

NIGERIAN ENVIRONMENTAL JUSTICE ON TRIAL: A RE-EXAMINATION OF THE ENGLISH HIGH COURT'S DECISION IN *BILLE & OGALE COMMUNITIES V SPDC**

Abstract

The 2025 decision of the English High Court in *Bille & Ogale Communities v Shell Plc & Shell Petroleum Development Company (SPDC)* placed Nigerian environmental justice under renewed judicial scrutiny through the application of Nigerian law. The judgment raises critical questions concerning the horizontal enforceability of constitutional and Charter-based human rights, the justiciability of environmental harm, and corporate accountability for large-scale environmental degradation. This article critically examines the Court's conclusions that the right to life under section 33 of the Constitution of the Federal Republic of Nigeria 1999 and rights under the African Charter on Human and Peoples' Rights are not enforceable against private corporations, and that environmental pollution such as oil spills does not engage constitutionally protected rights. While acknowledging the constraints inherent in the application of foreign law through expert evidence, the article argues that the decision adopts an unduly narrow and formalistic interpretation of Nigerian constitutional and human rights jurisprudence. It contends that section 46 of the Constitution supports the horizontal enforcement of Chapter IV rights and that neither the text nor the purpose of section 33 limits its application to state actors, particularly where non-state conduct poses a direct threat to life. The article further challenges the Court's reliance on *Opara v SPDC*, arguing that recent Supreme Court and appellate authorities, most notably *Centre for Oil Pollution Watch v NNPC* and *Mobil Producing Nigeria Unlimited v Ajanaku*, signal a jurisprudential shift towards recognising serious environmental harm as capable of engaging enforceable fundamental rights. It concludes that *Bille & Ogale* risks misrepresenting the current trajectory of Nigerian environmental and constitutional law.

Keywords: *Ratio Decidendi*, *Obiter Dictum*, Environmental Right, Horizontal Application of Rights, Justiciability.

1. Introduction

The 2025 decision of the English High Court (King's Bench Division) in *Bille & Ogale Communities v Shell Plc & Shell Petroleum Development Company (SPDC)*¹ represents one of the most significant instances of transnational environmental litigation arising from oil pollution in Nigeria's Niger Delta. The case concerns long-standing environmental degradation allegedly caused by oil exploration and production activities conducted by SPDC, Shell's Nigerian subsidiary, and raises far-reaching questions about environmental justice, corporate accountability, and the enforceability of fundamental rights under Nigerian law. Although determined in an English forum, the litigation is governed entirely by Nigerian law, thereby placing Nigerian constitutional and human rights jurisprudence under external judicial scrutiny. The proceedings comprise four related claims: individual claims brought by members of the Bille and Ogale communities, and representative claims advanced on behalf of the communities as a whole. All claims seek damages and other reliefs against both Shell Plc, the UK-based parent company, and SPDC. While the litigation was initiated in 2015 on the basis of tort and breach of statutory duty, a significant development occurred in 2023 when the claimants amended their pleadings to include allegations of violations of fundamental rights under the Nigerian Constitution and the African Charter on Human and Peoples' Rights. This amendment transformed the dispute from a conventional environmental tort claim into a test case on the scope, reach, and justiciability of environmental rights in Nigeria. Given that the alleged harm occurred in Nigeria, it is undisputed that Nigerian law governs both the private law and fundamental rights claims. Pursuant to a consent order made on 16 January 2024, the English High Court identified a series of preliminary issues to be determined prior to the substantive trial, scheduled to commence in March 2027. These preliminary issues span both private law and constitutional claims, but their resolution carries particular significance for the development of environmental rights jurisprudence under Nigerian law.

This article focuses on a select group of these preliminary issues, namely those concerning the right to a clean and healthy environment and its relationship with enforceable fundamental rights under the Nigerian Constitution and the African Charter. Specifically, it examines whether Nigerian constitutional and Charter-based rights can be enforced against private companies for environmental harm, and whether such rights are capable of grounding claims for compensation arising from oil pollution. The analysis centres on the scope and interpretation of section

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¹ *Bille & Ogale Communities v Shell Plc & Shell Petroleum Development Company (SPDC)* (2025) EWHC 1539 (KB) by the Hon. Mrs. May DBE, 20th June 2025.

