IN THE SUPREME COURT OF NIGERIA

Suit No: SC28/2001

Petitioner: Attorney-General of the Federation
And
Respondent: Attorney-General of Abia State & 35 Ors

Date Delivered: 2002-04-05

Judge(s): Muhammadu Lawal Uwais (CJN), Abubakar Bashir Wali (JSC), Idris Legbo Kutigi (JSC), Michael Ekundayo Ogund

Judgment Delivered

Section 162(1) of the Constitution of Federal Republic of Nigeria 1999 (hereinafter is referred to as the Constitution or the 1999 Constitution) establishes the Federation Account into which shall be paid all revenues collected by the Government of the Federation, with a few exceptions not relevant to the case in hand.

Sub-section (2) of section 162 of the Constitution empowers the National Assembly to determine the formula for the distribution of funds in the Federation Account. Sub section (2) provides:

\"162(2) The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density; Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.\"

The proviso to the sub-section entrenches, with respect to natural resources, the principle of derivation in any formula the National Assembly may come up with. By this principle \"not less than thirteen per cent\" of the revenue accruing to the Federation Account directly from any natural resource shall be payable to a State of the Federation from which such natural resources are derived. For a State to qualify for this allocation of funds from the Federation Account, the natural resources must have come from within the boundaries of the State, that is, the resources must be located within that State.

There arose a dispute between the Federal Government, on the one hand, and the eight littoral States of Akwa- Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers State on the other hand as to the Southern (or seaward) boundary of each of these States.

The Federal Government contends that the southern (or seaward) boundary of each of these States is the low-water mark of the land surface of such State or, the seaward limit of inland waters within the State, as the case so requires. The Federal government, therefore, maintains that natural resources located within the Continental Shelf of Nigeria are not derivable from any State of the Federation.

The eight littoral States do not agree with the Federal Government's contentions. Each claims that its territory extends beyond the low-water mark onto the territorial water and even onto the continental shelf and the exclusive economic zone. They maintain that natural resources derived from both onshore and offshore are derivable from their respective territory and in respect thereof each is entitled to the \"not less than 13 per cent\" allocation as provided in the proviso to subsection (2) of section 162 of the Constitution.

In order to resolve this dispute, the Plaintiff took out a writ of summons praying for:

\"A determination of the seaward boundary of a littoral States within the Federal Republic of Nigeria for the purpose of

calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999.\"

All the States in the Federation are joined as defendants in the action. The parties, except the 29th and 30th Defendants, that is, Osun and Oyo States, filed and exchanged their respective pleadings. Some of the Defendants raised counter-claims against the Plaintiff. The pleadings of the Plaintiff and the eight littoral Defendant States reflect their respective viewpoints in the dispute. Some of the defendants raised in their pleadings, a number of objections such as there being no dispute, misjoinder, lack of jurisdiction etc. All these objections were taken at an earlier hearing and disposed of. See Attorney General of the Federation v. Attorney General of Abia State & 35 Ors. (2001) 11NWLR689.

Notwithstanding the decision of this Court rejecting the preliminary objections, the 3rd Defendant in the affidavit evidence in support of their case still maintains that they have no dispute with the plaintiff. In paragraph 16 of the affidavit evidence of Ifiok Uleana, a legal practitioner and Acting Director of Civil Litigation in the Ministry of Justice, Uyo, Akwa Ibom State, the deponent testified thus:

\"That the 3rd defendant has never had any dispute with the plaintiff regarding on-shore or off-shore derivation since as our counsel has advised and I verily believe that question has been settled by Decree No.106 of 1992.\"

In paragraphs 27 and 29, however, the deponent deposed:

\"27. That the Federal Government has been paying to defendant Akwa-Ibom State the amount due to it on derivation but in paying, the Federal Government has unjustly withheld 40 per cent of the 13 per cent due and the plaintiff has held on to such amounts and has refused to pay despite repeated demands by the 3rd defendant.\"

29. That the total amount due to Akwa-Ibom State Government and wrongly withheld by the plaintiff's N15,006,418,955.28 covering the period indicated in paragraph 28 above and the plaintiff has not denied owing this amount.\"

If there was no dispute between him and the plaintiff, why the underpayment complained of by him. I stand by our earlier decision that on the pleadings of the parties in this case there is a serious dispute between the plaintiff and the littoral states as to the seaward limit of the latter\'s territories.

In a similar situation in United States v. State of California, 332 US 19, 24-25;US Reporter 1658, 1661, the US Supreme Court, per Black J, had this to say:

\"It is contended that the pleadings present no case or controversy under Article III, 2 of the Constitution. The contention rests in the first place on an argument that there is no case or controversy in a legal sense, but only a difference of opinion between Federal and State officials. It is true that there is a difference of opinion between Federal and State officers. But there is far more than that. The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of Federal and State officials as to which Government, State or Federal, has a superior right to take or authorise the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be taken by or under authority of the State. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action. The case principally relied upon by California, United States v. State of West Virginia, 295, U.S. 463 55SC 789, 79 L.Ed. 1546, does not support its contention. For here, there is a claim by the United States, admitted by California, that California invaded the title or paramount right asserted by the United States to large area of land and that California has converted to its own, oil which was extracted from that land. United States v. State of West Virginia, supra, 295, U.S. at page 471, 55 SC at page 792, 79 L.Ed. 1546. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under Article III. The justifiability of this controversy rests therefore on conflicting claims of alleged invasions of interest in property and on conflicting claims of governmental powers to authorise its use.\"

Here, the Federal Government contends that natural resources derivable from Nigeria's territorial water, continental shelf and exclusive economic zone are not derivable from any littoral State. The littoral States contend to the contrary; they claim those areas as part of their respective territories.

Can it still reasonably be suggested that there is no concrete dispute between the parties as to entitle either side to invoke the original jurisdiction of this Court in section 232(1) of the 1999 Constitution to resolve same' I rather think not.

The Court had earlier ordered that parties willing to adduce evidence should do so by filling affidavit evidence. Only the 3rd, 8th, 9th, 10th, 24th and 32nd Defendants did so; the others did not. Nor the plaintiff either.

The parties (except, again, some of the Defendants) filed and exchanged their briefs of arguments as well. At the hearing of the case, learned counsel proffered oral submission. The defendants, who, however, failed to file briefs were not heard in oral arguments.

Plaintiff\'s Claim

The simple question that arises in this case is: what is the southern (or seaward) boundary of each of the eight littoral Defendant States of Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Undo and Rivers ' The answer to the question is not, however, as simple. One would need to wade through past constitutions, statutes and statutory instruments, evidence, common law and international law to come to an answer. To get a clear picture, I will start by giving a brief political history of the Federal Republic of Nigeria.

Political History of Nigeria

There is evidence before us in the affidavit evidence of Professor Ayodeji Oladimeji Olakoju, His Royal Highness Oba Adeyinka Oyekan of Lagos (both filed by the 24th Defendant, Lagos State) and His Royal Highness Edidem (Professor) Nta Elijah Henshaw VI, Obong of Calabar (filed by the 9th Defendant, Cross River State), from which a brief political history of Nigeria can be traced.

Until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria (Nigeria, for short), there existed at various times various sovereign states known as emirates, kingdoms and empires made up of ethnic groups in Nigeria. Each was independent of the other with its mode of government indigenous to it. At one time or another, these sovereign states were either making wars with each other or making alliances, on equal terms. This position existed throughout the land now known as Nigeria. In the Niger Delta area, for instance there were the Okrikas, the Ijaws, the Kalabaris, the Efiks, the Ibibios, the Urhobos, the Itsekiris, etc. Indeed certain of these communities (e.g. Calabar) asserted exclusive rights over the narrow waters in their area. And because of the terrain of their area, they made use of the rivers and the sea for their economic advancement in fishing and trade -and in making wars too! The rivers and the sea were their only means of transportation. Trade then was not only among themselves but with foreign nations particularly the European nations who sailed to their shores for palm oil, kernel and slaves.

The area now known as Lagos was an amalgam of several communities, such as Aworis and Eguns, to mention a few. All the coastal communities took advantage of the sea and the network of rivers and lagoons as their means of transportation in traveling far and wide along the coastline on trading expeditions, fishing and waging wars.

The British colonial rule commenced with the cession of Lagos to the British monarch in 1861. By the Treaty of Cession entered into on 6th August 1861, King Dosumu (otherwise spelt Docemo) of Lagos and his chiefs ceded to the British Crown the Port and Island of Lagos. For the full text of the treaty, see The Attorney-General v. John Holt & Co. & Ors. and The Attorney General v. W .B. McIver & Co. & Ors. 2NLR at pp.4-5

At about the same time some British firms had established trading ports around the Niger and subsequently extended their operations from the middle of the Niger valley into what is now known as Northern Nigeria. The companies later merged and formed a company known as the Royal Nigeria Company which was granted a charter by the British

Monarch not only to trade but also to administer the area from the middle of the Niger valley to present day Northern Nigeria. On the revocation of the charter of the Royal Niger Company on 31 December 1899, the area under its sphere of administration was renamed Protectorate of Northern Nigeria.

With effect from 1st January 1900, also, the remaining part of the present day Nigeria that did not form part of the Protectorate of Northern Nigeria was added to the Niger Cost Protectorate which had earlier been established for the communities of the Niger Delta, to form the Protectorate of Southern Nigeria. It was the British colonial rule that provided the central authority that bound together all the erstwhile separate states, emirates, empires and kingdoms that were dotted all over the land now known as Nigeria.

The case of the Attorney -General v. John Holt &Co. & Ors. (supra) shows that the political history of Lagos was more chequered. By commission under the Great Seal dated 13th March 1862, the ceded territories were formed into a separate Government with a Legislative and Executive Council under the title of the Settlement of Lagos. This arrangement lasted but only a short time, for by another Commission dated the 19th day of February 1866, Lagos became part of the Government of the West African Settlements, with a separate Legislative Council but subject to the Governor-General-in-Chief at Sierra Leone. By 24th July 1874 the Gold Coast and Lagos were separated from the other settlements and constituted into one Colony known as the Gold Coast Colony. On 13th January 1886, by Letters Patent, Lagos became a separate Colony. Twenty years later, by Letters Patent dated 28th February 1906, the Colony of Lagos, on 1st May 1906, was merged with the Protectorate of Southern Nigeria to form the Colony and Protectorate of Southern Nigeria.

And on 1st January 1914, the Protectorate of Northern Nigeria was merged with the Colony and Protectorate of Southern Nigeria to form the Colony and Protectorate of Nigeria. Thus emerged the country Nigeria which gained independence from British Colonial rule on 1st October 1960 and is today known as the Federal Republic of Nigeria.

Boundaries

It is interesting to know the boundaries of the country the British created in 1914. By The Nigeria Protectorate Order in Council, 1913 made at the Court at Windsor Castle on 22nd November 1913 but to take effect on 1st January 1914, the boundaries of the new country were defined. The boundaries of the Protectorate of Nigeria were again reaffirmed in The Nigeria Protectorate Order in Council 1922 made on 21st November 1922 at the Court at Buckingham Palace. See Laws of Nigeria 1923. Vol.4 at page 355 et seq. In section II of the said Order in Council, the Protectorate of Nigeria was defined as \"the territories of Africa which are bounded on the South by the Atlantic Ocean, on the west, north and north-east by the line of the frontier between the British and French territories and on the east by the territories known as the Cameroons\".

By another order in Council - the Colony of Nigeria (Boundaries) Order in Council, 1913 made the 22nd November 1913 the boundaries of the Colony of Nigeria (that is, Lagos) were also described with the Bight of Benin as the southern boundary. See also The Lagos Local Government (Delimitation of the Town and Division into wards) Order in Council 1950 No. 34 of 1950 which put the southern boundary of Lagos as \"The sea\". That remains the boundaries of Nigeria, and of Lagos, to this date. The Southern boundary of Nigeria is the Atlantic Ocean, that is, the sea. The Bight of Benin is a long inward curve on the Coast of the Atlantic Ocean.

By further constitutional changes - see: Nigeria (Constitution) Order in Council, No.1172 of 1951 - Nigeria was divided into Northern, Western (including Lagos) and Eastern Regions. By L.N 126 of 1954 titled The Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954 , made pursuant to section 5(2)(a) of the said Nigeria (Constitution) Order in Council 1951, the boundaries of the three Regions to which the Country had been divided, were given in one proclamation. The boundaries of Western and Eastern Regions were described in the Second and Third Schedules respectively, to the said Proclamation. Of relevance to this case are the southern boundaries of these two Regions which are given in each case as \"The Sea\", which is the Atlantic Ocean.

