gas! None of the parties desires that Energia Ltd should be joined or does Energia Ltd desires that it should be joined. Energia Ltd is thus the bridegroom of all these motley of parties masquerading as communities, families and individuals. The parties are all angling to be the best bride of Energia Ltd. They do not look up to Energia Ltd as the cause of their misery and for why they are always on the road to the Court hall looking for one form of judgment or injunctive order or the other. The bridegroom seats on its throne like a Solomon with 300 wives and 300 concubines goading one wife to attack the other while it harvest the fruits of their land. There is no unanimity of purpose amongst them against Energia Ltd. Energia Ltd is not their problem. Their problem is amongst themselves.

**Litigating and Revoking Oil Bloks**

An oil prospecting license or oil mining lease may be revoked by the Minister if the licensee or the lease becomes controlled by a citizen or subject of or a company incorporated in a country other than the licensee’s country of origin. It may also be revoked if the laws of the licensee’s country do not allow or permit citizens of Nigeria or Nigerian companies to acquire interest on conditions that are reasonably comparable with the conditions upon which such concessions are granted to subjects of that country, or if the licensee has failed to comply with any of the provisions of the Petroleum Act or Regulations, or if it has failed to pay its due rents and royalties, or if it has failed to furnished reports on its operations as lawfully required, or if the licensee has failed to train and employ Nigerians.

Litigating oil blocks has become a recurrent phenomenon in the oil industry with the expression of more interests from both within and outside the country and with the increasing potentials and prospects of the industry. The Umu-Ozegbe family case against Energia Ltd in Hck/33/2013 is not an exception. At the Federal High Court, Abuja presided over by Justice Awuri Chikere, Shell had sought injunction restraining three foreign companies from the contentious OML 13 and 16 which the companies bided for during the oil block bidding exercise in May, 2007. The three companies where: Repsol Nig. Ldt of Pasco de la Castellana, Madrid, Spain; Centrica CCC Oil and Gas of Centrica Plc, Millstream, Maidenhead Road, Windsor Berkshire United Kingdom; and Sterling Global E&P of C-25 Laxmi Towers, Bandra Kurla Complex, Bandra, Mumbai, India. The suit was the second filed by Shell in respect of the blocks, the first being before Justice Binta Murtala Nyako. Before Justice Awuri Chikere, Shell which alleged that the three companies were not residing in Nigeria and do not have assets therein prayed the court for damages in the sum of 500 million naira for unlawful interference with its contract in respect of the two oil blocks claiming that the refusal of the defendants to exclude OML 13 and 16 from the bidding exercise despite the existence of the order of Justice Murtala Nyako made on 9th May, 2007 was wrongful, disrespectful of the court and inimical to the proper administration of justice in Nigeria. The argument of the Federal
Government, the fourth defendant in the suit, in a preliminary objection on the ground that the action was statute barred in that Shell was awarded the two licenses about 18 years ago and had failed to develop the licenses in businesslike manner as required by the repelled Petroleum Act, 1969 was dismissed as it was not only misconceived but unsustainable (Ughegbe, 2007 p. 3).

Umu-Ozegbe against Ossai Ogboso Onah

At the Court of Appeal, Asaba, Misitura Omodere Bolaji-Yusuff, JCA delivering the lead judgment of the court recaptured the evidence of the Umu-Ozegbe family given through Moses Asuai Onowu against Energia Ltd and Ossai Ogboso Onah children as follows, ‘I brought this case because the children of Ossai Ogboso Onah and Josephine Ossai who are tenants to our land and strangers from Umuntu, are claiming the ownership of the land our family gave their father, Ossai Ogboso Onah to plant rubber trees only. The land was given to them, they did not buy same. Title reverts to my family after the rubber falls. This is expected to last for the period the family wished to use the land…In the year 1996 when Okwa Nzete was the head of Umu-Ozegbe…the family head delegated late Chief Pius Onowu my father and myself as the Secretary to request the late Chief Ossai Ogboso Onah to pay some money for the use of the land on which he was cultivating rubber trees, but he told us that he had an agreement with our forefathers. We further requested him to show us the said agreement, but he refused.