20 of the Nigerian Constitution, sections 33 and 34 of the Constitution, and Articles 4, 16, 22, and 24 of the African Charter, as understood within Nigerian jurisprudence. Because these issues required the application of Nigerian law beyond the direct expertise of the English court, the parties relied extensively on expert evidence. Dr Olisa Agbakoba, SAN, testified on behalf of the claimant communities, while Mr Godwin Omoaka, SAN, appeared for the defendants. The divergent expert opinions presented to the Court underscore the doctrinal uncertainty and contested nature of environmental and human rights enforcement in Nigeria, an uncertainty that this article seeks to critically interrogate.

2. The Horizontal Application of Fundamental Rights under the Nigerian Constitution and the African Charter: Challenges and Prospects

Before examining the justiciability or scope of the right to a clean and healthy environment under the Nigerian Constitution and the African Charter, it is necessary to first address whether fundamental rights can be enforced against private actors. In *Bille & Ogale Communities v Shell*, the English High Court considered this pivotal issue of horizontal application, which determines whether constitutional and human rights protections extend beyond the state to corporations and other non-state entities. Establishing this foundation is essential for any meaningful discussion of environmental rights in the Nigerian context.

Nigerian Constitution

The Nigerian Constitution distinguishes between two categories of rights. The first category, contained in Chapter II, Fundamental Objectives and Directive Principles of State Policy, primarily comprises socio-economic rights, which are generally non-justiciable under section 6(6)(c) of the Constitution. Notably, section 20, which guarantees a clean and healthy environment, falls within this chapter. The second category, found in Chapter IV, Fundamental Rights, consists of civil and political rights that are justiciable under section 46 of the Constitution. These include first-generation rights such as the right to life (section 33) and the right to dignity of the human person (section 34). In *Bille & Ogale Communities v Shell*, the claimants relied on section 20 (non-justiciable) alongside sections 33 and 34 (justiciable) to support their claims. The central question before the Court was whether these justiciable rights could be enforced horizontally against private companies. Both expert witnesses agreed that Nigerian courts typically apply a two-pronged approach: first, examining the wording of the right, and second, considering the context of its alleged violation. Mr Justice May endorsed this approach, noting that in evolving areas such as human rights enforcement, the scope of the right and the duty-bearer depend on the specific circumstances of the case. The Court then proceeded to consider the applicability of sections 33 and 34 in the context of corporate accountability. Although both experts agreed on the application of the two-pronged test for assessing the horizontal enforceability of Chapter IV rights, they differed in their interpretation of section 33. Dr. Agbakoba contended that, if directly considered by the Supreme Court, both rights would be recognized as enforceable horizontally against private parties, including corporations. Mr. Omoaka acknowledged that section 34 (right to dignity) has been interpreted by Nigerian courts to extend to private actors, although he personally maintained that fundamental rights were originally intended to bind only the state. The divergence was sharper regarding section 33 (right to life): Dr. Agbakoba argued for its potential horizontal application, whereas Mr. Omoaka maintained that Nigerian courts would not enforce it against private entities. Mr. Omoaka referred to *Agbeniga v Adejimiroye & Anor*², the only Nigerian appellate decision directly addressing horizontal application of section 33. In that case, involving an assault between private individuals, the Court of Appeal held that the right to life under section 33 could not be enforced against private persons, reasoning that criminal sanctions under the Criminal Code already protect the right to life and that constitutional enforcement applies only to state actors. Dr. Agbakoba acknowledged this ruling but argued that the Supreme Court would adopt a different approach today, while Mr. Omoaka maintained that *Agbeniga* remains authoritative.

The English Court accepted the submission of Mr. Omoaka, SAN, that no Nigerian appellate court has expressly applied section 33 of the Constitution horizontally. In reaching this conclusion, the Court acknowledged the decision of the Federal High Court in *Gbemre v. SPDC*³, where the right to life appeared to be enforced against a private corporation, but discounted its authority on the grounds that it was a first-instance decision, was pending on appeal, and was not relied upon by the claimants. On that basis, the Court concluded that, while claims under section 34 of the Constitution (dignity of the human person) may be maintained against private actors, section 33 (right to life) is not presently enforceable against private entities under Nigerian law. With respect, this conclusion is doctrinally unsustainable. The pendency of an appeal does not deprive a subsisting decision of its legal force or diminish the binding nature of the ratio decidendi it articulates. Under the settled doctrine of stare decisis, a decision of a court of competent jurisdiction remains binding on courts of subordinate jurisdiction until it is set aside by a higher court. Accordingly, the principles enunciated in *Gbemre v. SPDC* were unaffected by the mere

² (2016) LPELR-40138 (CA).

