Case Nos: HT-2017-000383
HT-2020-000143
BL-2019-002334

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)
[2020] EWHC 3281 (TCC)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 19 November 2020

Before :

Mrs Justice O'Farrell

- -

Between :

(HT-2017-000383)
HARRISON JALLA & ABEL CHUJOR — **Claimants**
- and -
~~**(1) ROYAL DUTCH SHELL PLC**~~
(2) SHELL INTERNATIONAL TRADING AND SHIPPING COMPANY LIMITED
(3) SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED — **Defendants**

(HT-2020-000143)
HARRISON JALLA & OTHERS — **Claimants**
- and -
(1) SHELL INTERNATIONAL TRADING AND SHIPPING COMPANY LIMITED
(2) SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED — **Defendants**

(BL-2019-002334)
HRH THE OLUGBO (KING) OF UGBO — **Claimants**

KINGDOM & OTHERS
- and -
(1) SHELL INTERNATIONAL TRADING AND SHIPPING COMPANY LIMITED
(2) SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED **Defendants**

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Graham Dunning QC, James Burton, Wei Jian Chan and Philip Aliker (instructed by **Rosenblatt Limited**) for the **Claimants** (in Claims HT-2017-000383 & HT-2020-000143)

Lord Peter Goldsmith QC and Dr Conway Blake (instructed by **Debvoise & Plimpton LLP**) for the **Defendants**

Hearing date: 19th November 2020
- -

JUDGMENT

Mrs Justice O'Farrell **Thursday, 19 November 2020**
(**3.46** pm)

Judgment by **MRS JUSTICE O'FARRELL**

1. This dispute arises out of an oil spill that occurred in the Bonga oilfield off the coast of Nigeria on 20 December 2011. The oil spill emanated from an offshore floating production, storage and off-loading facility ("the Bonga FPSO"), located approximately 120 kilometres off the Nigerian coastline of Bayelsa State and Delta State within the Nigerian exclusive economic zone.

2. The Bonga FPSO was operated and controlled by the third defendant, Shell Nigeria Exploration and Production Company Limited ("SNEPCo"), a Nigerian company regulated by the Nigerian governmental authorities.

3. The spill was caused by a rupture of one of the pipelines connecting the Bonga FPSO to a single point mooring system ("SPM") both of which were operated and controlled by SNEPCo.

4. The second defendant, Shell International Trading and Shipping Company Limited, ("STASCO") was the technical manager of the vessel, the MV Northia, that was loading from the Bonga FPSO at the time of the spill.

The claims

5. Until this morning there were three sets of proceedings before the court. The first is the Jalla Main Proceedings, HT-2017-000383. The claim currently comprises a claim by two claimants, Harrison Jalla and Abel Chujor. The defendants are STASCO, which is a UK incorporated company, and SNEPCo, which, as I have indicated, is a Nigerian incorporated company.

6. In the Jalla Main Proceedings the claimants allege that oil from the 2011 spill devastated the shoreline, causing serious and extensive damage to the land, water supplies and to the fishing waters in and around the coastline. The claimants seek damages and/or compensation for pollution and environmental degradation caused by the oil spill which continues to cause ongoing damage to the land and fishing waters around the villages. The claims are made in negligence, nuisance and Rylands v Fletcher liability.

7. The second set of proceedings I will refer to as the Jalla Protective Proceedings, claim HT-2020-000143. That is a claim by, at the moment, 27,830 individuals, including Mr Jalla and Mr Chujor, claiming on their own behalf and as representatives of a number of communities pursuant to CPR 19.6. In addition, the claimants comprise some 479 communities initially pleaded by reference to the communities as opposed to individuals in and around, it would appear, the Delta and Bayelsa States. The defendants, as before, are STASCO and SNEPCo.

8. The relief sought is a mandatory injunction requiring remediation of the affected area, damages and/or compensation, and the claims are again brought in negligence, nuisance and Rylands v Fletcher.

