

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY 4TH DAY OF MAY, 2018
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD
OLUKAYODE ARIWOOLA
KUMAI BAYANG AKA' AHS
AMINA ADAMU AUGIE
PAUL ADAMU GALINJE

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC.135/2008

BETWEEN:

1. STEPHEN DINO
2. OYE OGOLI
3. JOSEPH YIBOWEI
4. SYLVANUS JUMBO

APPELLANTS

AND

SHELL PETROLUEM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

RESPONDENT

JUDGMENT

[Delivered by I. T. Muhammad, JSC.]

I have the privilege of reading the judgment of my learned brother, Galinje, JSC. There is only one issue for determination in this appeal which is whether the learned Justices of the Court of Appeal were right in law in holding that the supernumerary police (or spy police) are not the agents or servants of the respondent (Shell Petroleum Development Company Limited) which was resolved by my learned brother, Galinje, JSC, in favour of the respondent. I, too, dismiss the appeal. I adopt my learned brother's reasoning. I abide by consequential orders made therein.


IBRAHIM TANKO MUHAMMAD,
JUSTICE, SUPREME COURT.

APPEARANCES

E. O. Adekwu for the appellant with him; Oladapo O. Agboola

M. A. Essien, SAN for respondent with her; Olusola Laniyan and O. U. Ulasi

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SUPREME COURT OF NIG

H. A. ADUWAK
SIGNATURE
DATE 28/06/18
Officer

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BETWEEN

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AND

SHELL PEROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

} RESPONDENT

JUDGMENT
(Delivered by Olu Ariwoola, JSC)

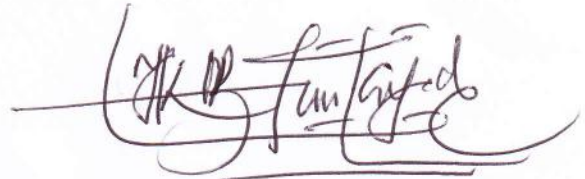
I had the opportunity of reading in draft the lead judgment of my learned brother **Galinje, JSC** just delivered. I agree entirely with the reasoning and conclusion that the appeal is

devoid of any merit and should be dismissed. I too will dismiss the appeal as I have nothing more to add.

Appeal dismissed.

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REGISTRAR
SUPREME COURT OF NIG

H. A. ADUWAI
SENIOR REGISTRAR



Olu Ariwoola
Justice, Supreme Court

Mr. E. O. Adekwu with Oladapo O. Agboola for the appellants.

Mrs. M. A. Essien with Olusola Laniyan and O. U. Ulasi for the respondent.

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APPELLANTS

2. MOYE OGOLI

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AND

SHELL PETROLEUM DEVELOPMENT

....

RESPONDENT

COMPANY OF NIGERIA LIMITED

JUDGMENT

(Delivered by **AMINA ADAMU AUGIE, JSC**)

I read in draft the lead Judgment delivered by my learned brother, **Galinje, JSC**. I am in complete agreement with his reasoning and conclusion which I adopt, as I have nothing useful that I can add to it.

Appeal lacks merit. I also dismiss the Appeal. I abide by the consequential orders made.

H. A. ADLIWAN
SENIOR REGISTRAR

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REGISTRAR
SUPREME COURT OF NIG

Officer!
A. A. Agie
AMINA ADAMU AUGIE,

JUSTICE, SUPREME COURT

APPEARANCES:

E. O. Adekwu, Esq., With

Oladapo O. Agbola, Esq.

For the Appellants.

M. A. Essien (Mrs.), With

Olusola Laniyan, Esq., and

O. U. Ulasi, Esq.

For the Respondent.

