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LEGAL ALERT

SUPREME COURT OF NIGERIA HOLDS THAT IT CAN EXERCISE ORIGINAL JURISDICTION ON DISPUTES BETWEEN THE STATES AND THE FEDERATION ARISING FROM PRODUCTION SHARING CONTRACTS

I. Introduction

On 20th July 2018, the Supreme Court held that its original jurisdiction can be invoked in instances where the action is a tax dispute between federating State(s) and the Federation of Nigeria (or between States of the Federation); involving a question of law or fact or both and pertaining to the existence or otherwise of a legal right.

The action was commenced by Rivers, Abia and Akwa Ibom States via Originating Summons against the Federation of Nigeria on alleged breached of **Section 16 (1)** of the **Deep Offshore Production Sharing Contracts Act** by the Federal Government for failing or refusing to adjust the share of the Government of the Federation in the production and sharing contracts under consideration in accordance with **Section 16(1)** of the **Deep Offshore Production Sharing Contracts Act** which provides as follows:

"The provisions of this Act shall be subject to review to ensure that if the price of crude oil at any time exceeds \$20 per barrel, real terms, the share of the Government of the Federation in the additional revenue shall be adjusted under the Production Sharing Contracts to such extent that the Production Sharing Contracts shall be economically beneficial to the Government of the Federation."

The Plaintiffs had contended that the Defendant is a trustee for the States of the Federation. Although the parties reached an amicable settlement and prayed the court to enter their Terms of Settlement as its judgment of the court, the Supreme Court, requested parties to address it on whether the Supreme Court could exercise its original jurisdiction in this case.

2. The Judgement of the Court

The Supreme Court held that pursuant to the provision of Section 232(1) of the Constitution, for the original jurisdiction of the Supreme Court to be successfully invoked in civil cases, the following must co-exist:

- The action must be a dispute between the Federation and a State or States or between States.
- The dispute must involve any question of law or fact or both.

- The dispute must pertain to the existence or extent of a legal right”

The court therefore concluded that in the instant case:

- The Plaintiffs have unequivocally established a dispute, which is the failure or refusal of the Defendant to adjust the share of the Government of the Federation in the Production Sharing Contracts further to **Section 16(1) of the Deep Offshore and Inland Basin Production Sharing Contracts Act.**
- The dispute is between three States of Rivers, Bayelsa and Akwa Ibom and the Federation of Nigeria.
- This has satisfied the demands of the constitution for invoking the original jurisdiction of the Supreme Court.

3. The Facts of this case distinguished from other cases

The Supreme Court in its ruling distinguished the facts of this case from the following earlier cases in which the Supreme Court held that the original jurisdiction of the apex court could not be properly invoked:

- (i) **Attorney General of Lagos State v Attorney General of the Federation and 35 ors (2014-) 9 NWLR (pt 1412) 215.** The dispute in that case was between the Lagos State Government and the Federal Inland Revenue Service on the management and operation of the value added tax. The reliefs claimed by the Plaintiffs were against the Federal Government of Nigeria, its servants and its agencies and not against the Federation of Nigeria or any State or States of the Federation as a constituent unit or units of the Federation.
- (ii) **Attorney General of Kano State v Attorney General of the Federation (2007) 6 NWLR (pt 1026) 164,** The Supreme Court refused to exercise its original jurisdiction because, even though the Statement of Claim of the Plaintiff showed the existence of a justiciable dispute between the Plaintiff and the Inspector General of Police. The Supreme Court therefore declined to assume its original jurisdiction because the dispute was outside the purview of section 232(1) of the 1999 Constitution

For more information, contact:

Maxwell Ukpebor +234 803 960 0520
Samuel Akpologun +234 806 526 4570

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