9. The third set of proceedings, claim BL-2019-002334, has been referred to as the Akinruntan proceedings. The claimants to those proceedings are His Royal Highness the Olugbo King of Ugbo Kingdom, Prince Akinfemiwa Akinruntan and Prince Adeyinka Akinruntan. They are all members of the Ugbo Kingdom. The claim is brought by those three named individuals on behalf of themselves and more than 7,000 individuals and 10 communities as representative proceedings pursuant to CPR 19.6. The defendants are STASCO and SNEPCo.

10. The claims are mirror images of the Jalla Protective Proceedings, albeit issued prior to those proceedings, but they make their claims in relation to pollution and environmental damage in the Ugbo Kingdom which is on the coast of Ondo State, further north from the other two states.

11. A letter was sent to Debevoise & Plimpton LLP, solicitors acting for the defendants, dated 18 November 2020 in which the claimants in the Akinruntan proceedings gave notice that they were withdrawing the case from the English courts:

> "We write on behalf of all the claimants in Akinruntan's proceedings in Case no: BL-2019002334 to withdraw the case from the High Court of England & Wales.
>
> This is due to some reasons beyond our control having realised certain facts in the case during the course of pursuit of the Bonga oil spill proceedings."

12. Therefore, when this hearing started today the court was under the impression that those proceedings were no longer going ahead. However, it transpires that a further letter was sent this morning stating that the notice itself was withdrawn, i.e. that the Akinruntan claimants wished to continue with those proceedings.

13. Obviously it is unfortunate that two letters with such different notices should have been sent to the court just before and during these proceedings. Clearly that matter needs to be clarified as soon as possible. In the absence of such clarity the court will proceed on the assumption that they remain active proceedings which need to be case managed together with the Jalla 1 and 2 proceedings.

Procedural history

14. I will refer to the procedural history as briefly as I can but so as to give context to the rulings that I am going to make.

15. The Jalla Main Proceedings were issued on 13 December 2017.

16. On 10 April 2018 amendments were put forward by the claimants. In the original claim form the claimants were identified as "Harrison Jalla, Abel Chujor and others" but no reference was made to CPR rule 19.6. However, in the proposed amendments in April 2018 the claim form was amended to show Mr Jalla and Mr Chujor as lead claimants, claiming for themselves and on behalf of the Bonga community which is some 27,830 individuals, together with 457 communities, stated to be pursuant to CPR 19.6, in a representative capacity.

17. Further amendments included the substitution of STASCO as a defendant in place of the Shell International Limited company, the original defendant to the first Jalla proceedings.

18. In September 2018 the defendants sought to challenge jurisdiction and to strike out the claims against STASCO. The challenge and the orders sought by the defendants are summarised in the first judgment of Mr Justice Stuart-Smith, as he then was, dated 2 March 2020 at paragraph 8:

    a. firstly a declaration that the court did not have jurisdiction to try the claims, or alternatively that the court should not exercise any jurisdiction which it had pursuant to CPR part 11(1)(a) and (1)(b);

    b. secondly, an order setting aside the claim form, service of the claim form, and the order of Fraser J giving the claimants permission to serve the claim form on SNEPCo out of the jurisdiction, pursuant to CPR part 11(6)(a) and/or (b);

    c. thirdly, in the event that the court found that there was no real issue against STASCO, an order striking out the claims against STASCO as having no real prospect of success pursuant to CPR 3.4(2)(a) and/or 24.2;

    d. fourthly, in the alternative an order that proceedings be stayed pursuant to article 34 of the Recast Brussels Regulation and/or section 49(3) of the Senior Courts Act 1981 and pursuant to the court's inherent jurisdiction.

19. On 3 April 2019 the claimants served a further proposed amendment to the Particulars of Claim, seeking to plead in some detail the case made against STASCO, who had not been joined in the original proceedings.