IN THE SUPREME COURT OF NIGERIA
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} APPELLANTS

AND

SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

} RESPONDENT

JUDGMENT

(Delivered By Paul Adamu Galinje, JSC)

Each of the Appellants herein, who were plaintiffs at the Rivers State High Court claimed against the Respondent the following reliefs:-

- 1. One million naira (N1,000,000.00) being damages for false imprisonment.*
- 2. One million naira (N1,000,000.00) for assault and battery.*
- 3. One million naira (N1,000,000.00) for malicious prosecution.*

By its statement of defence, the Respondent herein denied the claims. Issues having been joined, the case proceeded to trial. At the end of the trial and in a reserved and considered judgment delivered on the 9th of February, 2000, Mary U. Odili, JCA (as he then was) found for the Appellants and granted all the reliefs they sought before him. The Respondent was unhappy with the decision. Being aggrieved it appealed to the Court of Appeal (Lower Court) and submitted four issues for determination of the appeal. Their lordships at the lower court, Coram Oimage, Muhammad and Thomas JJCA resolved all the issues in favour of the Respondent herein and allowed the appeal. In the lead judgment delivered by M. D. Muhammad, JCA (as he then was) his lordship found that the main issue upon which the whole claim rested was whether the supernumerary police

are police officers under the management and control of the Inspector-General of Police.

In resolving this issue at page 301 of the printed record of this appeal, his lordship had this to say:-

“The Appellant is not involved in the determination of the appointment of the officers. The supernumerary police officers whose services are withdrawn following appellant’s written notice under Section 18(5) remain officers of the Nigerian Police Force until their appointments are eventually determined by virtue of Section 22(1) of the Police Act.

Under the foregoing Sections of the Police Act, which provisions the lower court is duty bound to observe and enforce, it is glaring that the supernumerary police officers are never servants of the Appellant.”

The Appellants were not satisfied with the decision of the lower court. They have challenged the decision of the lower court by way of this appeal. Their notice of appeal at pages 312 – 315 of the record, dated 2nd August, 2006 and filed on the 7th August, 2006 contains one ground of appeal. The sole ground of appeal without its particulars reads as follows:-

“The learned Justices of the Court of Appeal erred in law in holding that the supernumerary police (or spy police) are not the agents or servants of the respondents (Shell Petroleum Development Company Nig. Ltd).”

Parties filed and exchanged briefs of argument. Appellants’ brief of arguments settled by **A. O Okeaya-Inneh Esq** of counsel to the Appellants is dated 30th of June, 2008 and filed on the 5th July, 2008. Learned counsel formulated one issue for determination of this appeal and it reads thus:-

“Whether the learned Justices of the Court of Appeal were right in law in holding that the supernumerary police (or spy police) are not the agents or servants of the respondent (Shell Petroleum Development Company Nig. Ltd.)”

Mrs. Miannaya A. Essien, learned senior counsel for the Respondent settled the Respondent’s brief of argument dated 10th September, 2008 and filed on the 16th September, 2008. Learned counsel formulated one issue for determination of this appeal and it reads thus:-

“Whether the learned Justices of the Court of Appeal were right when they held that supernumerary police were not the agents or servants of the Respondent?”

The sole issue submitted by the appellant and the one issue formulated by the Respondent are similar. I will therefore treat them together. Before venturing into the argument of learned counsel for each side, I will, for the sake of clarity, set out the brief facts of this case as disclosed by the evidence before the trial court.

The Appellants herein are employees of **Tidex Nigeria Ltd**, a company that carries out the business of Marine transportation of goods and equipment for the oil industry including the Respondent herein. The Appellants are crew of **M. V Beef Master**, a tugboat owned by their employer, Tidex Nigeria Ltd, an independent contractor engaged by the Respondent to transport goods and equipment to its swamp locations from its base at Kidney Island

On the 17th February, 1994, the Appellants set out from Kidney Island in their employers' tugboat for Sea Rex 12, a rig belonging to the Respondent. Appellants were to deliver portable water that had been loaded on their tugboat to the Respondent's rig at Sea Rex 12. On arrival at Rex 12, a

drilling superintendent of the Respondent enquired from the Appellants the where-about of the drilling chemicals that has allegedly been loaded in the tugboat for delivery to Sea Rex 12 as well. Appellants denied knowledge of the drilling chemicals. They were subsequently handed over by the drilling superintendent to one Clement Ukenezie. The latter a supernumerary police officer working for the Respondent arrested the Appellants. According to the Appellants, the Respondent facilitated their conveyance to its premises at Rumuomasi, Port Harcourt where they were tortured, maltreated and intimidated by the supernumerary police officers attached to the Respondent and other security personnel. The Appellants were subsequently arraigned before a magistrates' court, charged with conspiracy and stealing. Their arraignment, trial and subsequent discharge by the magistrate court as well as the conduct of the supernumerary police officers form the basis of the Appellants claims at the Trial High Court.

