

UK Supreme Court in *Jalla v Shell*: the claim in Bonga spill is time barred

The UK Supreme Court ruled that the cause of action in the aftermath of the 2011 Bonga offshore oil spill accrued at the moment when the oil reached the shore. This was a one-off event and not a continuing nuisance. The Nigerian landowners' claim against Shell was thus barred by the limitation periods under applicable Nigerian law (Jalla and another v Shell International Trading and Shipping Company and another [2023] UKSC 16, on appeal from [2021] EWCA Civ 63).

On 10 May 2023, the UK Supreme Court has ruled in one of the cases in the series of legal battles started against Shell in the English courts in the aftermath of the Bonga spill. The relevant facts are summarized by the UK Supreme Court as follows at [6] and [7]:

6. (...) The Bonga oil field is located approximately 120 km off the coast of Nigeria. The infrastructure and facilities at the Bonga oil field include a Floating Production Storage and Offloading unit ("FPSO"), which is linked to a Single Point Mooring buoy ("SPM") by three submersible flexible flowlines. The oil is extracted from the seabed via the FPSO, through the flowlines to the SPM, and then on to tankers. The Bonga Spill resulted from a rupture in one of the flexible flowlines connecting the FPSO and the SPM. The leak occurred overnight during a cargo operation when crude oil was being transferred from the Bonga FPSO through the SPM and onwards onto a waiting oil tanker on (...) 20 December 2011. The cargo operation and the leaking were stopped after about six hours.
7. As a result of the Bonga Spill, it is estimated that the equivalent of at least 40,000 barrels of crude oil leaked into the ocean. The claimants allege that, following its initial escape, the oil migrated from the offshore Bonga oil field to reach the Nigerian Atlantic shoreline'.

Some 27,830 Nigerian individuals and 457 communities stated that the spill had a devastating effect of the oil on the fishing and farming industries and caused damage to their land. They sued Shell in English courts. The claim was instituted

against International Trading and Shipping Co Ltd (an English company, anchor defendant) and Shell Nigeria Exploration and Production Co Ltd (a Nigerian company, co-defendant).

The English courts have accepted jurisdiction, as it had happened in several cases based on a comparable set of facts relevant for establishing jurisdiction, as reported earlier on this blog [here](#), [here](#), [here](#), [here](#), and [here](#). The jurisdiction and applicable law in the specific case of Bonga spill litigation have been closely followed inter alia by Geert van Calster [here](#).

The case at hand is an appeal on a part of an earlier rulings. However, unlike some earlier claims, this is not a representative action, as the UK Supreme Court explicitly states at [8]. The crux of the ruling is the type of tort that the Bonga spill represents under Nigerian law, applicable to that case (on applicable law, see *Jalla & Anor v Shell International Trading and Shipping Company Ltd & Anor* [2023] EWHC 424 (TCC), at [348] ff.).

According to the Nigerian party, the spill gave rise to ‘a continuing cause of action because there is a continuing nuisance so that the limitation period runs afresh from day to day,’ as some oil has not been cleaned up and remained on the coast. Shell submitted, on the contrary, that the spill was a one-off event, that the cause of action accrued with the coast was flooded, and that the claim was time barred under the relevant limitation statutes. The lower courts and the UK Supreme court agreed with Shell. They rule that the cause of action had accrued at the moment when the spilled oil had reached the shore. This occurred some weeks after the spill. As a result, at the moment of instituting the proceedings, the claim was time barred.

Noteworthy is the detail in which the UK Supreme Court discusses the authorities on the tort of nuisance under the heading ‘4. Four cases in the House of Lords or Supreme Court’ at [17] ff. This degree of detail is certainly not surprising, due to the relevance of English law for the Nigerian legal system. In the meantime, it contrasts with the approach that would be adopted by a civil law tradition’s court, if the case was brought under their jurisdiction. Firstly, in the civil law traditions, a claim governed by foreign law reaches the highest judicial authority only in exceptional cases. Secondly, if – as in this case – there were ‘no prior case in English law that has decisively rejected or accepted the argument on continuing nuisance put forward by the claimants in this case,’ a continental court might

have come to the same conclusion, but finding the law would perhaps be much less business as usual for a continental court than for the UK Supreme Court.

The footage of the hearings available on the website of the UK Supreme Court is most enlightening on the Court's approach and reasoning.