20. In September and October 2019 the challenges, together with the applications to amend and to adduce further evidence were heard by the Learned Judge. On 2 March he gave his judgment. I am not going to summarise the whole judgment but it was a very clear and careful judgment that considered all of the arguments that had been raised by the parties on the above issues. I refer only to the key findings that are relevant to the matters the Court has to decide today.

21. In relation to limitation the Judge stated at paragraph 61:
    "i) It is clear that many claimants will have suffered actionable damage before 4 April 2012;

ii) On current information the defendants have a reasonably arguable case on limitation, though it is not certain that all claimants suffered actionable damage caused by oil from the December 2011 spill before 4 April 2012;

iii) If and to the extent that the claimants had not suffered actionable damage before 4 April 2012, it is arguable and inherently plausible that some may have suffered actionable damage between April 2012 and June 2013;

iv) On present information it is not possible to exclude the possibility that some claimants may first have suffered actionable damage after June or even October/November 2013. There is, however, at present no reason to conclude that they did;

v) On present information it is not possible to reach any further conclusions for the purposes of these applications about who suffered damage when."

22. The Judge also dealt with the other issues that had been raised. At paragraph 68 the Judge decided that the limitation period should not be extended by reference to the concept of a continuing nuisance. The claimants' causes of action accrued when each claimant first suffered sufficient damage for the purposes of a claim in nuisance. I pause to note that that is currently the subject of an appeal.

23. At paragraph 85 the Judge found that time should not be extended against STASCO on the grounds of deliberate concealment.

24. At paragraph 150 the Judge stated in relation to the application to amend, as against STASCO, that the court had no discretion to allow the amendment of the claim form to join STASCO, if and to the extent that the application was made after the expiry of the relevant limitation period.

25. At paragraph 177 the Judge found that there was no discretion to allow the amendment, seeking to add allegations regarding the action of the vessel and its contribution to the spill, if and to the extent that it was statute-barred.

26. At paragraph 201 of the judgment the Judge stated that there was no discretion to allow the amendments to plead in detail the case against STASCO, to the extent that they were statute-barred.

27. At paragraph 206 the Judge found that as against SNEPCo the claim as currently pleaded had a reasonable prospect of success and the additional amendments could be considered as particularisation of the existing case. Therefore, although it was reasonably arguable that the proposed amendments regarding SNEPCo were being sought outside the applicable limitation period, the court would have a discretion to permit the amendments against SNEPCo and the court would do so.

28. However, of course the case against SNEPCo is dependent on there being a case against the anchor defendant, STASCO.

29. This was summed up by the Judge at paragraph 227 where he stated:

> "Subject to questions of limitation, the English court has jurisdiction to try the claims against STASCO."

30. It has been a source of bemusement to me that both sides are claiming victory. The issue of jurisdiction as against SNEPCo, a Nigerian corporation, is dependent on there being a valid claim against STASCO. The Learned Judge was very clear that he rejected the jurisdictional challenges made by the defendants, save for the crucial issue of whether the claims against STASCO were statute-barred. Therefore the Judge was unable to finally dispose of the challenge to jurisdiction because it is subject to the outstanding limitation issues, as set out in paragraph 251 of the judgment:

> "I therefore conclude that the necessary criteria are satisfied and find that the court has jurisdiction over SNEPCo. As already indicated, this conclusion is subject to my conclusions on limitation issues earlier in this judgment. If and to the extent that the claim against STASCO falls away for limitation reasons, the first prerequisite for jurisdiction over SNEPCo also goes."

31. If the anchor defendant is lost, there then becomes no basis on which service out of the jurisdiction against SNEPCo could be used validly to give the court jurisdiction.

32. The Learned Judge decided in paragraph 274 that the issues that had not yet been decided, namely the limitation issues, should be dealt with by way of a further hearing.