Nigeria remained divided into three Regions up to and after independence in October 1960. In 1964, however, a fourth

Region - the Mid-West Region was carved out of the Western Region. In May 1967, the Federal Military Government scrapped the regional arrangement and divided the country into twelve states. By 1996, a 36 States structure had emerged in the country. All the eight littoral Defendant States were carved out of the old Western, Mid-West and Eastern Regions and constitute the coastal areas of those Regions. It goes without saying that the southern boundaries of all these littoral Defendant States must be the Southern boundaries of the Western and Eastern Regions as defined in LN 126 of 1954, that is, \"The Sea\". And this is coterminous with the Southern boundary of Nigeria as defined in Section 11 of The Nigeria Protectorate Order in Council l922 and of Lagos as defined in The Colony of Nigeria (Boundaries) Order in Council, 1913.

This conclusion would have provided the answer to the simple question that calls for determination in this action. But the conclusion raises yet another question: what is the boundary mark between Western, Mid-West and Eastern regions (and indeed Nigeria for that matter) on the one hand and the sea, on the other '

The Orders-in-Council and Proclamations are silent on this. And this is the next question I now have to resolve in this judgment. One thing, however, is clear. If the boundary is with the sea, then by logical reasoning, the sea cannot be part of the territory of any of the old Regions. For this reason, therefore, I have no hesitation in rejecting the contentions of the eight littoral Defendant States that their boundaries extend to the exclusive economic zone or the continental shelf of Nigeria. The position of the territorial waters of Nigeria, the continental shelf and the exclusive economic zone shall be considered later in this judgment.

Coming back to the new question posed by me in the paragraph above I must observe that the Plaintiff led no evidence in this case. Some of the Defendants have argued that Plaintiffs case ought to be dismissed on this ground alone. But Chief Williams, SAN learned leading counsel for the Plaintiff has submitted that the issue before the Court is one of law that needs no evidence to resolve. He referred to the Court\'s earlier ruling on the preliminary objections of some of the Defendants and pointed out that the Court had then observed that the action was about the interpretation of the Constitution. In learned Senior Advocate\'s view the Plaintiff does not need any evidence to interpret the Constitution and prove his case. He cited in support of his submission the English case of Pioneer Plastics Contractors Ltd. v. Commissioners of Customs & Excise (1967) Ch 597.

I think Chief Williams is right as the new question now under consideration can be resolved as a matter of Law. Both Messrs Akpamgbo, SAN and Okpoko, SAN learned counsel for the 1st and 6th Defendants respectively made oral submissions to the same effect. In my humble view, and as I shall presently show, the seaward boundary of a littoral State as we are called upon to determine in this case, is a matter of law. What becomes factual, and on which evidence will be required to prove, is the actual location of that boundary. The latter situation is not the issue before us. If, however, a Defendant State claims territory beyond the boundary as determined by law, such a Defendant will need to adduce evidence, such as Crown grant, to establish her case. That plaintiff has not adduced affidavit evidence in this case is not fatal to Plaintiffs case. See: Pioneer Plastic Containers Ltd. v. Commissioners of Customs and Excise (supra) where the Court in England (Chancery Division) held, rightly in my view, that where there are no issues of fact on the pleadings, no evidence need be adduced.

What then is the position in law, as Chief Williams relies on law' As I have found earlier in this judgment, the southern boundaries of the littoral States of Nigeria are the sea. This makes them riparian owners. And as riparian owners the seaward extent of their land territory, at common law, is the low-water mark or the seaward limit of their internal waters. This is so, because at common law, the sea shore or foreshore (both mean the same thing) belongs to the Crown. See:

Hales: DeJure Maria (Hargrave\'s Tracts. pp 12,25 &26) where it is written:

\"The shore is that ground that is between the ordinary high-water and low-water mark. Thus both prima facie and of common right belong to the King, both in the shore of the sea, and the shore of the arms of the sea.\"

The learned author of Halsbury's Laws of England 4th Edition has this to say in Vol.4(l) paragraph 921:

\"Seashore or foreshore ... The boundary line between the seashore and the adjoining land is in the absence of usage or evidence to the contrary, the line of the median high tide between the ordinary spring and ebb tides.\"

Again, in Vol.49(2), paragraph 1, the learned author explains further:

\"I. Meaning of \'high seas\' and \'territorial waters\'. At common law, \'high seas\' includes the whole of the sea below low-water mark where great ships can go, except for such parts of the sea as are within the body of a county, for the realm of England only extends to the low-water mark, and all beyond is the high seas. In international law 'high seas' means all parts of the sea not included in the territorial sea and internal waters of any state.\"

Writing in Volume 18, paragraph 1453, the learned author defines the land territory of a State as consisting of the land within its boundaries, including islands. This is \"within the exclusive jurisdiction of the territorial State.\" In paragraph 1454, he has the following on the internal waters of a territorial State:

\"1454. Internal waters. Internal or national waters are those areas of water, including parts of the sea, which are under the full sovereignty of the territorial state. They include inland waters, ports, anchorages and roadsteads, bays, gulfs and estuaries, sea separated by islands and all sea area which are to the landward side of the baselines from which the territorial sea is delimited. Internal waters differ from territorial waters in that there exists in territorial waters but not in internal waters, a right of innocent passage for foreign vessels. Foreign warships require permission to enter internal waters, and merchant vessels enter on conditions determined by the territorial state.\"

Now, at international law the baseline for measuring the breadth of the territorial sea is the low water mark along the coast. See Article 3 of the Geneva Convention on the Territorial Sea and Contiguous Zone. 1958 (binding on Nigeria) which provides.

\"Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast as marked on large-scale charts officially recognized by the coastal state.\"

See now Article 5 of the United Nations Convention on the Law of the Sea, 1982.

In R v. Keyn (1876) 2 Ex.D 63 at p.67 Sir Phillimore declared:

\"The county extends to low-water mark, where the \"high seas\" begin: between high and low-water mark, the Courts of oyer and terminer had jurisdiction when the tide was out, the Court of the admiral when the tide was in.

There appears to he no sufficient authority for saying that the high sea was ever considered to be within the realms, and, notwithstanding what is said by Hale in his treatises De Jure Maris and Pleas of the Crown, there is a total absence of precedents since the reign of Edward III, if indeed any existed then, to support the doctrine that the realm of England extends beyond the limits of counties.\"

See also: The Mecca (1895) P 95 at p.107 per Lindley L.J applied in R v. Liverpool Justices, ex-parte Molyneux(1972) 2 QB384; (1972) 2 All E.R. 471; Att. Gen of Southern Nigeria V. John Holts & Co. (Liverpool) Ltd. &Ors. (1915) AC 599 (PC): 2 NLR 1 (Full Court).

Chief Williams has referred us to a number of cases decided in other common law jurisdictions and has urged us to apply the principles enunciated in those cases to the present case. These cases are: US v. Louisiana L.Ed 1025; (USA), Reference Re Ownership of Offshore Mineral Rights, (1968) 65 DLR 2nd, 354 (Canada); New South Wales & Ors v. Commonwealth (1975-6) 8 LR I (Australia). The Littoral Defendant States, however, urged us not to follow those cases as, according to them, the facts and circumstances in those cases.

I have read all these cases. True enough, the facts and circumstances may not be the same. But the principles of the common law and international law pronounced in those cases are applicable equally here. I have already discussed the common law principles and their application to this case. I shall later in this judgment discuss in depth the international law relating to the matter on hand.

Thus, at common law, the boundary-mark between a riparian owner, such as the littoral states are in this case, and the sea is the low-water mark. See: Bonze v. LA Mackie (1969-70) 122 CLR 177; Reference ownership of offshore Minerals Rights (supra); New south Wales & Frs. Commonwealth (supra), (1975)-76) 135 CLR 337; United States v. Louisiana (supra); 332 US 19;67 US Reporter 1658; RV. Kin (1876) 2 Ex D63 at p.67.

But some of the Defendants, particularly the 9th Defendant has submitted that the common law is not applicable. With profound respect to learned counsel, I cannot accept this submission. Common law has been received law in this country since I863 when it was applied to Lagos and 1914 when by the Supreme Court Ordinance of that year it was

applied to the Colony and Protectorate of Nigeria. In Charlie King Amachree v. Daniel Kalio, 2 NLRL 108; John Holt\'s Case (supra) and Chief Braide v. Chief Adoki, l0 NLR 15, to mention a few, common law was applied to resolve the issues arising in those cases. I do not think I need say more on this except to point out that the successor to the British Crown is the Government of the Federation of Nigeria.

I think this is a convenient stage to consider the peculiar position of the 9th Defendant. It has been shown by affidavit evidence and annexures thereto that the Cross River State has a number of islands dotted on its internal waters and the sea. Her southern boundary, in the circumstance, will be the seaward limit of her internal waters.

With the conclusion I reach in the paragraph above I would have said I am done with Plaintiffs case. But that is not yet to be. For the Littoral Defendant States, in reliance on some sections of the Constitution and the past history of revenue allocation in the country, appear to be saying that the Constitution supports their standpoint and that the Plaintiff had before admitted their ownership of the land and sea beyond the low-water mark. How correct are these contentions'

Both in their written Briefs and in oral submissions, the Littoral Defendant States argue that by sections 2(2). 3(1) & (2) and First Schedule to the Constitution, Nigeria consists of the aggregate of the territories of all the 36 States of the Federation and the Federal Capital Territory and that, constitutionally, therefore, Nigeria cannot have any other territory outside this aggregate. It is argued that if the Plaintiff's contention is right it would mean that Nigeria's territory exceeds the constitutional limit set out in the constitution. It is then submitted that it is the acceptance of their argument that these areas of the sea belong to the literal State that will make the territory of Nigeria accord with the constitution.

Chief Williams, in reply, contends that the seaward limit of Nigeria is the low water mark but Nigeria in its sovereignty and by the custom of the international community exercise jurisdiction beyond that limit.

I think Chief Williams is right. I have shown earlier in this judgment that the Imperial Power that created the country Nigeria put as her southern boundary, the Sea - the Atlantic Ocean. I have also found that where the sea is a boundary, the boundary-mark is the low-water mark. The low-water mark, therefore, forms the boundary of the land territory of, not only the eight littoral States of Nigeria, but of Nigeria as well.

One may then ask the question: what gives validity to such legislation as the Territorial Waters Act. Cap. 428, Exclusive Economic Zone Act, Cap 110 and Sea Fisheries Act, Cap. 404, Laws of the Federation of Nigeria 1990' Chief Williams has submitted that each of these enactments was validly made by the Federal Legislature \"pursuant to its power to make laws for the Federal Republic of Nigeria with respect to external affairs.\"

Again, there is force in the submission of learned Senior Advocate. Nigeria as a sovereign state is a member of the international community. The littoral Defendant State not being sovereign, are not, either individually or collectively. In exercise of its sovereignty, Nigeria from time to time enters into treaties - both bilateral and multilateral. The conduct of external affairs is on the exclusive legislative list. The power to conduct such affairs is, therefore, in the Government of the Federation to the exclusion of any other political component unit in the Federation.

Another truism we must accept is that Nigeria is a coastal or maritime nation - its southern boundary is the Atlantic Ocean. While it is recognised in customary international law that the sea is res nullius and it is, therefore, available for the enjoyment of all nations of the world, land-locked nations inclusive, it has come to be accepted that by the vulnerability of their proximity to the sea, maritime nations are entitled to some privileges not available to others to protect their security. Down the ages, nations entered into bilateral agreements for the control of the use of the sea. Momentum towards this end gathered in the I8th and 19th centuries. The notion of territorial waters whereby sovereignty is given to a maritime nation over a breadth of the sea adjacent to her coast, developed. An example of this is the bilateral treaty between the United States and Great Britain made in Washington on January 23, 1924, Article I of which reads:

\"The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters.\"

Contrary to the submission of learned Attorney-General of Cross-River State (9th Defendant), the Territorial Jurisdiction Act 1879 was enacted in the United Kingdom not with a view to overruling, by legislation, the court's decision in R v. Keyn (supra), but to give effect to the growing notion of territorial waters and the exercise of criminal jurisdiction within them.

The rules of international law that have evolved over the centuries are now crystalised in the Geneva Convention on the Territorial sea and the Contiguous Zone, 1958, Geneva Convention on the High Seas, 1958, among others. All the 1958 Geneva Conventions relating, to the sea are now supersede by the 1982 United Nations Convention on the Law of the Sea.