About four years ago, (that is 2008) his children, particularly the 1st defendant brought a photocopy of an agreement to the family at the point his father’s sickness became critical. This is a photocopy of the document the 1st defendant brought to my family…Recently, they – defendants gave a sizeable part of the land to Energia oil. Where the company has removed the rubber trees, and paid compensation to them and the company has started construction work therein with intent to build its rig without the consent of Umu-Ozegbe family. In summary, the purpose for which my family gave out the land in dispute for planting rubber trees is not the same presently because most of the rubber trees have fallen off, and they have also given part of the farmland to Energia oil without the consent of Umu-Ozegbe family and above all, they have challenged Umu-Ozegbe family following the publication I referred to…they claimed that they are the rightful owners and that any person that wishes to enter the land should contact them.

Misitura Omodere Bolaji-Yusuff, JCA continued. Under cross examination, Moses Asuai Onowu states further, ‘the defendants were tenants when they were given the piece of land in issue to plant rubber trees only. The defendants were tenants subject to when the rubber trees were no longer on the land. They were supposed to be paying for the land in the sum of Ten pounds annually every March as at when they were given the land. It is true that the area of the rubber plantation as claimed by the defendant’s father is in Exhibit E6. The defendants agreed at the Ministry of Oil and Gas, Asaba Delta State that they gave out that portion of the land in dispute to Energia, and that is where Energia has its Well B 8 & 9. It was at the first meeting at the Ministry of Oil and Gas that the defendants admitted that Energia was on a part of the plantation leased to their father. They also admitted at that meeting that the said land was leased to them for 99 years by Ogboge family. It is not true that defendants were adopted into Umu-Ozegbe family of Ogboge Ogue. It is true that by Exhibit A the defendants acknowledged that the land in dispute was leased to them; the tenure of the leased land was to end when the rubber trees planted therein are no more. The lease commenced at the time the rubber trees were planted.

After noting that the evidence of the second witness was along the same lines, the Learned Misitura Omodere Bolaji-Yusuff, JCA, then decided as follows, ‘In the face of the above evidence on record, the submission of the appellants’ Counsel, (R. I. D. Okezie with Chief C. E. Anokamn and P. Omosigho Mrs.), that the respondents’ witnesses did not positively state that there was an agreement between them and the appellants or identify Exhibit E6 as the lease agreement is outrageous. Even without Exhibit E6, the evidence of PW1 and PW2 clearly and unequivocally established the fact that appellants are customary tenants of the respondents. The allegation of breaches made by the respondents was also established by the evidence of PW1. The grant of portions of the land in dispute to Energia Oil Company and other persons by the defendants without the consent of the respondents, collection of rents from those people allegedly allocated portions of the land in dispute for farming purposes are acts of misconduct which are the ingredients of the grant of the forfeiture. The lower court was right when it held that the respondents discharged the burden of proof on them.
Umu-Ozegbe of Ogbole Continues to Bleed

Despite the landmark judgment, Energia Ltd has continued since 14th December, 2022 to play the ostrich. It has arrogantly refused to obey and abide by the decision of the Court of Appeal and has equally failed to apply for leave to appeal against the judgment to the Supreme Court of Nigeria as an interested party. It continues to confound the public why oil companies like Energia Ltd continues to behave in this manner in sub-Saharan Africa and Nigeria in particular. The desire to disobey and disregard judgments of courts of law is no doubt to be found not in the audacious and Panthera-tigris of Energia Ltd but the lame-duck legal system itself that barks but cannot bite. The judgment of the Court of Appeal is declaratory, it is not executory! Are there no known procedures through which Energia Ltd can be brought to recognize Umu-Ozegbe family instead of Pa Ossai Ogboso Onah children with whom they had formed the unholy allegiance ab initio?

Generally it is the practice in the common law system that a declaratory relief will be granted where the plaintiff is entitled to relief in the fullest meaning of the word (Guaranty Trust Co. v. Hamay (1951) 2 KB at 572; Chukwumah v. Shell petroleum (Nig) Ltd (1993) LPELR 864 SC, (1993) 4 NWLR (Pt. 289) 512. Declaratory claims are said to be invitations to the court to make pronouncements on the legal position of a state of things and it is by itself not enforceable in law. It is a remedy for the determination of a justifiable controversy where, as in this case, the Umu-Ozegbe family of Ogbole Ogume is in doubt as to its legal rights to the ownership of the Ekolo and Igbe Imo land which its tenants and other contestants have placed into dispute by being shortchanged by Energia Ltd and Delta State government. It has thus been granted to Umu-Ozegbe family as a judicial discretion in the circumstances in which the Delta State Customary Court of Appeal and the Court of Appeal both in Asaba are of the considered and firm opinion that Umu-Ozegbe family seeking the declaration is entitled to it when all the facts are taken into account (U.T.C. (Nig.) Plc v. Peters (2022) 18 NWLR (Pt. 1862) 297 at 312 – 313). The two appellate courts must have reached these conclusions because there is iota of evidence that the Umu-Ozegbe family of Ogbole has been compensated.