³ (2005) AHRLR 151 (NgHC 2005).

fact of an appeal and ought not to have been treated as juridically inconsequential. To hold otherwise would undermine the coherence of precedent and introduce uncertainty into judicial hierarchy.

More fundamentally, the English Court's approach reveals an internal inconsistency. If the pendency of an appeal is sufficient to diminish the authority of *Gbemre*, then, by parity of reasoning, the reliance placed on *Opapa v. SPDC*⁴ as the 'most authoritative' statement of Nigerian law is equally vulnerable, given that *Opapa* itself is currently under challenge before the Supreme Court⁵. The selective invocation of appellate uncertainty therefore cannot be doctrinally justified. While it is understandable that an English court applying foreign law must proceed cautiously and rely on available precedents, the absence of a definitive appellate pronouncement should not compel an unduly restrictive or formalistic interpretation, particularly where such interpretation defeats the normative purpose of constitutional rights and ignores the trajectory of Nigerian constitutional jurisprudence. Applying the established two-factor test, section 33 does not explicitly limit its application to the state. Section 33 provides: 'Every person has a right to life, and no one shall be deprived intentionally of his life except in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.' Now consider section 46, the enforcement provision for Chapter IV rights:

- (1) Any person who alleges that any of the provisions of this Chapter (i.e., Chapter IV – Fundamental Rights) has been, is being or is likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.
- (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any of the provisions of this Chapter.

Applying the two-factor test, which the Court itself adopted, a careful reading of the express wording of sections 33 and 46 of the Nigerian Constitution indicates that nothing in the text limits the enforcement of fundamental rights solely to the state. Section 33 guarantees that 'every person has a right to life' without specifying that the obligation falls exclusively on government actors. Section 46, which provides the enforcement mechanism for all Chapter IV rights, empowers 'any person' alleging a violation to apply to a High Court for redress and authorizes the Court to issue such orders or directions 'as it may consider appropriate' to secure enforcement. The text contains no express restriction confining enforcement to state actors; any such limitation arises solely from judicial interpretation, as in *Agbeniga v Adejimiroye & Anor*. On a plain-language reading, these provisions support the horizontal enforceability of all Chapter IV rights, including the right to life, reflecting the modern reality that human rights violations often arise from private actors, including corporations, as well as the state. This broader interpretation aligns with the drafters' intent and international best practices, and nothing in sections 33 or 46 expressly excludes private entities from liability.

Dr. Agbakoba's position on the horizontal application of Section 33 (right to life) finds further support in the arguments of Ms. Kaufmann (claimants' counsel), who pointed out the illogical consequence of allowing claims against private actors for torture or imprisonment under Sections 34 and 35, but not for loss of life under Section 33. She noted:

1. Of all the rights the right to life is the most fundamental of all. It would be illogical to enable a claim against a private person/company which imprisoned and/or tortured an individual (under sections 34 and 35 of the Constitution, which the courts have already indicated may be applied horizontally) but not where the individual was killed or nearly killed in circumstances which would engage section 33 (leaving arguments about scope to one side for these purposes).
2. Section 33 deploys the same generous language as in sections 34 and 35, and the clawbacks which follow are in all three rights largely directed at actions of the state which are deemed not to contravene the right. The clawbacks in ss.34 and 35 have not been interpreted so as to prohibit the right from having horizontal effect; there is no apparent reason why the clawback in section 33 should do so either.

The Court's reliance on *Agbeniga*, which rested on the existence of criminal sanctions for murder, appears unpersuasive. Criminal law also prohibits acts such as torture and false imprisonment, yet Sections 34 and 35 have been enforced horizontally against private actors. As observed by the Court:

⁴ (2015) LPELR-24798 (CA).