The Geneva Conventions provide for limits of the territorial sea, the right of innocent passage through the territorial sea and the use of the high seas. Articles 1 and 2 of the Territorial Sea and the Contiguous Zone, 1958 are relevant to the case on hand and I therefore quote them hereunder:

Article 1

1. The sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these articles as and other rules of international law.

Article 2

The sovereignty of the coastal state extends to the air space over the territorial sea as well as to its bed and subsoil.\"

The area of the sea beyond the territorial water is know in international law as the high seas. While the convention on the Territorial Sea and the Contiguous Zone confer sovereignty on a coastal state over the territorial sea, convention on the High seas denies sovereignty to such a nation. Articles 1 and 2 of the latter convention provide:

Article 1

The term \'high seas\' means all parts of the sea that are not included in the territorial sea or in the internal waters of the state.

Article 2

The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these article and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal states:

1. Freedom of navigation;
2. Freedom of fishing;
3. Freedom to lay submarine cables and pipelines;
4. Freedom to fly over the high seas.

These freedoms, and other which are recognised by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.\"

(italics are mine)

The exception to this rule, however, is the control given a coastal State in respect of an area of the high seas contiguous to the territorial sea, for article 24 of the Convention on the Territorial Sea and the Contiguous Zone provides:

\"Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two states is measured.\"

The Convention on the High Seas further debunks the claims of the littoral defendant states in this case to ownership of the land and sea far beyond the territorial sea. The convention on the territorial sea and the contiguous zone grants only limited sovereignty to coastal states over their territorial seas. It is unlike the sovereignty such state have over their land territory. That being so, therefore, the claim by the plaintiff of sovereignty over the territorial sea of Nigeria and the exclusive economic zones does not extend the land territory of Nigeria beyond what is provided for in section 2 and 3 of the constitution. Nigeria on attainment of independence, ratified these convention and pursuant to its legislative powers under section 74 of the 1963 Constitution, the Federal Military Government enacted the Territorial Waters Act (Cap 428) and the Sea Fisheries Act (Cap 404) to give effect to the convention on the territorial sea and the contiguous zone.

By the 1958 Convention the breadth of the territorial sea is a maximum of 3 miles. This has now been extended to 12 nautical miles by article 3 of the 1982 United Nations convention on the Law of the Sea which superceded the Geneva Conventions of 1958. Article 33 extends the breadth of the contiguous zone from 12 miles to 24 nautical miles.

The 1982 United Nations Convention on the Law of the Sea is a comprehensive treaty on the sea. It supersedes the 1958 conventions. The new conventions covers a number of subjects relating to the sea which are usually found in a number of separate conventions and deals with such subjects as the territorial sea and the contiguous zone, straits used for International navigation, archipelagic states, exclusive economic zone, continental shelf, high seas and the rights of nations thereto (including the right to fish on the high seas), regime of islands, enclosed or semi-enclosed seas, right of access of land-locked states to and from the sea and freedom of transit in the area, protection and preservation of the marine environment, marine scientific research, development and transfer of marine technology and, finally, settlement of disputes.

The Exclusive Economic Zone is defined in Article 55 of the 1982 Convention as meaning

\"' an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the coastal state and the rights and freedoms of other state are governed by the relevant provisions of this convention.\"

And by Article 57, the zone \"shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.\" The exclusive Economic Zone Act (Cap 116) was enacted in 1978 to give effect to the treaty that preceded the 1982 convention on the subject and in compliance with the provisions of Section 74 of the 1963 Constitution which provided:

\"74. Parliament may make laws for Nigeria or any part thereof with respect to matters not included in the legislative lists for the purpose of implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of an international organisation of which the Federation is a member.\"

The proviso is unnecessary for our purpose.

The sum total of all I have been saying above is that none of the Territorial Waters Act, Sea Fisheries Act and Exclusive Economic Zone Act has extended the land territory of Nigeria beyond its constitutional limit, although the Acts give municipal effect to international treaties entered into by Nigeria by virtue of its membership, as a sovereign state, of the Comity of Nations. These treaties confer sovereignty and other rights on Nigeria over certain areas of the sea (the Atlantic Ocean) adjacent to her coastline. As Marwick , CJ put it in New South Wales & Ors, v. The Commonwealth (1975-76)135 CLR 337 at P. 363.

\"The international concession was not that the territory of the nation, in a proprietary or physical sense, was enlarged to include the area of water in the territorial sea or the area of subjacent soil. Indeed, the very description \'territorial waters\' emphasises, in my opinion that they are waters which wash the shores of the territory of the nation state, otherwise regarded as ending at the margin of the land.\"

To the extent that the Littoral Defendant States seek, by affidavit evidence, to prove that these areas of the Sea belonged in the past to communities indigenous to these states, I hold that such evidence is nebulous. It falls for short of the nature and quality of the evidence required in a case like this where the claim of the indigenous community to ownership of the sea runs against the grain of statutory instruments (Orders in Council) and the common law and international law too. It is not the case of the Littoral Defendant States that, like the original American States, the Crown made a grant of the offshore to them or their predecessors in title (that is, the Eastern and Western Regions of Nigeria or the Colony and Protectorate of Southern Nigeria). The mere fact that oil rigs and/or wells located in the offshore areas bear names of indigenous communities on the coastline adjacent to such offshore areas is of no moment in proving

ownership to such offshore areas. Such naming, as well as provisions in the various acts for registration, etc, to be in the states adjacent to these areas, is only an internal administrative arrangement made by the plaintiff.

Before I move on I need to correct a misconception that appears in the argument of some of the defendants. It is not correct, in my respectful view, that the plaintiff is claming for himself the revenue on natural resources derivable otherwise than from a State. The principle of derivation does not apply to the Government of the Federation, rather, what the plaintiff appears to be saying is that whatever remains in the Federation Account after the application of the principle of derivation, is for distribution among the beneficiaries listed in subsection (3) of Section 162 and in accordance with the formula approved by the National Assembly.

I now turn attention to the purported recognition, by the plaintiff, of the ownership of the Littoral Defendant State to the area of the sea popularly known as the offshore. The said Defendant State rely on the revenue allocation provision and decrees, particularly Allocation of Revenue (Federation Account, etc) (Amendment) Decree 1992, No 106 of 1992 which (hereinafter is referred to as Decree 106 of 1992) amended the Allocation of Revenue (Federation Account, etc.) Act, Cap 16 Laws of the Federation of Nigeria 1990 and which expressly provided that

\" ' in the application of this provision, the dichotomy of onshore and off-shore oil production and mineral oil revenue is hereby abolished.\"

All the littoral Defendant State harp on this provision to assail plaintiff's claim which they see as a reintroduction of the dichotomy.

With the introduction of federalism in Nigeria, our constitution made provision for revenue allocation among the component units of the Federation. For instance, in the 1960 Constitution that ushered in independence, elaborate provisions were made in Section 130-139 for revenue allocation. Of particular importance to this case is section 134 which reads:

\"134. (1) There shall be paid by the Federation to each region a sum equal to fifty per cent of-

(a) the proceeds of any royalty received by the Federation in respect of minerals extracted in that region; and

(b) any mining rents derived by the Federation during that year from within that region.

(2) The Federation shall credit to the distributable pool account a sum equal to thirty per cent of

(a) the proceeds of any royally received by the Federation in respect of minerals extracted in any region; and

(b) any mining rent derived by the Federation from within any region.

(3) For the purposes of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or those receipts have been deducted therefore or allowed for.

(4) Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.

(5) In this section minerals includes mineral oil.

(6) For the purposes of this section the continental shelf of a region shall be deemed to be part of that region.\"

(italics are mine)

Except for the percentage payable, sub section (1) appeared to be on all fours with the proviso to sub-section (2) of section 162 of the 1999 Constitution for both are based on the principle of derivation. There is, however, no provision in section 162 or anywhere else in the 1999 Constitution similar to sub-section (6) which made it possible for revenue derived from the continental shelf contiguous to a region to be payable to that region. But the sub-section did not make the continental shelf part of the region but only deemed it to be part of the region solely for the purpose of the section. Had there not been the insertion of sub-section (6), revenue derived from mining operations in the continental shelf would not have been payable at that time to the Region contiguous to the shelf. It is the absence in the 1999 Constitution of a provision similar to sub-section (6) of section 134 of the 1960 Constitution, that has given rise to the dispute resulting in this case. I do not, however, see section 134 (6) as estopping the plaintiff from contending that the continental shelf is not part of the territory of a state contiguous to it.

There was in 1963 Constitution a provision, verbissima verbis with section 134; it was section 140. This section also contained sub-section (6) which allowed for the revenue derived from mining operations in the continental shelf to be paid to the region contiguous to it. Thus there was no change in the system of revenue allocation in the country between independence and the emergence of military rule in 1966.

Perhaps I may at this stage chip in a word or two on the continental shelf. Part. VI of the 1982 U.N. convention on the Law of the Sea deals with the Continental Shelf. Article 76 of the Convention defines a continental shelf thus:

\"I. The continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territory sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.\"

To fully understand the rights a coastal state has over its continental shelf and the limits of those rights, it is necessary to set out Article 77 and 78 of the convention which read:

\"Article 77

Rights of the coastal state over the continental shelf

1. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal state does not exploit its natural resources, no one may undertake these activities without the express consent of the coastal state.

3. The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 78

Legal status of the superjacent waters and air space and the rights and freedoms of other states.

1. The rights of the coastal state over the continental shelf do not affect the legal status of the superjacent waters or of

the air space above those waters.

2. The exercise of the rights of the coastal state over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedom of other states as provided for in this convention\".

(italics are mine)

It can be seen from above that though a coastal state exercises certain sovereign rights over its Continental Shelf, that does not make the shelf part of her land territory over which she has absolute and exclusive control; her sovereign right over the continental shelf is of a limited kind only.

January 15, 1966 saw the end of constitutional government and the emergence of military rule. The constitutional provisions relating to revenue allocation as respects minerals moved from 1971 forward and backward through some decrees until we had the 1979 Constitution, section 149 of which made no provision for allocation of revenue based on derivation as in the Constitutions before it. The National Assembly, pursuant to section 149(2) of the said 1979 constitution, enacted the Allocation of Revenue (Federation Account, etc.) Act (hereinafter is referred to as Cap. 16). It is this Act that the Military Government amended in 1922 by Decree 106 of 1992. By the amendment, one per cent of the revenue accruing to the Federation Account derived from minerals was to be shared among the mineral producing States in proportion to the amount of minerals produced from each state, whether on-shore or off-share. It is Cap 16 (as amended by Decree 106 of 1992) that provided the formula in use for revenue allocation before the coming into force of the 1999 Constitution in May 1999. There is clear difference in the wording of section 149 (2) of the 1979 Constitution and section 162 (2) of the 1999 Constitution. While section 149 (2) of the 1979 Constitution made no provision for derivation principle in respect of revenue allocation as it related to revenue accruing from mineral operations, section 162(2) of the 1999 Constitution makes provision for sharing of revenue accruing from natural resources on derivation basis. For ease of reference I set here below the said provisions:

\"149(2) Any amount standing to the credit of the Federation Account shall be distributed among the federal and state governments, and the local government councils in each state, on such terms and in such manner as may be prescribed by the National Assembly.\"

\"162(2) The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density;

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.\"

Another provision which I need set out here is section 4A of Cap. 16 (as amended by Decree No. 106 of 1992). It reads:

\"4A-(I) An amount equivalent to one per cent of the Federation Account shall be allocated to the Federal Capital Territory.

(2) An amount equivalent to 3 per cent of the Federation Account derived from mineral revenue shall be paid into a fund to be administered by the Oil Minerals Producing Area Development Commission established by the Oil Mineral Producing Areas Development Commission Decree 1992 for the development of the mineral producing areas, in accordance with such directives as may be issued in that behalf, from time to time by the National Assembly, and the fund shall be distributed among the areas on the basis of need, subject to section 2 of the Oil Mineral Producing Areas Development Commission Decree.

(3) For the purpose of subsection (2) of this section, and for the avoidance of any doubt, the distinction hitherto made between on-shore and off-shore oil mineral revenue for the purpose of revenue sharing and the administration of the fund for the development of oil mineral producing areas, is hereby abolished.

(4) An amount equivalent to 2 per cent of the Federation Account shall be paid into a fund to be administered by an Agency to be set up for that purpose of the amelioration of general ecological problems in any part of Nigeria, in accordance with directives as may be issued from time to time by the National Assembly.

(5) An amount equivalent of 0.5 per cent of the Federation Account shall be allocated and paid into a fund to be designated 'Stabilisation Fund' which shall be administered by the Minister for Finance, the residue arising out of using minerals revenue, instead of the Federation Account as the base for allocation to the Fund for the development of the mineral producing areas shall be added to this Fund.

(6) An amount equivalent to 1 per cent of the Federation Account derived from mineral revenue shall be shared among the mineral producing states based on the amount of mineral produced from each state and in the application of is provision, the dichotomy of on-shore and off-shore oil producing and mineral oil and non-mineral oil revenue is hereby abolished.