In this appeal, both parties are in agreement that the narrow issue submitted for resolution of this appeal is based on the legal status of the supernumerary police officers attached to the Respondent. I am in agreement with learned counsel for the parties that by the sole ground of appeal and the sole issue formulated therefrom, the appellant is challenging only that pronouncement by the lower court that the supernumerary police officers attached to the Respondent are not servants of the Respondent, as such the Respondent cannot be vicariously held liable for their action.

Supernumerary is derived from latin word *supernumararii* which in Roman law refers to advocates who were not registered or enrolled and did not belong to the college of advocates. They were not attached to any local jurisdiction. Supernumerary police officer is defined by Section 2 of the Police Act, Laws of the Federation of Nigeria (LFN) 1990 as a Police Officer appointed under Sections 18, 19 or 21 of the Police Act or under an

authorization given under Section 20 of the same Police Act.

Section 18 of the Police Act, 1990 provides as follows:-

“18(1) Any person (including any government department) who desires to avail himself of the services of one or more police officers for the protection of property owned or controlled by him may make application therefore to the Inspector-General, stating the nature and situation of the property in question and giving such other particulars as the Inspector-General may require.

(2) On application under the foregoing subsection the Inspector-General may, with the approval of the President, direct the appropriate authority to appoint as supernumerary police officers in the force such number of persons as the Inspector-General thinks requisite for the protection of the property to which the application relates.

(3) Every supernumerary police officer appointed under this Section:-

- (a) Shall be appointed in respect of the area of the police province or, where there is no police province, the police district or police division in which the property which he is to protect is situated.*
- (b) Shall be employed exclusively on duties connect with the protection of that property.*
- (c) Shall, in the police area in respect of which he is appointed and in any police area adjacent*

thereto but not elsewhere, have the powers, privileges and immunities of a police officer; and

(d) Subject to the restrictions imposed by paragraph (b) and (c) of this section and to the provisions of Section 22 of this Act, shall be a member of the Force for all purposes and shall accordingly be subject to the provisions of this Act and in particular the provisions thereof relating to discipline.

(4) Where any supernumerary police officer is appointed under this section, the person availing himself of the services of that officer shall pay to the Accountant-General-

(a) On the enlistment of the officer, the full cost of the officer's uniform; and

(b) Quarterly in advance, a sum equal to the aggregate of the amount of the officer's pay for the quarter in question and such additional amounts as the Inspector-General may direct to be paid in respect of the maintenance of the officer during that quarter; and any sum payable to the Accountant-General under this subsection which is not duly paid may be recovered in a summary manner before a magistrate on the complaint of any superior police officer:

Provided that this subsection shall not apply in the case of an appointment made on the

application of a department of the Government of the Federation.

- (5) *Where the persons availing himself of the services of any supernumerary police officer appointed under this section desires the services of that officer to be discontinued, he must give not less than two months' notice in writing to that effect, in the case of an officers appointment in respect of a police area within that part of Lagos State formerly known as the Federal Territory, to the Inspector-General or, in the case of an officer appointed in respect of a police area within a state, to the Commissioner of Police of that State: and on the expiration of such notice the services of the supernumerary police officer in question shall be withdrawn.*
- (6) *Where the services of a supernumerary police officer are withdrawn in pursuance of subsection (5) of this section in the course of a quarter for which the sum mentioned in subsection (4)(b) of this section has been paid to the Accountant-General, the Accountant-General shall pay to the person by whom that sum was paid a sum which bears to that sum the same proportion as the unexpired portion of that quarter bears to the whole of that quarter.*

By Section 18(2) supernumerary police officers are appointed by the appropriate authority on the directive of the

Inspector-General of Police and by Section 20(3)(c) a supernumerary police officer shall be a member of the police force for all purposes and shall accordingly be subject to the provisions of the Police Act. For avoidance of doubt, Section 20(3) of the Police Act provides as follows:-

“20(3) Every supernumerary police officer appointed under an authorization given under this section-

- (a) Shall be appointed in respect of the police area to which the authorization relates;*
- (b) Shall in the police area in respect of which area adjacent thereto, but not elsewhere have the powers, privileges and immunities of a police officer; and*
- (c) Subject to the restriction imposed by paragraph (b) of this section and to the provisions of Section 22 of this Act, shall be a member of the Force for all purposes and shall accordingly be subject to the provisions of this Act and in particular to the provisions thereof relating to discipline.”*

Where a supernumerary police officer desires to resign his appointment, he will do so by giving one month notice in that behalf to the superior police officer in charge of the police area in respect of which he is appointed. This is by virtue of Section 22(1) of the Police Act.