⁵ (2015) 6 NWLR (Pt. 1454) 281 (CA); (2015) LPELR-24851 (CA)

I did not fully follow the court's reasoning in *Agbeniga*, which relied largely on criminal sanctions for murder. As Mr. Omoaka conceded, criminal sanctions also exist for torture (Section 34) and false imprisonment (Section 35). If the presence of criminal penalties were sufficient to exclude horizontal enforcement, then Sections 34 and 35 should likewise be excluded, yet the courts have already applied them horizontally. The article cited by Justice Owoade did not address horizontal effect; it merely classified Sections 33, 34, and 35 as 'absolute rights,' two of which have clearly been enforced against private actors.

Section 33 is clear and unambiguous. Its subsection (2) merely outlines permissible limitations on rights; it does not restrict enforcement to state actors. Just as Sections 34 and 35 have been applied horizontally, nothing in Section 33's text precludes claims against private individuals or corporations. By importing such limitations, *Agbeniga* imposed a judicially created restriction unsupported by the Constitution's wording. This inconsistency underscores the need for reform. A holistic constitutional amendment clarifying that all Chapter IV rights are enforceable against both state and non-state actors would enhance legal certainty and strengthen a rights-based approach, particularly given the modern reality that many human rights violations are perpetrated by private actors. In this light, denying the horizontal applicability of the right to life, foundational to all other constitutional rights, is neither consistent nor convincing.

African Charter

Turning to the application of rights under the African Charter, the Charter was domesticated in Nigeria through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983. As a result, the Charter now operates in Nigeria on two levels: first, as a ratified international treaty, and second, as domesticated legislation⁶. In this case, the Court held that rights under the African Charter cannot be enforced against private companies. It noted that the Schedule to the African Charter Act reproduces the Charter's full text verbatim. Article 1 of the Charter states: 'The Member States of the Organization of African Unity Parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.' The Defendants' case, supported by the opinion of Mr Omoaka, was that the African Charter Act made no change to the provisions of the Charter or the established international jurisprudence on the way in which the Charter operates. Article 1 of the Charter makes it clear that it is the Member States which are legally obliged to 'recognise the rights duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them'. Article 1 is the 'normative lynchpin' of the Charter, as Mr Omoaka described it, determining the content and scope of the substantive rights set out therein. He drew attention to the decision of the African Commission in *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*⁷, and to decisions of the ECOWAS Court for example in *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria*⁸. In the latter case the court observed that 'the scope of...provisions [of the Charter] must be looked for in relation to Article 1 of the Charter.' Mr Omoaka explained that, as these and other decisions demonstrate, the Charter rights only become binding and enforceable through Article 1, which in turn mandates that 'the rights, duties and freedoms enshrined in this Charter' shall be recognised and implemented by 'Member States'.

As an international treaty, the Charter clearly imposes obligations on states, not private actors. Dr Agbakoba, while acknowledging this, argued that once domesticated, Nigerian courts could enforce the Charter's rights horizontally, just as they have done with certain Chapter IV constitutional rights, based on the broad language of Section 1 of the African Charter Act and Section 46 of the Constitution. The African Charter Act is a simple piece of legislation, providing under a single substantive provision, section 1, as follows: Section 1, the enforcement of provisions of African Charter on Human and Peoples' Rights Act provides:

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in this Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria

However, the English court firmly rejected this broader interpretation of the African Charter's applicability. In its reasoning, the court stated:

Logically, applying ordinary rules of statutory interpretation, I do not think that this can be right. The wording of section 1 of the African Charter Act specifically includes the words '...subject as

⁶ O Agbakoba SAN, Expert Report on Nigerian Constitutional Law, 8 November 2024, in *Bille and Ogale Group Litigation* at the High Court, King's Bench Division, Claim Nos KB-2023-000252; KB-2023-002200, before Hon. Justice May Dbe.

⁷ Communication 323/06 of 12th October 2012.

⁸ Judgment No. ECW/CCJ/JUD/18/12, 14 December 2012.

thereunder provided...’, referring to the entire Charter, not to selected parts of the Charter. Nothing in the African Charter Act changed the wording or structure of the African Charter itself; instead, by a single provision, it simply imported the entire text, unchanged, into Nigerian law, including, in particular, Article 1, by which all the duties are expressed to be State duties. In cross-examination, Dr. Agbakoba agreed that this was the effect of Article 1 of the Charter.⁹

Based on this reasoning, the court concluded that, because the African Charter was domesticated wholesale, without any amendments to tailor its provisions to Nigeria’s local legal context or to extend its obligations to non-state actors, its provisions must be interpreted literally. Under this literal interpretation, duties and obligations under the Charter remain directed solely at state actors, as originally framed in Article 1. Consequently, the court accepted the argument advanced by Mr. Omoaka, holding that the African Charter does not apply horizontally and therefore does not impose enforceable obligations on private individuals or companies.