(7) For the purpose of this Decree, and for the avoidance any doubt, where any state of the Federation suffers absolute decline in its revenue arising from factors outside its control, as a result of the implementation of this decree, Stabilisation Fund shall be used to initially augment allocation of the State, in accordance with acceptable threshold, to be worked out by the National Revenue Mobilisation Allocation and Fiscal Commission, at which recourse can be had to the fund and for how long.\"

The National Assembly has not enacted any law relating to revenue allocation as it is empowered to do by section 162(2) of the Constitution. In order not to create a vacuum, the Constitution in section 313 provides:

\"313. Pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and the States, among the States, between the States and Local Government Councils and among the Local Government Councils in the states, the system of revenue allocation in existence for the financial year beginning from 1st January 1998 and ending on 31st December 1998 shall, subject to the provisions of this Constitution and as from the date when this section comes into force, continue to apply.\"

The proviso to the section is unnecessary for our purpose; it is, therefore omitted here. By this provision, Cap 16 (as amended by Decree No. l06 of 1992) is to continue to be used in so far as it is not inconsistent with the provisions of the constitution.

Chief Williams has argued thus:

\"In the result, until the authorities responsible are able to produce the formula envisaged under Section 162 of the 1999 Constitution the provisions enacted in the Allocation of Revenue (Federation Account etc) Act, Cap. 16 will continue to apply. It is to be observed that this will be so even where the provisions of Cap. 16 are inconsistent with the provisions of Section 162. In short, Cap. 16 does not operate as an \'existing law\' under the provisions of Section 315 but rather by force of the transitional provisions of Section 313 cited above.

It only remains to be noted in this connection that the provision abolishing \'on-shore and off-shore oil production\' dichotomy enacted in Section 4A(6) of Cap. 16 as amended by Decree 106 of 1992 is, as explained herein, in force, not as an existing but as a temporary enactment pending the coming into force for the Revenue Allocation Formula under Section 162.\"

With profound respect to learned Senior Advocate, I cannot agree that Cap. 16 does not operate as existing law or that it applies as it is notwithstanding any inconsistency between it and the Constitution. The correct position, in my respectful view, is that Cap. 16 (as amended by Decree 106 of 1992) provides the formula to be used for the purpose of revenue allocation pending the time the National Assembly comes out with a new formula as directed by the Constitution. Cap 16 is however, only applicable in so far as it is not inconsistent with the provision of the 1999 Constitution. And where there is any inconsistency, the Act gives way. Cap 16 is, of course, an existing law as it answers neatly to the definition of that expression in section 315(4)(b) which provides:

\"(4) In this section, the following expressions have the meanings assigned to them respectively:

(b) \'existing law\' means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when the section comes into force or which having been passed or made before that date comes into force after that date.\"

Given the zig-zag history of revenue allocation vis-a-vis the derivation principle since, at least, 1960 to date, it cannot be said that the plaintiff at any time admitted that the area of the sea beyond the low-water mark belonged to the coastal regions or states contiguous to it. With this conclusion, I hold, and determine, that the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that state pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 is the low-water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the state. And this shall be my judgment it respect of plaintiff's case.

(Italics supplied by the Editor)

The Counter-Claims

Having resolved the plaintiff's claim I now turn to a consideration of the counter-claims of the 3rd, 6th, 8th, 9th, 10th, 15th, 17th, 24th, 28th, 32nd and 33rd Defendants states. The 20th and 27th Defendants who also counter-claimed had, in the course of the proceedings, withdrawn their counterclaims. The counterclaims of the 20th and 27th Defendants, having been withdrawn, are hereby struck out.

The 15th Defendant in his statement of defence claims:

\" whereupon the 15th defendant prays this honourable court to determine that by the provision of section 162(2) of the Constitution of the Federal Republic of Nigeria, all the 36 States in the country are entitled to 13% of revenue accruing directly to the Federation\'s (sic) account from any natural resources."

The 17th Defendant in his own statement of defence, in paragraph 10 thereof claims.

\"10. WHEREOF the 17th defendant claims determination of this Honourable Court that:-

(a) The natural resources derived from any part of Nigeria are deemed to be derived from Nigeria and not from an particular area where the resources may be physically located.

(b) The Federal Republic of Nigeria is a state and not a section thereof when interpreting the economic agenda prescribed by the Constitution.

(c) That be section 162(2), all states represented by the defendants in this suit are equally entitled to at least 13% of the revenue accruing to the Federation Account directly from any natural resources.

(d) That the rule of not less than thirteen percent enshrined in the constitution under section 162(2) shall be applied based on principle of equality and justice to embrace all the states forming the Federation.\"

Both Defendants each failed to file a written brief and, therefore, advanced no arguments in favour of their claims, in the circumstance I strike out the counter-claims of each of the two Defendants. In any event, both counterclaims are unsustainable having regard to the interpretation I have already placed on section 162(2) of the Constitution.

I shall deal with the remaining counter-claims separately, but before doing so, I like to discuss generally some issues common to them all. Chief Williams SAN, for the Plaintiff has urged as to strike out all the counter-claims in that necessary parties are not joined in each counter-claim. Learned Senior Advocate refers us to Order 5 rule 2 of the Federal High Court (Civil Procedure) Rules, 2000 which provides:

\"2-(1) Subject to sub-rule (2) of this rule, a defendant in any action who alleged that he has any claim or is entitled to any relief or remedy against plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counter-claim in respect of that matter; and where he docs so he shall add the counter-claim to his defence.

(2) Sub-rule 1 of this rule shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were a plaintiff and the person against whom it is made, a defendant.

(3) A Counter-claim may be proceeded with notwithstanding that judgement is given for the plaintiff in his action, or that the action is stayed, discontinued or dismissed.\"

and submits that only counter-claiming Defendant and the plaintiff are parties the counter-claim. He argued further in his brief, thus:

\"No one else is a party to the counter-claim even if that person is a defendant to the substantive action. The rules of the Federal High Court make provision for joining strangers to the action or existing of co-defendants as parties to the counter-claim. It will be submitted hereafter that this being so, counter-claiming Defendant can only counter-claim in respect a relief which affects him alone. He cannot counter-claim where the relief claimed is one which so affect or is so likely to affect the interest of other parties, that the Court ought not to entertain the claim for that relief behind the back of other persons who are not joined as parties to the action.

It is to be observed that sub-rule (2) of Order 5 rule 3 stipulates as follows:

(2) If it appears on the application of any party against whom a counter-claim is made, that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may he expedient.

The plaintiff respectful submits that where this court is satisfied that any counter-claim is not duly constituted for the purpose of trying the relief claimed, it ought to strike it out or direct that the counter-claim be tried separately so that all roper parties can he joined for the purpose of trial. The Plaintiff however, submits that in the circumstances of this case, the proper order to make is to strike out the counter-claim concerned.\"

He concludes by urging the Court to strike out all the claims contained in the reliefs claimed by the counter-claiming Defendants on the ground the all parties interested in or likely to be affected by the said counter-claims have not been joined.

Professor Qsinbajo, learned Attorney-General of Lagos State, in his oral submissions, urges us to overrule Chief Williams. The learned Attorney-General, relying on Green v. Green (1987) 18 NSCC (Pt.2) P.1115 at. 1122, submits that all necessary parties to the counter-claims are fully aware of them and choose to stand by. They will be bound by the result of the counter-claim.

Order 12 rules 5(1) of the Federal High Court (Civil Procedure) Rules 2000 (applicable to these proceedings) provides for joinder of interested parties. It reads:

\"5-(l) If it appears to the court, at or before the hearing of a suit, that all the persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may be likely to be affected by the result, have not been made parties, the court may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be.\"

True enough, only the counter-claiming Defendant and the plaintiff are, in the strict sense, parties to each counter-claim see order 5 rule 2(2). But this case is one with a difference. All parties that can be said to be necessary parties to each counter-claim are parties already before the court in respect of Plaintiffs claim. They were all served with the pleadings of the counter-claiming Defendants and cannot claim not to be aware of what is going on. I agree with Professor Osinbajo that the non-joinder of all the Defendants other than the counter-claiming Defendant in each counter-claim, will not in the circumstances of this case, defeat each counter-claim. In Green (supra), this court held that the only reason which make a party to an action is that he should be bound by the result of the action and the question to be settled. A person whose interest is involved or is in issue in an action and who knowingly chose to stand-by and let others fight his

battle for him is equally bound by the result in the same way as if he were a party. Oputa JSC who delivered the lead judgement in the case, observed at page1122:

\"Under our law one reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action. See Amon v. Raphael Tuck & Sons Ltd. (1956/0 1 Q.B.D. 357 at p.380 per Devlin, J. Under our law also a person whose interest is involved, or is in issue in an action and who knowingly chose to stand by and let others fight his battle for him is equally bound by the result in the same way as if he were a party: see In Lart 1896 2 Ch. D. 788; Leeds v. Amherst 16 LJ. Ch. 5; Esiaka. Obiasogwu 14 W.A.C.A. 178; Abuakawa v. Adanse (1957) 3 All E.R. 559. Now if Solomon M.D. Green knew of the plaintiffs action as he was in this case bound to know, and yet was content to stand-by, he is bound by the result.\"

And at page 1123, the learned Justice of the Supreme Court added:

\"A distinction must he drawn between the desirability of making a person a party and the necessity of making him one. In Settlement Corporation supra it was held that joining a person as a party to proceedings did not arise merely because the relief sought in the cause or matter might affect someone who was not a party in respect of his rights at common law or in equity. In Peenok v. Hotel Presidential (1983) 4N.C.LR. 122 this Court per Idigbe, JSC and Obaseki, JSC drew the neccesary distinction between what is desirable to do and what is necessary to do and came to the conclusion that although it was desirable to join the Rivers State Government whose Edicts Nos. 15 and 17 were under attack, it was not necessary to join them before the Court could decide on the claims of the parties before it.,\"

In the case on hand, no doubt it is desirable to join all the states in the Federation as parties to each counter-claim. I do not however, think it is necessary to join them for the Court can decide the issues raised in the counter-claims without any of the other states being joined. As they all are aware of the counter-claim and choose to stand-by, they will be bound by the result of each counterclaim.

In view of all that I have said above. I have no hesitation in overruling the preliminary objective of Chief Williams to the counterclaims.

Chief Williams has also raised a number of legal issues, which he invites the Court to decide first before going into the reliefs claimed in the counter-claims. He relies on Order 25 rule 2(1) of the Federal High Court (Civil Procedure) Rules, 2000 in support. The rule reads:

\"2-(1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial.

(2) A point of law so raised may, by consent of the parties, or by order of the Court or a judge in Chambers on

the application of either party, be set down for hearing and disposed of at any time before the trial.

Rule 3 is also relevant and it reads:

\"3. If, in the opinion of the court or a judge in chambers the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the court or judge in chambers may thereupon dismiss the action or make such other order therein as may be just.\"

The legal issues are:

\"(i) What is the procedure for making provision for the formula for distributing the amount standing to the credit of the Federation Account pursuant to section 162 of the Constitution.

(ii) As from what moment in time do the State Governments become entitled to receive their share of the amount standing to the credit of the Federation Account'

(iii) Pending the arrival of the moment mentioned in Question (ii) what provision should he applied to the distribution of the amount mentioned in Question (ii).

(iv) whether there is any legal basis for the Supreme Court to make an order against the plaintiff for an account of moneys in the Federation Account.

(v) whether it is competent for any defendant to counter-claim for a relief which raises the same or substantially the same question or questions which arise in the plaintiffs action.

(vi) whether it is lawful for the Federal Government to appropriate one per cent of the amount in the Federation Account to the Federal Capital Territory.

(vii) Whether it is lawful to deduct moneys from the Federation Account to service or pay debts owed by the Federal Government.

(viii) whether it is lawful for moneys intended for Local Governments or for purposes of primary education to he paid to any person or authority other than the State Government.

(ix) And whether this court has jurisdiction to grant a declaration, which will serve no useful purpose.

It is the submission of Chief Williams that subject to existing law in that behalf, no formula is in force until an enactment of the National Assembly in that behalf. I think the simple answer to issue (i) (and this is the case of the counter-claiming defendants) is that Cap 16 as amended by Decree 106 of 1992 provides, subject to the provisions of the Constitution, the formula applicable in the interim. This is what section 313 of the Constitution enjoins. I have earlier, in this judgement, rejected the further submissions of Chief Williams that Cap 16 (as amended) is to he applied as it is and that it is not an existing law. Cap 16 is an existing law within the meaning of that expression in section 315(4)(b) of the Constitution and it applies only in so far as it is not inconsistent with the provisions of the Constitution.