In Messrs Singoz & Co. (Nig.) Ltd V. U.M. Co. Ltd (2022) 18 NWLR (Pt. 1862) 203 at 224 it was held by the Supreme Court per Okoro JSC that ‘both the 1999 Constitution and the Land Use Act 1978 make compensation for unexhausted improvements’ on Ekolo and Igbe Imo bush of Okololi Ogbole Ogume ‘a contingent requirement of the law before the Governor (of Delta State) can validly exercise his power of revocation’ and section 44(1)(a) of the 1999 Constitution (as amended) provides that ‘no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner and to the purposes by a law, that among other things: (a) requires the prompt payment of compensation…” Similarly, section 29 of the Land Use Act provides that the holder of a deemed right of occupancy shall be entitled to compensation for value at the date of revocation for the unexhausted improvement on the land.’ In other words, a Governor cannot validly exercise his power of revocation of title to land from the deemed holder of the right of occupancy without payment of compensation (Ogunleye v Oni (1990) 2 NWLR (Pt. 135) 745.

Furthermore, it is not Energia Ltd as in this case under study that is to pay the Umu-ozegbe family the compensation for the acquisition of the Ekolo and Igbe Imo locations in Okololi Ogbole but the Delta State government and no matter the colorful, caliber of documents that Energia Ltd may be parading currently in utter folly over the Ossai Ogboso Onah rubber plantation, the Supreme Court in Kyari v. Alkali (2001) LPELR – 1728 SC at 34 – 35, (2001) 11 NWLR (Pt. 724) 412 the followed its earlier decision in Romaine v. Romaine (1992) 4 NWLR (Pt. 238) 650 per Nnaemeka-Agu JSC that the “production and reliance upon such an instrument carries with it the need for the court to enquire into some or all of a number of questions including: whether the document is genuine and valid; whether it has been duly
executed; whether the grantor had the capacity and authority to make the grant; whether the grantor had in fact what it purported to grant and whether it had the effect claimed by the holders of the instrument in the faces of the judgments of the Delta State Customary Court of Appeal and Court of Appeal, Asaba. Therein lies how oil companies spark disputes in the third world.

**Conclusion**

The nature of treatment that host families receive from oil companies in the Niger Delta is important because it may largely be responsible for peaceful co-existence or conflict that may degenerate into native war and loss of lives and properties. Engagement templates which seek to undermine host families for host communities are in need of review because in the Ndokwa or Ukwuani space, land ownership is largely based on families not community. The community should be dealt with as a separate entity from the family. An attempt to treat and give what belongs to a family to the community can only foster strife and internal acrimonies in the short term and in the long run. The desire to cut corners and rob Peter to pay Paul has been exhibited in the experience that Umu-Ozegbe family has had with Energia Ltd and because the oil company believes that it has military security and state backing, it has continued to treat the Umu-Ozegbe family with levity, sponsoring all genre of claimants against it. Worse is the company’s attitude to the truth in its relationship with Ossai Ogboso Onah children. A company worth its name and international best practices ought to have by now, put its feet on the ground having come by the truth that the Ekolo and Igbe Imo locations belong to Umu-Ozegbe family, but its regales the genuine and pseudo claimants with the lure of litigation for eternity while it walks to the banks annually with obscene lucre.

**Recommendation**

- The Delta State government should call Energia Ltd to order and pay the Umu-Ozegbe family its due compensation.
- Energia Ltd should be prevailed upon to withdraw HCK/33/2013 High Chief Vincent Ugbo & 5Ors v. High Chief Ochakpor & 20 Ors pending before the Ozoro High Court which involves over 25 different independent parties and recognize Umu-Ozegbe family.
- Templates of oil companies should be enlarged to capture host-families as a different sub-set of stakeholders in the oil business benefit environment.

**References**


Regulation 4(b) Petroleum (Drilling and Production) (Amendment) Regulations 1996 Cap 350 LFN.


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Guaranty Trust Co. v. Hamay (1951) 2 KB at 572

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