The decision of the English court in this matter highlights a critical failure in Nigeria’s legislative drafting process. A closer look reveals that a simple application of common sense could have guided the drafters of the African Charter (Ratification and Enforcement) Act to amend the original text of the Charter during domestication. Specifically, they ought to have removed references to ‘state parties’ and other treaty-specific language, replacing them with terms clearly indicating applicability to both state and non-state actors. Such an approach would have adapted the Charter to reflect Nigeria’s local legal context and enforceability requirements. Given this legislative oversight, it is difficult to fault the English court for adopting a strictly literal interpretation of the Act. The court simply applied the wording as enacted, and nothing within the text suggests ambiguity that would justify a departure from the literal rule of interpretation. Nonetheless, this position does not reflect the practical reality in Nigeria, where the courts have repeatedly applied the provisions of the domesticated Charter alongside constitutional rights under Chapter IV of the 1999 Constitution to protect fundamental human rights. Notably, the Preamble to the 2009 Fundamental Rights (Enforcement Procedure) Rules significantly broadens the scope of enforceable rights. It provides: ‘These Rules shall apply to all applications for the enforcement of fundamental rights specifically provided for in Chapter IV of the Constitution and the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.’ This provision underscores that both constitutional rights and rights under the African Charter can be enforced through the same procedural framework. More importantly, the Rules apply to both private individuals or companies and the state, thus reinforcing the point that the domesticated Charter is not limited in application to state actors alone.

The Nigerian Supreme Court in *Abacha v. Fawehinmi*¹⁰ further affirmed this position. It held that Nigeria, having ratified the African Charter and domesticated it via the African Charter (Ratification and Enforcement) Act (Cap. 10), has conferred the force of law upon its provisions. As such, the Charter must be respected and enforced by all arms of government, legislative, executive, and judiciary. The Court recognized that while the Charter is not superior to the Constitution, it remains binding as a statute ‘with international flavour’ and cannot be disregarded. The implication of this decision contradicts any interpretation suggesting the Charter applies only to state actors. Once domesticated, the Charter becomes Nigerian law and must be read and enforced in line with domestic realities. Continuing to rely on treaty-specific language like ‘state parties’ undermines the very purpose of domestication and limits the transformative potential of the Charter. Accordingly, this supports the call by this author for a comprehensive review of all domesticated treaties that suffer similar interpretational shortcomings. It also highlights the urgent need for Nigerian legislative drafters to be better informed and trained in the process of treaty adaptation, to avoid the kind of drafting oversight that occurred in this instance. Effective use of domesticated international human rights instruments requires clarity, precision, and contextual sensitivity in legislative drafting.

3. Justiciability of the Right to Clean and Healthy Environment under the Constitution and African Charter

Having first addressed the horizontal application of constitutional and African Charter rights, the English Court then considered the justiciability of the right to a clean and healthy environment. In particular, the Court examined whether various rights under Nigerian law could provide a legal basis for claims arising from environmental harm, including oil spills. These rights included: the right to a clean and healthy environment (section 20, Nigerian Constitution); the right to life (section 33(1)); the right to dignity of the person (section 34(1)); the right to life and physical integrity (Article 4, African Charter); the right to the highest attainable standard of physical and mental health (Article 16(1)); the right to economic, social, and cultural development (Article 22); and the right to a general satisfactory environment favorable to development (Article 24, African Charter). The Court’s inquiry

⁹ *Supra*.

¹⁰ (2000) 6 NWLR (Pt. 660) 228.

focused on whether these provisions, individually or collectively, could engage enforceable rights under Chapter IV of the Constitution, thereby supporting claims for compensation for environmental damage.

In addressing the justiciability of the right to a clean and healthy environment, Mr Justice May examined how Nigerian courts, particularly the Supreme Court, would approach the engagement of constitutional and African Charter rights in cases of environmental harm, including oil pollution. The Court focused on two leading Nigerian appellate decisions: *Opara & Ors v SPDC*¹¹ and *Centre for Oil Pollution Watch v NNPC (COPW)*¹², ultimately treating *Opara* as the authoritative precedent on justiciability.