On issues (ii) and (iii), Chief Williams submits that \"until the enactment of the relevant act of the National Assembly no formula enacted pursuant to section 162 of the 1999 Constitution is in force for distributing moneys in the Federation Account.\" Accordingly, learned counsel submits, all counterclaims based upon the assumption that such a formula exists are misconceived and untenable.

Perhaps this is the proper stage to examine Cap. 16. Section 1 (as amended) reads:

\"(i). The amount standing to the credit of the Federation Account (as specified in subsection (I) of section 149 of the Constitution of the Federal Government of Nigeria) shall be distributed by the Federal Government among the various Governments in Nigeria and the funds concerned on the following basis, that is to say-

(a) The Federal Government - 48.5 per cent;

(b) The State Government - 24 per cent;

(c) Local Governments - 20 per cent\'

(d) Special Funds -7.5 percent;

(e) Federal Capital Territory - I per cent of the Federation Account;

(ii) Development of the Mineral Producing Areas - Three percent of the revenue accruing to the Federation derived from minerals;

(iii) General Ecological Problems - Two percent of the Federation Account,

(iv) Derivation: - One percent of the revenue accruing to the Federation derived from minerals

(v) Stabilisation Account - 0.5 percent of the Federation Account plus the arising out of using mineral revenue, instead of the Federation Account as the basis for allocation to the fund for the development of the mineral producing areas and derivation.

No where in section 162 of the Constitution is provision made for allocation of the fund in the Federation Account to all, or any, of the items under paragraph (d) above, except (d) (iv) on I will say more presently. Sub-section (3) of section 162 provides for the beneficiaries among whom the Federation Account is to be distributed. The sub-section reads:

\"(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.\"

The Federal Capital Territory is not a state or a local government in a state. It, therefore, cannot qualify for distribution of the Federation Account. Nor are the Area Councils in the Federal Capital Territory as they are not local governments \"in a State\" as provided in sub-section (3) above

The result is that paragraph (d) of section 1 of Cap. 16 (as amended) is inconsistent with the provisions of the Constitution and to that extent, section 1 is void. See also: AG Bendel State v AG Federation & Ors. (1983) ANLR 208.

As regard paragraph (d)(iv) of Section 1 of Cap 16 (as amended) in so far as it provides for one per cent of the revenue accruing to the Federation Account derived from minerals, it is equally in-consistent with section 162(2) of the Constitution. The proviso to sub-section (2) of Section 162, for ease of reference, reads:

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.\"

The Constitution provides for \"not less than 13 per cent \" of the revenue accruing to the Federation Account directly from any natural resources to be distributed on the principle of derivation. Cap. 16 says: \"One per cent of the revenue accruing to the Federation Account derived from minerals\" is to be so distributed. There are undoubtedly inconsistent provisions. And by the provisions of sections 1(3), 313 and 315(l),of the Constitution the provisions of section 1 of Cap 16 that are inconsistent with the Constitution must give way to the Constitution.

Now, sub-section (2) of section 315 of the Constitution provides for modification of an existing law to bring it into conformity with the Constitution. The subsection reads:

\"(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.\"

The word \"modification\" is defined in sub-Section (4) of Section 315 as including: -

\"addition, alteration, omission or repeal.\'

See Att. Gen. Ogun State v. Att. Gen. of the Federation (1982)1-2 SC 13. And the appropriate authority in respect of Cap. 16, a law of the Federation, is the President. Thus, the President has constitutional power, by order, to modify Cap. 16 either by way of addition, alteration, omission or repeal, to bring it into conformity with the Constitution. This he has not done. At least, our attention has not .been drawn to any order made by the President modifying Cap 16 to bring it into conformity with the 1999 Constitution.

It is generally agreed by all the parties that the figure 13 per cent is now being used in working out the principle of derivation in respect of crude oil derived from the littoral States. This figure, as I shall show presently, is used by the counter claiming Defendants in computing their reliefs. We have not been told the legal basis for this figure. There is no order by the President modifying Cap 16 that lays down this figure. Nor is there an enactment of the National Assembly pursuant to section 162(2) of the Constitution specifying that figure. Our attention was drawn to an item in an Appropriation Act where the figure 13 per cent was used to compute an expenditure. That of course is not the enactment envisaged in section 162(2). That figure, therefore, appears to be a rule of the thumb or a gentleman\'s agreement to among the parties.

In the absence of a legal basis for the figure 13 per cent, I cannot see how the court can grant a relief, however meritorious based on such a rule of the thumb.

The counter-claiming defendants have argued that the figure 13 per cent is the barest minimum allowed by the

Constitution and have urged us to use that figure in computing their reliefs. With profound respect to the learned Attorneys-General and learned counsel who submitted to this effect, 1 regret I cannot accede to their request. By the use of the expression \"not less than 13 per cent,\" discretion is given to the lawmaker as to the figure to be used; That discretion is not for the court to exercise but for the president, as prescribed authority, when making a modification order or the National Assembly when enacting a law pursuant to section 162(2). The power of the court as regards an existing law is limited to what is provided in sub-section (3) of Section 315 of the Constitution, which reads;

\"(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or tribunal established by law to declare invalid provision of an existing law on the ground of inconsistency with the provision of any other law, is to say:

(a) any other existing laws;

(b) a law of a House of Assembly;

(c) an Act of the National Assembly; or

(d) any provision of this Constitution.\"

Another area of inconsistency between Section 1(d) (iv) of Cap. 16 and Section 162(2) of the Constitution relates to the revenue that is subject to the derivative principle. While Cap. 16 talks of revenue accruing from minerals, section 162(2) speaks of revenue accruing form natural resources. What is the meaning of \"natural resources '\" The expression is not defined in the Constitution. It is defined in Black\'s law Dictionary 6th edition as follows.

\"Any material in its native state which when extracted has economic value. Timberland, oil and gas wells, ore deposits, and other products of nature that have economic value. That cost of natural is subject to depletion. Often called \'wasning assets.\"

The term includes not only timber, gas, Oil, coals, \'minerals, lakes and submerged lands, but also, features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes.\"

Oil, natural gas and coal come within this definition but not, in my respectful view, ports, wharves, mangoes, livestock, hide and skin, horns, ground-nuts, beans, grains, pepper, cotton and gum Arabic. Mangoes, Livestock etc. are not natural resources but agricultural products, a term described in Black\'s Law Dictionary as meaning:

\"Things which have a situs of their production upon the farm and which are brought into condition for uses of society by labour of those engaged in agricultural pursuits as contra-distinguished from manufacturing or other industrial pursuits. That which is the direct result of husbandry and the cultivation of the soil. The product in its natural non-manufactured condition.\"

I now turn to issue (iv) in the issues Chief Williams has invited this court to determine in relation to the counter-claims. It is Chief Williams' contentions that:-

I. There is no basis for the counter-claims for the plaintiff to account for moneys which accrue to the Federation Account because each State is represented on the Federation Account Allocation Committee by her Commissioner for Finance. The committee was established pursuant to section 5(1) of Cap. 16 and its functions are

(a) to ensure that allocations made to the States from the Federation Account are promptly and fully paid into the treasury of each State and

(b) to report annually to the National Assembly in respect of (a) and

2. Each State is represented on the Revenue Mobilisation Allocation and Fiscal Commission and none of the States counter-claiming for an account has alleged that the commission has on request, failed or refused or neglected to supply her with a statement of account on request.

I don't think Chief Williams is on a firm ground as regards (1) above. It is not the function of Federation Account Allocation Committee to collect revenue for the Federation Account. That is the duty of the Government of the Federation, that is, the Plaintiff. For sub-section (1) of section 162 provides:

\"(1) The Federation shall maintain a special account to be called the Federation Account into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.\"

By this provision, the Government of the Federation becomes a trustee. It is the duty of the trustee to render account to the beneficiaries of the trust if, and when, called upon to do so. See: Att. Gen. Bendel State v. Att. Gen of the Federation & Ors. (1983) ANLR 208. To be entitled to an order for an account, however, the plaintiff must have fist been requested to do so by the beneficiary and heve refused, failed or neglected to do so.

On (v) Chief Williams submits that some of the counter-claims are unnecessary in as much as they raise issues the success or failure of which depends on whether the plaintiff succeeds or fails. I agree with him and this will be taken into consideration when dealing with the counterclaims.

Issue (vi) has already been dealt with. And in view of the conclusion I reached on the validity of section 1(d) of Cap 16 (as amended), I overrule the submissions of Chief Williams on this issue. By virtue of section 313, the provisions of sections 1(d)(I) and 4A(l) allocating 1 (one) per cent of the Federation Account to the Federal Capital Territory are in-consistent with section 162(3) of the Constitution and are, therefore, void.

I now turn to Issue (vii) which deals with the deduction from the Federation Account for settlement of Plaintiffs external debts. Some of the counter claiming Defendants question the validity of such deductions. Chief Williams has argued in favour of the validity of such deductions and refers, in support, to sections 3 and 4 of the General Loan and Stock Act, Cap, 161 and section 314 of the Constitution. How far is he right'

Sections 3 and 4 of Cap. 161 provide:

\"3. Whenever by any Act authority shall have been given, or shall here-after be given, to raise any sum of money for the purposes mentioned in such Act, the President may, from time to tine, as he or they may deem expedient, raise such sum either by debentures or by stock, or partly by debentures or by stock or partly by debentures and partly by stock.

4. The principal moneys and interest represented by the debentures or stock issued under the provisions of this Act are hereby charged upon and shall be payable out of the general revenues and assets of the Government.\"

And section 314 of the Constitution provides:

\"314 Any debt of the Federation or of a State which immediately before the date when this section comes into force was charged on the revenue and assets of the Federation or on the revenue and assets of a State shall, as from the date when this section comes into force, continue to be so charged.\"

(italics are mine)

With respect to Chief Williams, his submission on this issue does not find favour with me. Section 4 of Cap. 161 is very

clear such external debts arc charged upon and payable out of the general revenue and assets of the Government of the Federation that incurred the indebtedness and not the Federation Account. And section 314 of the Constitution only reaffirms that position. It is for each government, Federal or State, to pay its debt. Neither can constitutionally charge its debts on. the Federation Account.

On Issue (viii), Chief Williams has argued that payment of moneys representing the share of Local Governments in the Federation Account has to be made to those Government in accordance with Cap. 16. He also argues that primary education is a local government function under the Constitution.

I think, with respect, that the second limb of Chief Williams\' submissions is misconceived. Section 7(5) of the Constitution provides;

\"The functions to be conferred by law upon local government councils shall include those set out in the fourth Schedule to this Constitution.\"

Paragraph 2 of the Fourth Schedule reads in part:

\"2. The functions of a local government council shall include participation of each council in the Government of a state as respects the following matters:

(a) the provision and maintenance of primary, adult and vocational education;\"

(italics is mine for emphasis)

In so far as primary education is concerned, a local government council only participates with the State Government in its provision and maintenance. The function obviously remains with the State Government.

I think the issue raised here has been disposed of by this Court in A-G Bendel State v. A-G Federation & Ors (supra) where this court held, per Uwais JSC as he then was at page 220:

\"It seems to me therefore that once the Federation Account is divided amongst the three tiers of government, the Governments collectively become the absolute owners of share that is allocated to them (i.e. 35 per cent). So that it would normally be their prerogative to exercise full control over the share. Consequently, it will not be appropriate for the

Federal Government to administer the share without the authorisation of the State Government. This appears to be logical and in keeping with the fundamental principle of federalism on the autonomy of the constituent State.\"

I need not say more on this issue at this stage until 1 come to the counter-claim where it is specifically raised.

The last issue - issue (ix) - raises the question of the jurisdiction of this court to grant a declaratory relief. I think Chief Williams is right in his submission that runs thus:

\"It is well settled that a court does not act in vain. Accordingly, it will not make any declaration, which does not settle or determine dispute or controversy between the parties. Section 232(1) of the Constitution limits the original jurisdiction of this Court to cases where the dispute involves any question (whether of law or face) on which the existence or extent of a legal right depends. Consequently this court has no unlimited jurisdiction to grant declaratory orders in cases where the existence or extent of a legal right does not depend in such declaration or where the declaration will serve no useful purpose.\"

I shall bear this in mind when I come to consider the reliefs for declarations raised in the counterclaims.

Counter-claim of 3rd Defendant:

The 3rd defendant counterclaims for the following reliefs:

\"(1) A declaration that the 3rd defendant is by virtue of section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 is entitled to receive a minimum of 13% of the entirety of the natural resources derived from its territory free from any dictotomy as to on-shore and off-shore natural resources.

(2) An order compelling the plaintiff to pay the said balance of 40% of 13% due to the 3rd defendant from the 29th day of May 1999 till date in respect of the natural resources derived from Akwa Ibom State.