Section 22(4) defines appropriate authority as reflected in Sections 18 to 21 of the Police Act in relation to the power to appoint or determine the appointment of supernumerary police officers to mean Nigerian Police Council or any superior police officer to whom that power has been delegated in accordance with Section 194(1) of the Constitution of the Federal Republic of Nigeria.

The provisions of the Police Act, I have highlighted in this judgment are very clear. The appointment of supernumerary police officers, discipline and removal are within the powers of the Inspector-General of Police. There is no ambiguity that will require strenuous statutory interpretation in respect of the provisions regarding who is vicariously liable to the actions of this class of police officers. In construing the provisions of the sections of the Police Act, the words used must be given their ordinary grammatical meaning. See A-G, Bendel State vs A-G Federation (1981) 10 SC 1; Ishola vs Ajiboye (1994) 6 NWLR (Pt. 352) 506;

Adewumi vs A-G Ondo State (1996) 8 NINLR (Pt. 464)

73.

In the instant case, the lower court after a thorough examination of the provisions of the Police Act that relate to supernumerary police officers came to the following conclusion at pages 300 – 301 thus:-

“ The combined effect of the various sections of the Police Act is that although by Section 18(1)(2)(3)(b), the supernumerary police officers who arrested, detained and prosecuted the respondents had been so appointed following an application for that purpose by the appellant, and the appellant pays for the officers uniform and salaries by virtue of Section 22(1) the appointment of the supernumerary police officers is determinable only by ‘the appropriate authority’; the Nigerian Police Council. And the import of Section 18(5) needs to be elaborated upon here too. Pursuant to the subsection where the appellant desires discontinuance of the services of the supernumerary police officers, it gives the required notice in writing only to have the services ‘withdrawn’. The appellant is not involved in the determination of the appointment of the officers. The supernumerary police officers whose services are withdrawn following appellant’s written notice under Section 18(5) continue to be officers of the Nigerian Police Force until their appointments are eventually determined by virtue of Section 22(1) of the Police Act.

Under the foregoing sections of the Police Act, which provisions the lower court is duty bound to observe and

enforce, it is glaring that the supernumerary police officers are never servants of the appellant."

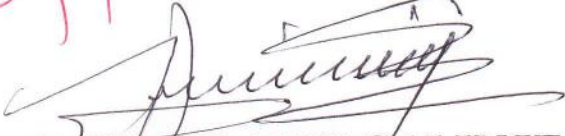
The lower court is perfectly right in its interpretation of the relevant sections of the Police Act. I therefore have no reason to interfere with the conclusion of their lordships. The sole issue formulated by the appellants is resolved against them. The lower court found the decision of the trial court not founded on the evidence before it as the learned trial judge relied on his experience to take judicial notice of a contractual relationship that could only be established through evidence. The Appellant did not deem it necessary to appeal against that finding of the lower court.

The lower court also found that there was no evidence of malice on the part of the supernumerary police officers who were only carrying out their duty when they were confronted with the allegation that the drilling chemical, property of the Respondent which they were lawfully appointed to protect had disappeared on transit, and that the trial court's finding was perverse. There was also no appeal against this finding.

Clearly, learned counsel for the Appellants has not done enough to convince this court to overturn the decision of the lower court. Having resolved the sole issue submitted for determination of this appeal against the Appellants, this appeal shall be and it is hereby dismissed.

I make no order as to costs.

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SUPREME COURT OF NIG

OFFICER

PAUL ADAMU GALINJE
JUSTICE, SUPREME COURT


H.A. ADIWA
SENIOR REGISTRAR

APPEARANCES OF COUNSEL:

MR. E. O ADEKWU with Oladapo O Agbola for the Appellants.

MRS.M. A. ESSIEN with Olusola Laniyan and O. U Ulasi for the Respondent.