In *Opara*, the Nigerian Court of Appeal held that claims arising from gas flaring could not be recast as enforceable human rights claims under Chapter IV of the Constitution or the African Charter. Rather, such claims were properly grounded in tort, specifically nuisance, and were therefore incompetent under the Fundamental Rights (Enforcement Procedure) Rules. Affirming the decision of the trial court, the Court of Appeal stated:

A cursory look at the claim filed in this case from the reliefs and the varying affidavits clearly shows that the Appellants' main grouse is about pollution generated from gas flaring. This without mincing words is a matter that cannot be knighted as a fundamental right action under Chapter IV of the Constitution and under the African Charter on Human and Peoples' Rights... The issues of gas flaring, oil exploration and environmental impact assessment... are not issues of fundamental right. There is no legal craftsmanship found in this case that can weave them into fundamental rights to life and dignity of the human person under Chapter IV of the Constitution or under the African Charter.

The Court further endorsed the caution expressed by Niki Tobi JSC¹³ (as he then was) against the indiscriminate invocation of fundamental rights provisions, observing that while Chapter IV rights are broadly framed, they are circumscribed by constitutional safeguards and cannot be expanded beyond their clear textual and doctrinal limits. On this basis, the Court concluded that environmental pollution claims, standing alone, do not engage constitutionally protected rights to life or dignity under Nigerian law. Although the claimants contended that *Opara* was wrongly decided and that the Supreme Court's reasoning in *COPW* had effectively superseded it, the English Court observed that *COPW* dealt narrowly with locus standi in public interest litigation. Its findings on the enforceability of the right to a clean and healthy environment were obiter dicta and therefore inapplicable to the case before it. The Court emphasized that *COPW* addressed statutory duty and negligence claims, not fundamental rights, and did not overturn *Opara* or directly engage the constitutional or Charter rights at issue. Accepting Mr. Omoaka's argument, the Court held that *Opara* remains binding Nigerian authority on the scope of these rights, rejecting Dr. Agbakoba's claim that it was decided *per incuriam*. Accordingly, the English Court concluded that, under current Nigerian appellate jurisprudence, environmental pollution such as oil spills does not presently engage enforceable fundamental rights under either the Constitution or the African Charter.

These authors respectfully disagree with the English Court's conclusion on justiciability. While the central issue in 'COPW' concerned locus standi, the Supreme Court explicitly recognized that environmental rights, including the right to a clean and healthy environment under section 20 of the Constitution and Article 24 of the African Charter, may become justiciable when linked to enforceable rights under Chapter IV, particularly the right to life (section 33) and the right to dignity of the human person (section 34). This recognition, that grave environmental harm can implicate constitutionally guaranteed rights, formed the foundation for the Court's decision to expand standing in public interest litigation. Far from being mere obiter, these observations constitute the reasoning that informed the Court's decision, defining both the ratio decidendi and the broader legal context in which the judgment was delivered. Nigerian appellate authorities clarify the distinction between ratio decidendi and obiter dicta. In *Ajayi v. Ajayi*¹⁴ and *NUC v. Alli & Anor*¹⁵, the Court of Appeal explained that the ratio decidendi is the principle or rule of law on which a court's decision is founded, whereas obiter dicta are incidental remarks that do not determine the outcome. Similarly, *Ladejobi & Ors v. Oguntayo & Ors*¹⁶ emphasize that even where a pronouncement is technically obiter, it carries significant persuasive authority if it addresses the facts and legal principles relevant to the case at hand. Accordingly, even if one were to classify aspects of *COPW* as obiter, the Supreme Court's interpretation of constitutional rights in the context of environmental harm cannot be ignored by lower courts.

¹¹ *Supra*.

¹² (2019) 5 NWLR (Pt. 1666) 518 (SC).

¹³ *Olafisoye v. Federal Republic of Nigeria* (2004) 4 NWLR (Pt. 864) 580 (SC).

¹⁴ (2014) LPELR-22471(CA).

¹⁵ (2013) LPELR-21444(CA).

¹⁶ (2015) LPELR-41701(CA).

It is noteworthy that the Honourable Justice Eko J.C.A, one of the Justices who sat on the Court of Appeal panel that decided *Opara v. SPDC* in 2015, also served as one of the seven justices of the Supreme Court panel that delivered the judgment in *COPW v. NNPC* upon his elevation to the Supreme Court.