(3) Payment of the sum of N15,006,418,955.28 being the sum due from the plaintiff to the 3rd defendant calculated as 13% of the revenue from natural resources derived from Akwa Ibom State for the period June 1999 to February 2001.\"

Claim 1:

In view of all I have said earlier in this judgment, and particularly the conclusion I reached on Plaintiffs claim, the declaration now sought cannot be granted. It is, therefore, refused and the claim is dismissed.

Claim 2:

This claim is based on the use of the figure 13% in calculating the amount due to the counter claimant on the principle of derivation in the proviso to sub-section (2) of section 162 of the Constitution. There is no legal basis for the use of this figure. In the absence of any legislation by the National Assembly pursuant to section 162(2) of the Constitution which fixes a figures that is not less than 13 per cent (but which may he more than that figure) in calculating the amount due to a State affected by the principle of derivation in the proviso to the sub-section, it is for the President as the prescribed authority, to modify Cap.16 (as amended) to bring it in conformity with the provisions of the Constitution, particularly section 162 thereof. Unless and until either is done the 3rd Defendant cannot, as of legal right, lay claim to 13 per cent as a basis of working out the amount due it under proviso to section 162(2). It is not in dispute that natural resources are located on his territory and that revenue accrued, and still accrues, to the Federation Account from such resources. While it is not disputed that the 3rd Defendant is entitled to some share of that revenue, it is the actual entitlement that is in dispute. And this can only be resolved by knowing the actual figure to be used in calculating the entitlement. Claim 2, therefore, is refused.

Claim 3:

For the reason given above for refusing claim 2, claim 3 must equally be refused and it is hereby refused.

Although claims 2 and 3 fail, in view of the fact that it is not disputed that 3rd Defendant is entitled to something which is yet to be legally determined, other claims are struck out and not dismissed.

Counter-claim of 6th Defendant

The 6th Defendant counterclaims for the following reliefs:

\"(a) Determination to the effect that, the Constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to Section 162(2) of the Constitution came into operation

on the same day - that is, to say29/5/99 and Plaintiff is obliged to comply therewith from that day.

(b) An order that Plaintiff do pay over to Bayelsa State, the share due to the State under the proviso to Sec-162(2) of the Constitution as from 29/5/99 (which has been wrongly withheld).

(c) An order for Account by the plaintiff to the 6th Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue.

(d) An order that the Plaintiff should pay the 6th Defendant 13% of all the revenue so far accrued to the Federation Account from Bayelsa State in respect of off-shore mineral oils in the State.

(e) An order that the Plaintiff should pay the 6th Defendant 13% of all the revenue that has accrued from Natural Gas in Bayelsa State to the Federation Account.\"

I have already concluded in this judgment that the southern boundary of each littoral State in the Federation is the low water mark. That being so, the 6th Defendant, like all other littoral Defendants, is not entitled, under the proviso to section 162(2) of the Constitution that provides for the principles of derivation, to a share in the revenue accruing to the Federation Account from natural resources derivable from the Continental Shelf of Nigeria.

Consequently claims (c) and (d) fail and are dismissed.

Claims (a) and (b)

The 6th Defendant pleaded in paragraphs 3 and 5 of his counterclaim as set out hereunder

3. The Plaintiff and the President have disputed the commencement date of the principle of derivation established under the provision of Section 162(2) of the Constitution and have for that reason withheld payment due to Bayelsa State on the principle of derivation from 29/5/99 and have refused to make the said payment with effect from 29/5/99.

4. The 6th Defendant has also heavy Natural Gas deposits in her territory from which revenue has been accruing to the Federation Account, but the Plaintiff has not paid anything to the 6th Defendant in that regard.\"

The Plaintiff, in his defence to the counter-claim of this Defendant pleaded:-

\"7(ii) The counterclaims of the 6th Defendant (Bayelsa) ought to be dismissed because:

(a) The dispute between the Federal Government and the littoral States can only validly be determined by the Supreme Court;

(b) Pending such determination, the persons or authorities responsible for making provision for the formula for the sharing of moneys accruing to the Federation Account cannot appropriately make any such provision, and in the meantime the persons and authorities aforementioned are bound to observe and apply the provisions of section 315 of the Constitution.

(c) By the provisions of section 162 of the 1999 Constitution it is only the National Assembly (and it alone) that is authorised to prescribe the distribution of any amount standing to the credit of the States in the Federation Account.

(d) Accordingly, in the absence of any provision for the formula for the sharing of moneys accruing to the Federation Account made pursuant to Section 162 of the Constitution, the Supreme Court has no jurisdiction or power to make any order or give any direction with respect to any payment to this Defendant on account of what it claims it is entitled to receive from the Federation Account in accordance with the said section 162 of the constitution.\"

There is no specific denial by the plaintiff of paragraphs 3 and 5 of the 6th Defendant\'s counterclaim; the averments in these paragraphs must, therefore, be taken admitted.

I do not think it is seriously contended by the Plaintiff that section 162(2) did not come into effect on 29/5/99 when the Constitution itself came into effect. That being so, the determination sought in claim (a) is granted.

It is with claim (b) that the 6th defendant will encounter some difficulties. Section 4a of Cap 16 (as amended) has been duclared earlier in this judgment to be inconsistent with section 162 of the Constitution. It has equally been held by me that the figure 13 per cent does not form a legal basis for calculating the amount due to any State on the principle of derivation. On what basis then would this Court \'make the order sought in claim (b)' It is for the 6th Defendant to prove his entitlement to the relief sought by him. I think he has failed to do this in respect of claim (b); The order sought, on the facts now before us, is rather vague, indefinite and uncertain. The claim is, therefore, refused and is it struck out.

Claim (e)

The averments in paragraph 5 of the 6th Defendant\'s counter-claim, not having been specifically denied by the Plaintiff, are deemed admitted by him. I have earlier said in this judgment that a natural gas is a natural resource, It follows that as revenue accrued to the Federation Account from natural gas derived from the territory of the 6th Defendant he is entitled to a share of that revenue under the principle of derivation in section 162(2) of the Constitution. But as the counter-claiming 6th Defendant. has not shown to us the legal basis or authority for the use of the figure 13 per cent in calculating his entitlement, claim (e) cannot he granted; it is struck out.

Counter-claim of the 8th defendant

The 8th Defendant pleaded in his counterclaim as hereunder:

\"2. The 8th Defendant avers that the plaintiff has been generating revenue from the Natural Resources which are from the 8th Defendant\'s State.

3. The 8th Defendant states that the Natural Resources referred to in par agraph 2 of the Counter claim are Minerals and Agricultural products. namely, precious Stones and Metals, Potash, Gypsum, Gold, Livestock, Fish, Hide and Skin, Horns, Ground-nuts, Beans, Mangoes, Grains, pepper, cotton and gum Arabic.

4. The 8th Defendant states that the plaintiff generates and or derives rev enue from these Natural Resources by charging export duties, levies, taxes and by issuing licensees for dealership, processing and mining of these Natural Resources.

5. That the 8th Defendant contends that the plaintiff failed and/or refused to pay the 8th Defendant that 13% of the revenue derived from these Resources.

Whereof the 8th defendant Counter-claimant claims against the Plaintiff the following:

(a) A declaration that the 8th defendant/counter-claimant is entitled to 13% of the the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.

(b) To order Plaintiff to give account the revenue generated from these Natural Resources to the 8th defendant/counter-claimant.

(c) To order the plaintiff to pay the 8th Defendant/Counter claimant an amount equivalent to the 13% of the total revenue derived from the Natural Resources from the 29th day of May 1999 to date.\"

I have earlier in this judgment given the dictionary meanings of the expression \"natural resources' and \"agricultural products\" and have held that livestock, fish, hide and skin, horns, groundnuts, beans, mangoes, grains, pepper, cotton and gum Arabic, are not natural resources within the meaning and intendment of section 162(2) of the Constitution; they are, at best, agricultural and/or manufactured products. That being so, Section162(2) will not apply to them. Precious stones and metals, potash (that is, potassium), gypsum and and gold are clearly natural resources.

Plaintiff in defence to the 8th defendant\'s counterclaim pleaded thus:

\"7(iii) The counterclaims of the at 8th defendant (Borno) ought to be dismissed because:

(a) of the reasons set out in sub paragraphs (a) - (d) of paragraph (ii) above and

(b) the plaintiff has at no time denied the existence of the legal fight of the Defendant to its financial entitlement in accordance with any provision made pursuant to section 162 of the Constitution.

(c) Accordingly there is no basis for the declaratory order claimed by the plaintiff (sic Defendant)'\"

As claims (a) and (c) above are based the much-touted 13% and in view of what I have said earlier in this judgment on lack of legal authority for this figure, the two claims must fail. They are struck out.

There is no averment nor evidence that the 8th Defendant requested from the Plaintiff and was refused, an account as required in claim (b). In the light of the denial of the plaintiff in his defence to the counterclaim of the 8th Defendant one would expect some evidence from the latter. But n one is forthcoming. The claim, therefore, fails and it is dismissed.

Counter-claim of the 9th defendant

The counterclaim of this Defendant is more comprehensive than any of those hitherto considered. It is pleaded thus:

\"30 the 9th Defendant further avers that contrary to the provisions of the Constitution the FGN deducts monies from the

Federation account before applying the derivation principle.

Particulars

I. FGN has unconstitutionally created \"Fist Charge\" on the sums in the Federation Account for payment of capital investments on NNPC Priority Projects, payment in respect of Joint Venture Companies Cash call budgets, National Priority Projects such Aluminum Smelter Company operational cost contribution, Central Bank of Nigeria priority projects.

2. FGN has also charged the income in the Federation Account before deductions in accordance with the derivation principle, with the payment of Special Fund Account and the Excess Proceeds Accounts for oil revenue income that exceed the annual National Budget benchmark.

.....

31. The 9th defendant further states that the constitution does not provide for the retention by the Federal Government of funds from the Federation Account beyond the percentage allocated to it by act of the National Assembly.

32. In the premises, the 9th defendant has not been paid its entitlement from being an oil producing state in line with the proviso to section 162(2) of the Constitution.

Claim for Natural Resources

33. The 9th defendant maintains that for the purposes of section 162 of the 1999 Constitution, natural resources mean any material in its native or natural state which when exploited has economic value.

34. The 9th defendant states that

1. Natural wharves developed into ports

2. Solid minerals like chipping, mud and limestone

3. Mineral oil and natural gas and

4. Seas and inland waters used for fishing

are all natural resources within the contemplation of the 1999 Constitution Section 162(2) and the 9th defendant is entitled to revenue therefrom in spite of the provisions of the Piers Act, the Nigerian Ports Authority Act and the Sea Fisheries Act.

35. It is also contended by the 9th defendant that Cross River is entitled no less than 13% of all income derived from all natural resources stated above

36. The 9th Defendant pleads alternatively that even if the FGN owns or control over natural resources, that is so only as a trustee or custodian of the State from where such resources are derived and only such states are entitled to no less 13% of all revenue exploited from such natural resources.

Claim for Account

9th Defendant repeats the averments contained in paragraph 29-31 hereof and pleads in addition as follows:

a. The FGN has created a dichotomy between the onshore and offshore re venue from natural resources in computing amounts to be disbursed to states based on the principle of derivation

b. Since 23rd September 1987, the 9th Defendant has been deprived of her total earnings on derivation.

c. The FGN has not taken the principle of derivation into account in respect of revenue derived from solid minerals and non mineral and natural re sources like water ways, fishing, piers wharves, dams and ports.

d. The FGN without any basis in law make a direct charge of 1% on the Federation Account for FCT Abuja.

Whereof the 9th Defendant counter-claims against plaintiff as follows:

(1) A declaration that the area beyond and adjacent to the littoral state of Cross- River State not exceeding 200 nautical miles from the baseline from which the breadth of the territorial s ea of the Nigerian State is measured form part of the territory of the Cross River State of Nigeria.

(2) A declaration that all natural resources derived from the High Seas offshore Cross River Sate is derived from the territories of Cross River State and for which Cross River State is entitled to be paid at least 13% of t he revenue derived therefrom based on the principle of derivation.

(3) A declaration that the 9th Defend-n is entitled to 13% of all income derived by the FGN from activities at the Calabar Port, the quarries, rivers and seas in and abutting Cross River State.

(4) An Order directing the Accountant-General of the FGN, trough the Plaintiff, to render an acount of all monies received and disbursed from the Federation Account from 23rd September, 1987 fill the date of judgement.

Alternatively

(5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 817D in the Calabar/Cross River Estuary from 23rd September 1987 till date of judgement.