IN THE SUPREME COURT OF NIGERIA

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ON FRIDAY 4 MAY, 2018

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SC. 135/2008

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 3. JOSEPH YIBOWEI
 4. SYLVANUS JUMBO
- AND**

**SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED**

JUDGEMENT

(Delivered by KUMAI BAYANG AKAHHS, JSC)

The claim of the appellants (as plaintiffs) against the respondent (then defendant) in the trial court was predicated on vicarious liability. The facts may be briefly stated as follows:-

A tugboat M. V. Beef Master, owned by Tidex Nigeria Limited, an independent contractor, was engaged by the respondent for the transportation of goods and equipment to its base at Kidney Island for oil activities. The appellants were the crew working on M. V. Beef Master. On 17 February, 1994, the appellants set out from Kidney Island to deliver potable water to the respondent's rig at Sea Rex 12. On arrival at the destination, a drilling superintendent enquired from the appellants about the missing drilling chemicals which had been loaded in the tugboat for delivery at Sea Rex 12. The appellants said they knew nothing about the chemicals. The appellants were then handed over by the drilling superintendent to one Clement Ukenezie, a Supernumerary police officer working for the respondent who arrested and conveyed them to the respondent's premises at Rumuomasi, Port Harcourt where

they were tortured, maltreated and intimidated by the Supernumerary officers and other security personnel attached to the respondent. After their arrest they were arraigned before the Magistrate Court for conspiracy and stealing but were discharged by the Court. Following their discharge, the appellants instituted an action before the Rivers State High Court, Port Harcourt claiming special and general damages for suffering and pain, false imprisonment and malicious prosecution. Their claim succeeded in the High Court but that judgement was set aside by the Court of Appeal, Port Harcourt Division. The appellants were dissatisfied with the judgement of the lower court and appealed to this Court.

I read the judgement of my learned brother, Galinje JSC dismissing the appeal as lacking in merit. The dismissal of the appeal is based on the fact that the supernumerary police

officers are not servants of the respondent to warrant the respondent being found vicariously liable for their acts.

In Fiicharles Organ & Ors. V. Nigerian Liquified Natural Gas Ltd (NLNG) & Anor (2013) 16 NWLR (Pt. 1381) 506, the appellants who were supernumerary police officers took out originating summons against the respondents at the High Court of Rivers State seeking a determination whether on a proper construction of the employment of the appellants, they were not entitled to be recognized as staff of the 1st respondent.

In dismissing the appeal this Court held that since the NLNG Spy Police Force are appointed under section 18(1),(2),(3),(4) and (6) of the Police Act and section 214(1) of the Constitution, they cannot be said to be employees of 1st

respondent. The appointing authority has the ultimate control over the officers so appointed.

This is shown in section 22(1) of the Police Act and the definition of who constitutes the appropriate authority. The section provides:-

"22(1) Every supernumerary police officer shall, on appointment, be enlisted to serve in the Force from month to month and accordingly a Supernumerary police officer may at anytime resign his appointment by giving one month's notice in that behalf to the superior officer in charge of the police area in respect of which he is appointed, and his appointment may be determined by the appropriate authority on one month's notice in that behalf or on payment of one month's pay instead of such notice".

"The appropriate authority" is defined in the Act as follows:-

In relation to any power to appoint or determine the appointment of a supernumerary police officer means the Police Service Commission or any superior police officer to whom that power has been delegated in accordance with section 216(1) of the Constitution of the Federal Republic of Nigeria 1999”.

Since the respondent is limited to apply for the services of the supernumerary police officers and the power to appoint and control is in the hands of the appointing authority, the respondent cannot be held vicariously liable for the torts allegedly committed by the supernumerary police officers against the appellants.

I am therefore in agreement with my learned brother, Galinje JSC that the appeal lacks merit and I accordingly dismiss it with no order on costs.

H. A. ADUWAK
SENIOR REGISTRAR

KumaBakaahs.
K. B. AKAHS

JUSTICE, SUPREME COURT

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REGISTRAR
SUP. COURT OF NIG

Counsel appearing

E. O. Adekwu with Oladapo O. Agboola for Appellants.

M. A. Essien SAN with Olusola Laniyan and O. U. Ulasi for Respondent.