In his concurring judgment in *Opara*, Justice Eko J.C.A observed:

The cause of action for the suit, the subject matter of this appeal, is environmental pollution from oil and gas exploration. The cause of action in the dispute situates the dispute in the tort of nuisance, which, in my firm view, does not fall within any of the fundamental human rights either under Chapter IV of the Constitution of 1999 or the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 2004.¹⁷

However, in his concurring judgment in *COPW*, Justice Eko J.S.C (now a Supreme Court Justice) took a significantly broader and more inclusive stance. He stated:

Section 17(4) of the Oil Pipelines Act mandates that all licenses must comply with the Act's provisions and any regulations regarding public safety and pollution prevention. Moreover, section 33 of the 1999 Constitution guarantees the right to life, while section 20 emphasizes the state's duty to enhance and protect the environment. Article 24 of the African Charter on Human and Peoples' Rights asserts the right of all individuals to a satisfactory environment conducive to their development. *Collectively, these legal frameworks underscore the fundamental right of citizens to a clean and healthy environment.* The Acha Community and residents living near the Ineh and Aku streams rely on these rivers for drinking water, fishing, and other economic activities. They possess a right to a favorable environment, integral to their development, alongside a constitutional guarantee of the right to life. The state, including the defendant, a statutory corporation, has a duty to protect this community from harmful pollutants and to improve the quality of the water, air, land, and forests that sustain their livelihoods. The African Charter on Human and Peoples' Rights, as an international treaty incorporated into Nigerian law, obligates Nigerian courts to uphold and protect the human rights enshrined therein. As long as Nigeria remains a signatory to this Charter and other international environmental treaties, the courts will continue to safeguard these rights for its citizens.¹⁸

The evolution in Justice Eko's approach from his concurring judgment in *Opara* to his position in *COPW* clearly reflects the growing consensus within Nigerian courts to adopt a more expansive and inclusive interpretation of the right to a clean and healthy environment as a justiciable fundamental human right under both the Nigerian Constitution and the African Charter. Justice Eko's shift from a restrictive view to a broader interpretation exemplifies the broader judicial movement in Nigeria towards recognizing environmental rights as integral to the protection of life, dignity, and development. The Supreme Court's decision in *COPW* represents the current and authoritative position of Nigerian law on this issue, reaffirming the justiciability of the right to a clean and healthy environment. Although the English Court declined to treat *COPW* as the definitive authority on the justiciability of environmental rights, it nonetheless acknowledged the case's significance and its reflection of a shifting trend in Nigerian jurisprudence. The Court stated:

However, although I decline to find that *COPW* is to be treated as a definitive Supreme Court decision that these fundamental rights are capable of being engaged by environmental pollution, I accept Dr Agbakoba's evidence that *COPW* is an important indicator of the Supreme Court's 'direction of travel' in relation to cases involving pollution, at least so far as state responsibilities are concerned. It is apparent from many of the judgments in *COPW* that the fact that the proposed defendant NNPC was effectively an emanation of the Nigerian State was a key element in the view the court took of the case. The Claimants pointed me to two cases in Nigeria after *COPW* in further support of their argument that the Supreme Court would today decide the scope of rights differently from *Opara*: *Mobil Producing v Ajanaku & Anor* [2021] LPELR 52566 and *Torchi*, a Federal High Court decision which I have set out above at [152(2)]¹⁹

In *COPW*, the apex Court recognized that severe environmental pollution threatening water, land, and livelihoods engages the right to life under section 33 of the Constitution, read together with section 20 and Articles 22 and 24 of the African Charter. This principle is reinforced in the more recent *Mobil Producing Nigeria Unlimited v*

¹⁷ (2009) LPELR-8504(CA).

¹⁸ *Supra*.

¹⁹ *Supra*.