(6) An order compelling the Federal Government of Nigeria to render account of all monies derived form any place in Nigeria (from 29th May till the date of judgment in this suit) which were not paid into the Federation Account or which were not made to form part of the distributable pool set up by the 1999 Constitution

(7) An order compelling the Government of Nigeria to pay to Cross River State the sum total of the income rightly accruing to Cross River State pursuant to paragraphs 40(1), (2) and (6) above.\"

Plaintiff\'s defence is rather short and brusque. It reads:

\"7(iv) the counterclaim of the 9th Defendant, (Cross River) ought to he dismissed because:

(a) of the reasons set out in sub-paragraphs (a) - (d) of paragraph (ii) above and

(b) there is no basis in law or in fact to support any of the reliefs sought for in the counterclaim.\"

I now turn to the reliefs.

Claims 1 and 2

In view of my findings on Plaintiff\'s case, the declarations claimed must fail and are hereby dismissed.

Claim 3

As there is no legal authority for the use of the figure 13 per cent the declaration sought here must fail and it is dismissed. Furthermore, it is not shown to my satisfaction that \"all income derived by the FGN (Federal Government of Nigeria) from activities at the Calabar Port, the quarries, rivers and seas in (or) abutting Cross River state\" constitutes revenue accruing to the Federation account from natural resources derived from Cross River State. No evidence is given of the location of these features.

Claims 4,5 and 6

There is no averment in the pleadings of this defendant that the Plaintiff has been called upon to render account and has refused to do so. In the cir cumstance, there is no basis for the claims for account which are hereby struck out.

Claim 7

There is no paragraph 40 in the 9th Defendants pleading. 1 take it, however, that paragraph 38 is meant. In view of the dismissal of the declarations sought in paragraph 38(l) and (2) and the claim for account in claim (6), this claim too based on them must equally fail and it is dismissed by me.

Counter-Claim of 10th Defendant

In paragraph 20 of his pleading, the 10th Defendant claims as hereunder:

\"20. By reason of the foregoing, the 10th Defendant has suffered hardship, loss and damages, wherefore it (sic) counterclaims from the plaintiff as follows:-

(a) A declaration that section 44(3) and the proviso to section 162(2) of the 1999 Constitution do not recognise the so-called onshore/offshore dichotomy which has since been abolished by Act No.106 of 1992 and presently being unconstitutionally employed by the Plaintiff in the course of determining the revenue allocation due to the 10th Defendant from the Federation Account.

(b) An order directing the plaintiff to pay the sum of N1I,333392,572.l0 (eleven billion, three hundred and thirty-three million, three hundred and ninety- two thousand, five hundred and seventy-two naira ten kobo) being arrears of the minimum 13 per cent derivation under the proviso to section 162(2) of the 1999 Constitution (commencing from 1st June, 1999 - 31st December. 1999) without any form of distinction between onshore and/ offshore revenue to the 10th Defendant/Counter claimant.

(c) An order directing the plaintiff to pay the sum of N9.404.861 382.46 (nine billion, four hundred and ~four mil1~on. eight hundred and sixty-one thousand. three hundred and eighty-two naira. forty-six kobo) to the 10th Defendant being arrears of the minimum 13 per cent derivation on off-shore revenue accruing directly from the 10th defendant to the Federation Account between 30th January, 2000-28th February, 2001 or until judgment is delivered.

(d) Interest at the ruling bank rate - 14 per cent from 1/6/99 and 30/1/2000 until judgment, and thereafter, at any higher rate as the Supreme Court may order.

(e) A declaration that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing (before paying the constitutional minimum 13 per cent derivation to the oil producing states) is unconstitutional, null and void.

(f) A declaration that the under listed economic policies and/or practices of the plaintiff are unconstitutional being in conflict with the 1999 Constitution, that is to say:

(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.

(ii) Non payment of the shares of the 10th Defend in respect of proceeds from capital gains taxation and stamp duties.

(iii) Funding of the judiciary as a first line charge on the Federation Account.

(iv) Servicing of external debts via first line charge on the Federation Account.

(v) Funding of Joint Venture Contracts and the Nigerian National Petroleum Corporation (NNPC) priority Projects as first line charge on the Federation Account.

(vi) Unilaterally allocating 1 per cent of the revenue accruing to the Federation Account to the Federal Capital Territory.

(g) An order directing the Plaintiff to account for and/or return all monies in its custody directly attributable to the misapplications complained of herein to the Federation Account for disbursement in accordance with the 1999 Constitution form 29/5/99 till date.

(h) A perpetual injunction restraining the plaintiff from further violating the provisions of section 162 of the 1999 Constitution\'.

The defence of the Plaintiff is short. In paragraph 7(v), he pleaded thus:

\'7(v) The counterclaims of the l0th defendant (Delta) ought to be dismissed because:

(a) of the reasons set out in sub-paragraphs (a)-(d) of paragraph (ii) above

(b) for the reasons aforesaid, there is no basis to sustain items (b), (c), (d) and (g) of the said counter-claims

I notice that the Plaintiff is silent on claims (e), (f) and (h). There is, however, no express submission to judgment on those claims.

The 10th defendant proffered affidavit evidence in support of his claims.

In view of my earlier findings in this judgment, claims (a), (b) and (c) must fail and are hereby dismissed. Claim (d) for interest is predicated on claims (b) and (c) which now fail. It too fails and it is dismissed.

1 have earlier in this judgment found that it is wrong for the plaintiff to charge his external debt on the Federation Account. In the light of this finding, the declaration sought in claim (e) will be granted in a modified form as proposed in claim (f). Claim (e) will accordingly be struck out.

Before I consider claim (f) I like to quickly dispose of claim (g). No specific sum of money is mentioned in this claim. The am6unt that is to be returned to the Federation Account is vague, uncertain and indefinite. I think it is futile making an order in such circumstance. I will, however, not dismiss the claim but rather strike it out. It is necessary for the counter-claiming Defendant to provide fuller details. Claim (g;) is struck out.

I am now left with claims (f) and (h) I have earlier held that natural gas is a natural resource. Revenue from it must, therefore, be taken into account in the application of the principle of derivation in section 162(2) of the Constitution.

Section 163 of the Constitution provides

163. Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly -

(a) where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;

(b) where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.

Item D of Part II of the Second Schedule makes provision for the imposition, by the National Assembly of such tax or duty as the capital gains tax, incomes or profits of persons other than companies and stamp duties. By section 163, the net revenue collected from these taxes and duties is distributed among the states on the basis of derivation. It follows that what net revenue is collected from any state by the Government of the Federation is paid back to that state. There can be no justification for refusing to pay to the 10th Defendant his share of such revenue.

The funding of the judiciary is provided for in the Constitution. For subsections (1), (2), (4) and (7) of section 84 provide

84. (1) There shall be paid to the holders of the offices mentioned in this section such remuneration, salaries and allowances as may be prescribed by the National Assembly, but not exceeding the amount as shall have been determined by the Revenue Mobilisation Allocation and Fiscal Commission.

(2) The remuneration, salaries and allowances payable to the holders of the offices so mentioned shall be a charge upon the Consolidated Revenue Fund of the Federation.

.....

(4) The offices aforesaid are the offices of President, Vice-President, Chief Justice of Nigeria, Justice of the Supreme Court, President of the Court of Appeal, Justice of the Court of Appeal, Chief Judge of the Federal High Court, Judge of the Federal High Court, Chief Judge and Judge of the High Court of the Federal Capital Territory, Abuja, Chief Judge of a State, Judge of the High Court of a State, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, President and Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja, Grand Kadi and Kadi of the Sharia Court of Appeal of a State, President and Judge of the Customary Court of Appeal of a State, the Auditor-General for the Federation and the Chairmen and members of the following executive bodies, namely, the Code of Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the National Judicial Council, the Federal Judicial Service Commission, the Judicial Service Committee of the Federal Capital Territory, Abuja, the Federal Character Commission, the Code of Conduct Tribunal, the National Population Commission, the Revenue Mobilisation Allocation and Fiscal Commission, the Nigeria Police Council and the Police Service Commission.

.....

(7) The recurrent expenditure of judicial offices in the Federation (in addition to salaries and allowances of the judicial officers mentioned in subsection (4) of this section) shall be charge upon the Consolidated Revenue Fund of the Federation.

It is clear from the above provisions that it is the Consolidated Revenue Fund of the Federation, and not the Federation Account, that is charged with the salaries and allowances of judicial officers and recurrent expenditure of judicial offices in the Federation. The Consolidated Revenue Fund of the Federation is established under section 80 of the Constitution. The charge on the Federation Account is clearly inconsistent with section 84 of the Constitution and is, therefore unconstitutional, notwithstanding the provision subsection 3 of section 81 which provides.

81. (1) .....

(2) .....

(3) Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution.

.....

It may be that it was intended to give the judiciary a share of the Federation Account but this has not been expressly or impliedly provided for.

I have discussed earlier in this judgment the question repayment of the debt of the Government of the Federation; the repayment is to be charged not on the Federation Account, but on the revenue and assets of Government of the Federation, I have also discussed the constitutional validity of section l(d)(l) of Cap 16 (as amended) and found it to be inconsistent section 162(2) of the Constitution. Funding of joint Venture Contracts and the Nigerian National Petroleum Corporation (NNPC) Priority Projects cannot by any stretch of construction. come within section 62(3) of the Constitution which provides for the distribution of the Federation Account among the three tiers of Government that is Federal, States and Local Government. All these charges on the Federation Account are inconsistent with the Constitution and are, therefore, invalid.

Consequent upon all I have said above, I grant claims (f) and hereby declare that \"the under listed policies and practices of the Plaintiff are unconstitutional, being in conflict with the 1999 Constitution. that is to say

(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.

(ii) Non payment of the shares of the 10th Defend in respect of proceeds from capital gains taxation and stamp duties.

(iii) Funding of the judiciary as a first line charge on the Federation Account.

(iv) Servicing of external debts via first line charge on the Federation Account.

(v) Funding of Joint Venture Contracts and the Nigerian National Petroleum Corporation (NNPC) priority Projects as first line charge on the Federation Account.

(vi) Unilaterally allocating 1 per cent of the revenue accruing to the Federation Account to the Federal Capital Territory.

I also grant an injunction as claimed in chain (h) restrained the Plaintiff from further violating the Constitution in the manner declared in claim (f) above.

Counter-claim of the 24th defendant

By paragraph 53 of his Statement of Defence and Counter-Claim, the 24th defendant counter-claims for

(a) An interpretation of the provisions of sections 3 and 3of the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.

(b) Or alternatively, a declaration that all that area now refereed to as Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf culturally and geographically form or are deemed to form part of the territories of the littoral states immediately abutting the said areas

(c) A declaration that the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf culturally and geographically form part of the littoral states immediately abutting the said areas

(d) A further declaration that the Lagos State is entitled to 13 per cent of whatever is derived from the territorial waters abutting the coast of the Lagos State.

(e) A declaration that Nigeria\'s claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.

(f) A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the Continental Shelf on Nigeria not operate to divest ownership or deemed ownership of the said waters from the state.

(g) A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 states of Nigeria or the Federal Capital Territory) do no form or constitute a part of the Federal Republic of Nigeria.

(h) A declaration that natural resources mean any material in its natural state which when exploited has economic value.

(i) A declaration that for the purpose of Section 162(2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather only States from which natural resources are derived.

(j) The 24th Defendant/Counter Claimant is entitled to the waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights. riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.

(k) An order of this Honourable Court directing office of\' the Accountant-General of the Federation. through the plaintiff to render an account of all monies received and disbursed from the Federation ac-count from 29 May 1999 till the date of instituting this action.

(l) A further order directing the payment of amount due to the 24th Defendant/Counter Claimant as its share (by virtue of the principle of derivation stipulated in Section 162(2) of the 1999 Constitution) of the all revenue accruing from the state to the Federation Account.

(m) A further order directing the payment of I per cent of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory. for the maintenance of Federal infrastructure and installation within the State.

Section 232(1) of the constitution which gives this court original jurisdiction which is being exercised in this case, provides\'.

232. (1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

Thus, to clothe the Court with jurisdiction the suit must not only be between \"The Federation and a State or between States\" but must also related to a dispute involving any question (whether of law or fact) on which the existence or extent of a legal right depends. This Court will not involve itself in a mere academic exercise. With this background I now examine the claims of the 24th Defendant.

Claims (a), (e), (f), (g), (h) and (i), do not raise any dispute between the counter claiming Defendant and the Plaintiff involving any question on which the existence or extent of a legal right depends. They are, therefore incompetent and are hereby accordingly, struck out.

Claims (b), (c), (d) and (j) have already been covered during the consideration of Plaintiffs case. And in view of the findings made in that ease, claims (b), (c), (d) and (j) must fail and are, thereby dismissed.

I have held earlier in this judgement that any beneficiary in the Federation Account under section 162(3) has a aright to demand an account from the Plaintiff who is the trustee of the Account. However, the Court will not order the Plaintiff or any of his agents to render an account unless stand until the complaining beneficiary has first asked for an account and was refused. There is no such averment in paragraph 52 of the 24th Defendant\'s pleadings. Consequently, claim (k) for account will be refused. It is struck out.

Claim (l) is vague and uncertain. It has not been shown the basis on which the 24th Defendant\'s share is to be determined The National Assembly has not enacted a formula as enjoined on it by section 162(2) of the Constitution nor has the President come out with an order modifying Cap. 16 (as amended) to bring it in line with the Constitution. Claim (l) is accordingly struck out.

I agree with the Plaintiff that there is no basis in law for claim (m). A claim is not just based on sentiments but on law. No constitutional nor statutory provision has been cited to us to support this claim. It is dismissed.

Counter-claim of the 28th defendant

The 28th defendant counterclaims as follows:

1. A declaration that its seaward boundary extends beyond its coastline and that natural resources derived from its coastline are derived from its State to which the provisions of of Section 162(2) of the Constitution should-apply.

2. An order directing the Plaintiff to calculate and pay over to the 28th Defendant 13 per cent of revenue accruing to the Federation Account directly from natural recourses derived form offshore locations adjacent to the 2&h Defendant\'s coastline with effect from 29th of May 1999.

3. A declaration that the 28th Defendant is entitled with effect form 29th May 1999 to 13 per cent of the revenue accruing to the Federation account directly from the natural resources derived onshore within the state in accordance with the provisions of Section l62(2)of the Constitution of the Federal Republic of Nigeria.

4. An order directing the Plaintiff to pay over forthwith to the 28th Defendant 13 per cent of all revenue that has accrued to the Federation Account directly form natural resources derived form onshore locations in its State from 29th May 1999 to 30th December 1999.

In the. light of my earlier finding that the southern boundary of each littoral State is the low-water mark, claims (I) and (2) fail and are dismissed by me.

Claims (3) and (4) are based on the magical figure 13 per cent which I have held to have no legal basis for calculating the entitlement of any State under the proviso to section 162(2) of the Constitution. These are accordingly struck out.

Counter-claim of the 32nd defendant

Paragraph 14 of the 32nd Defendant\'s counterclaim reads:

14. Whereof the 32nd Defendant counter-claims against the Plaintiff as follows:

A. A declaration that the principle of derivation provided for under section 162(2) of the 1999 Constitution is applicable to 100 per cent of the total revenue derived form any natural resource from any State of the Federation.

B. A declaration that the \'on-shore\', \'off-shore\' dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional, null and void.

C. A declaration that the 32nd Defendant is entitled to be paid 13 per cent of all revenue accruing to the Federation Account from any natural resources particularly production and extraction of oil and natural gas from her territory with effect form 29th May 1999 and up to and including 31st December 1999.

D. A declaration that the boundary of the 322nd Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, Territorial Waters, Continental Shelf and the Exclusive Economic Zone to which the 32nd Defendant is contiguous.

E. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2) of the 1999 Constitution.

F. An order compelling the Plaintiff to furnish the 32nd Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29th May 1999 until the date of judgment in this suit.

G. A further order compelling the plaintiff to furnish the 32nd Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29th 1999 up to the date of judgment.

H. An order directing the Plaintiff to pay to the 32nd defendant all arrears of 13 per cent of the 40 per cent total \'off-shore\' production derivation accruals to which she is entitled from 29th May 1999 and continuing to date.

I. An order compelling the plaintiff to pay to the 32n& Defendant all arrears of 13 per cent \'on-shore\' and \'off-shore\' oil revenue form 29th May 1999 to 31st December 1999.

J. An order compelling the Plaintiff to pay to the 32nd Defendant 13 per cent of all revenues accruing to the Federation Account from the wharves, and sea ports within Rivers State.

K. An order compelling the plaintiff to pay to the 32nd Defendant 13 per cent of all revenues accruing to the Federation Account from natural gas produced and extracted from Rivers State from 29th May, 1999, and continuing up to the date of Judgment.

The Plaintiff\'s defence reads:

\"(xi) The counterclaims of the 32nd Defendant (rivers) ought to fail because:

(a) Of the reasons set fort under sub-paragraph 9(a)-(d) of paragraph (ii) above;

(b) There is no basis in law for item (a) of the said counter-claim.

(c) Items (b), (d) and (e) of the said counter-claims raise the same or substantially the same questions as the plaintiffs action in this suit and accordingly no useful purpose will be served in granting the claims as prayed for by the defendant;

(d) It is premature for the Defendant to sue for the reliefs claimed in items (c), (h), (i), (j) and (k) when the National Assembly has not yet enacted the formula for sharing the amount standing to the credit of the Federation Account.

and

(e) There are no facts pleaded by the Defendant to support items (f) and (g) of the said counter-claim.

The declaration sought in claim (A) is not a declaration right; it raises no issue upon which the existence or extent of a legal right depends. It is accordingly struck out.

In view of my finding that the southern boundary of a littoral State is the low-water mark, claims (B) and (D) are dismissed.

Plaintiff has not claimed entitlement to any revenue from the Federation Account on the basis derivation. Consequently, there is no dispute between the parties on this issue. Section 162(3) of the Constitution makes the Government of Federation a beneficiary of the Federation Account. In the light of these observations, claim (E) fails and it is dismissed by me.

Claims (C), (H), (I), (J) and (K) are based on the magical figure 13 per cent. And in view of what I have said earlier in this judgment on this figure as not forming a legal basis for determining the amount due to any State from which any revenue accrues to the Federation Account from natural sources derived from the State, claims (C), (H), (1) and (K) are hereby struck out. For the avoidance of doubt, however, I reiterate once again that natural gas is a natural resource and any revenue accruing from it qualifies for the application of the principle of derivation in favour of any state from which it is derived. I need also reiterate that, in my respectful view, wharves and sea ports are not natural resources within the meaning and intendment of that expression in the proviso to section 162(2) of the Constitution. It is not even proved that wharves and sea ports in Rivers State are locate within the territory of the State. Claim (J) is dismissed.

As regards claims (F) and (G), the 32nd Defendant has not pleaded facts to the effect that he called, upon the Plaintiff to render account and they failed, refused or neglected to do so. This is pre-condition to the claim by a beneficiary for account. Furthermore, the 32nd Defendant is represented the Federation Account Allocation Committee established under section 5 of Cap 16. If the 32nd Defendant wants the information that is being sought in claim (G) the Commissioner for Finance of his State is in a position to provide such information. Claims (F) and (G) are hereby struck out.

Counter-claim of the 33rd Defendant

This defendant, by paragraph 10 of his Statement of Defence claims:

(a) The natural resources derived from any part of Nigeria (by whatever name called) are deemed be derived from Nigeria and not the particular spot/area where the resources may be physically situate

(b) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation of Nigeria and not from any area or part of Nigeria.

(c) The Federal Republic of Nigeria is a stste and not sections thereof when interpreting the economic agenda and code prescribed by the constitution.

(e) By and under section 162(2), all the Areas/Sections (States) represented by the defendants in this suit are all entitled (in equal shares only) to at least 13 per cent of the revenue accruing to the Federation Account directly from any natural resources.

(e) The 33rd defendant is entitled to payment in arrears of monies equal to the sums paid to either Akwa-Ibom or Bayelsa or Cross Rivers or Delta or Edo or Ogun, Ondo and Rivers States since and while the plaintiff wrongly interpreted and applied section 162(2) of the Constitution of the Federal Republic of Nigeria.

(f) That the Federal Government of Nigeria should apologise to Defendants, save those listed in sub paragraph (e) herein for the inequality and discrimination occasioned by the misapplication of the not less than thirteen per cent rule enshrined in the Constitution vide section 162(2).

The Defendant\'s pleading was drafted in an unusual way; the claims are not stated to he raised by way of counterclaim. I shall however consider them for all they are worth.

Claims (a) and (b) raise issues that have been determined in Plaintiffs case. It is unnecessary to pronounce on them again. Claims (c), (d) and (f) are mere statements and not legal claims; they are accordingly struck out.

As regards claim (e), it has not been shown by this Defendant that it is derived from his territory, natural resources the revenue from which accrues to the Federation Account. Consequently, there is no legal basis for his claim (e) which is hereby dismissed by me.

The Summary

In summary, I adjudge as follows:

1. Plaintiffs case succeeds and I hereby determine and declare that the seaward boundary of a littoral State within the Federal republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, is the low water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State

2. Claim l of 3rd Defendant\'s counterclaims is dismissed but his claims 2 and 3 are struck out.

3. The 6th Defendant succeeds in his claim (a) and, accordingly, I determine and declare

That the constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the provision to sec-n 162(2) of the constitution came into operation on the same day that is to say, 29/5/99 and Plaintiff is obliged to comply therewith from that date.

His claims (b) and (e) are, however, struck out while his claims (c) and (d) are dismissed.

4. Claims (a) and (c) of the 8th Defendant\'s counter-claim are struck out; claim (b) is dismissed.

5. The 9th Defendant fails on her claims 12,3 and 7 which claims are hereby dismissed; claims 4, 5 and 6 are however struck out.

6. Claims (a), (b), (c) and (d) of the 10th Defendant\'s counterclaim are hereby dismissed; claims (e) and (g) are, however, struck out. The l0th Defendant succeeds on his claims (f) and (h). It is hereby declared that the underlisted policies and/or practices of the plaintiff are unconstitutional, being in conflict with the 1999 constitution, that is to say:

(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.

(ii) Non payment of the shares of the 10th Defend in respect of proceeds from capital gains taxation and stamp duties.

(iii) Funding of the judiciary as a first line charge on the Federation Account.

(iv) Servicing of external debts via first line charge on the Federation Account.

(v) Funding of Joint Venture Contracts and the Nige rian National Petroleum Corporation (NNPC) prior ity Projects as first line charge on the Federation Account.

(vi) Unilaterally allocating 1 per cent of the revenue accruing to the Federation Account to the Federal Capital Territory.

I also grant an injunction restraining Plaintiff from further violating the Constitution in the manner declared in claim (f) above.

7. The Counterclaims of the 15th Defendants are struck out as they did not file any brief in support of their claims.

8. The counterclaims of the 20th and 27th Defendants, having been withdrawn, are hereby struck out.

9. The 24th Defendant\'s claims (a), (e), (f), (g), (h) and (i) are incompetent and are accordingly, struck out. His claims (b), (c) (d), and (j) and (m) fail and are hereby dismissed. Claims (k) and (l) are, however, struck out to.

10. The 28th Defendant fails on his claims (I) and (2) which claims are hereby dismissed. Claims (3) and (4) are, however, struck out.

11. Claims (a), (c), (f) (g), (h), (i) and (k) of the 32nd Defendant\'s counterclaim are struck out. Claims (b), (d) (e) and {j) are dismissed.

12. The 33rd Defendant\'s claims (a), (b), (c), (d) and (f) are struck out; claim (e) is dismissed.

I make not order as to costs.

In ending this judgment, I express appreciation to all learned counsel who filed briefs and proffered oral submissions for the tremendous assistance rendered to the court and which has enabled us to arrive at what, we believe to be a just and equitable resolution of the dispute raised in this case.

Editor\'s Note

The full list of the Defendants in this case is shown below

1. Attorney-General of Abia State
2. Attorney-General of Adamawa State
3. Attorney-General of Akwa Ibom State
4. Attorney-General of Anambra State
5. Attorney-General of Bauchi State
6. Attorney-General of Bayelsa State
7. Attorney-General of Benue State

8. Attorney-General of Borno State
9. Attorney-General of Cross River State
10. Attorney-General of Delta State
11. Attorney-General of Ebonyi State
12. Attorney-General of Edo State
13. Attorney-General of Ekiti State
14. Attorney-General of Enugu State
15. Attorney-General of Gombe State
16. Attorney-General of Imo State
17. Attorney-General of Jigawa State
18. Attorney-General of Kaduna State
19. Attorney-General of Kano State
20. Attorney-General of Katsina State
21. Attorney-General of Kebbi State
22. Attorney-General of Kogi State
23. Attorney-General of Kwara State
24. Attorney-General of Lagos State
25. Attorney-General of Nasarawa State
26. Attorney-General of Niger State
27. Attorney-General of Ogun State
28. Attorney-General of Ondo State
29. Attorney-General of Osun State
30. Attorney-General of Oyo State
31. Attorney-General of Plateau State
32. Attorney-General of Rivers State
33. Attorney-General of Sokoto State

34. Attorney-General of Taraba State

35. Attorney-General of Yobe State

36. Attorney-General of Zamfara State