*Ajanaku & Anor*²⁰, which postdates the earlier *Opara* case relied upon by the English Court. The Court of Appeal, per Ogbuinya JCA, held that:

The law mandates an owner/operator of oil pipelines, like the appellant, to maintain and repair them to prevent crude oil leaks that cause damage to human lives and the environment (see *Centre for Oil Pollution Watch v. NNPC* (2019) 5 NWLR (Pt. 1666) 518; Section 11 of the Oil Pipelines Act, Cap. 407, Laws of the Federation of Nigeria, 2004). The importance of socio-economic rights in the life of any citizen cannot be overstated. A person's fundamental right to life, entrenched in Section 33 of the Constitution, cannot be fully realized in the absence of his right to a hospitable environment, including water, air, land, forest, and wildlife, all of which are guaranteed under Section 20 of the same Constitution. These rights are interconnected and should be enforced together. It is impossible to actualize the right to life if socio-economic rights are neglected. Hence, the award addressed both the financial needs of the respondents and the severe consequences of the oil spill.

While the Court accepted Mr. Omoaka's submission that *Ajanaku* was 'obiter' a position initially shared by Dr. Olisa Agbakoba, SAN (though described as a 'bad law'), the latter later affirmed that the decision continues to carry authoritative weight²¹. Taken together, *Centre for Oil Pollution Watch v NNPC* and *Ajanaku* underscore that Nigerian courts must recognize the profound impact of environmental degradation on fundamental human rights, thereby reinforcing the legal foundation for holding polluters accountable. It is immaterial that *Ajanaku* was not contested under the FREP Rules; what is significant is the Court's pronouncement on principles of law. Likewise, the fact that the matter was technically dismissed does not diminish the legal principles established. While the dismissal may affect the practical relief available to the claimant, the Court's determinations, such as the justiciability of environmental rights, remain binding on lower courts. In light of these authorities, the findings in *COPW* should be understood as an integral part of the Court's reasoning on environmental rights, not merely a passing comment. They demonstrate that environmental harm can engage justiciable rights under Chapter IV, providing a sound constitutional basis for linking the right to a clean and healthy environment to enforceable rights such as life and dignity. The English Court's failure to recognize this reasoning underestimates the binding authority of the Supreme Court and mischaracterizes the legal principles underpinning Nigerian environmental jurisprudence.

4. Conclusion

This article has argued that the English High Court's decision in *Bille & Ogale Communities v SPDC*, though careful in its method, ultimately rests on an unduly narrow and formalistic understanding of Nigerian constitutional and environmental jurisprudence. In treating *Opara v SPDC* as the definitive authority and characterising the Supreme Court's reasoning in *Centre for Oil Pollution Watch v NNPC* as obiter dictum, the Court detached the doctrine of locus standi from the substantive rights and obligations that give it legal meaning. A holistic reading of *COPW* demonstrates that the Supreme Court's recognition of severe environmental degradation as engaging enforceable constitutional and statutory rights, particularly the rights to life and dignity under sections 33 and 34 of the Constitution, read with section 20 and Article 24 of the African Charter, was indispensable to its expansion of standing and therefore formed part of the ratio decidendi. Equally, the English Court's restrictive approach to horizontal enforceability fails to reflect the trajectory of Nigerian law. The text and structure of sections 33 and 46 of the Constitution do not confine fundamental rights obligations to the state, and Nigerian courts have already recognised the horizontal application of Chapter IV rights, notably under sections 34 and 35. There is no principled basis for excluding the right to life from this development, particularly where private corporate conduct poses a direct threat to human survival. Similarly, once domesticated, the African Charter operates as Nigerian law and has consistently been applied alongside constitutional rights in rights-enforcement proceedings, notwithstanding its treaty origins. When these doctrinal strands are properly synthesised, *COPW* emerges not as a tentative or peripheral authority, but as the clearest expression of a judicial shift toward rights-based environmental protection and corporate accountability in Nigeria. The English Court's failure to accord this development its proper weight risks misrepresenting the current state of Nigerian law and obscuring the Supreme Court's constitutional role as its final expositor. The enduring uncertainty exposed by *Bille & Ogale* therefore underscores the urgent need for doctrinal consolidation and constitutional clarification, to firmly entrench both the horizontal application of fundamental rights and the justiciability of the right to a clean and healthy environment within Nigeria's legal order. Properly understood, *COPW* establishes as binding ratio decidendi that serious environmental degradation, whether caused by state or non-state actors, can engage enforceable constitutional and Charter-based rights in Nigeria, and the failure to recognise this in *Bille & Ogale* reflects not the state of Nigerian law, but a misreading of its settled and evolving jurisprudence.

²⁰ (2021) LPELR-55994 (CA).

²¹ *Supra*.