33. At paragraph 275 the Judge stated:

> "I direct that there shall be a further half-day hearing after hand-down of this judgment to address (a) the "representative" nature of this action and whether its structure needs to be adjusted; (b) how to determine which claimants can and cannot go forward to a trial in the light of the findings I have made in this judgment; and (c), any other consequential orders."

34. At paragraph 286 the Judge stated:

"My present and provisional view is that the following steps need to be taken.

i) The claimants must identify and plead their case on where their causes of action accrued with a view of trying that issue as a preliminary issue for all claimants where the issue is live;

ii) Either before or at the same time as the preliminary issue on when causes of action accrued, there should be a trial of a second preliminary issue, namely whether the applicable period of limitation for the claimants is six years or five."

(That of course is subject to whether the limitation period is five years under Nigerian law, or six years as under English law).

35. A further hearing took place on 24 March 2020 as a result of which the Learned Judge gave a further judgment and an order was produced, dealing with the way forward, stating at paragraph 16:

> "The claimants shall by 4 pm 24 November 2020 file and serve a Date of Damage Pleading setting out the claimants' case on when all relevant accruals of damage occurred with sufficient particularity to enable the defendants to know the case they have to meet, any lay evidence upon which they rely in the proceedings in support of the case advanced by the Date of Damage Pleading and any expert evidence upon which they wish to rely in the proceedings in support of the case advanced by the Date of Damage Pleading."

36. Subject to one caveat, namely a further hearing, it was ordered that the defendants should by 4 pm on 5 April:

> "... file and serve a response to the Date of Damage Pleading setting out the defendants' case in response to the claimants' Date of Damage Pleading any lay evidence upon which they rely in the proceedings in support of the case advanced by their response to the Date of Damage Pleading and any expert evidence upon which they wish to rely in the proceedings in support of the case advanced by their response to the Date of Damage Pleading."

37. Further, the Judge ordered a further CMC to be fixed during December 2020:

> "To review progress and vary or add to these Case Management Orders as appropriate. The present target is to have a preliminary trial, if appropriate, during the summer term of 2021 of preliminary issues (a) as to the date on which claimants suffered damage, (b) the appropriate limitation periods applicable to the claimants' claims, and (c) limitation as a defence to the claimants' claims."

38. That judgment was reflected in the order dated 27 March which included:

"(5) If the relevant period of limitation for a given claimant had expired on 4 April 2018, for that claimant:

5.1 the purported amendment on that date pursuant to CPR 17.1 by which STASCO was purportedly joined as the second defendant was a nullity and ineffective;

5.2 the application to join STASCO as the second defendant pursuant to CPR 17.4(3) and/or CPR 19.5(3)(a) is dismissed; and

5.3 service out of the jurisdiction on SNEPCo is set aside.

(6) If the relevant period of limitation for a given claimant had not expired on 2 March 2020 for that claimant:

6.1 the application to amend the claim form dated 3 October 2019 is granted pursuant to CPR 17.1(2)(b) and the amendment sought in the draft re-amended claim form attached thereto are allowed and effective; and

6.2 the application to amend the particulars of claim dated 3 April 2019 is granted pursuant to CPR 17.1(2)(b) and the amendments sought in the draft amended particulars of claim produced to the court at the hearing in October 2019 are allowed and effective.

(7) If the relevant period of limitation for a given claimant had expired on 2 March 2020 for that claimant:

7.1 the application to amend the claim form dated 3 October 2019 is dismissed;

7.2 the application to amend the particulars of claim dated 3 April 2019 is dismissed;

7.3 the claim against STASCO is dismissed; and

7.4 service out of the jurisdiction on SNEPCo is set aside."

39. The consequences for that were then set out under the heading "The defendants' jurisdiction applications":

(8) For any claimants falling within both paragraphs 4 and 6 above [i.e. where the limitation period had not expired by the stated dates]:

8.1. The court has and shall exercise its jurisdiction to try the claims against both STASCO and SNEPCo; and

8.2. STASCO's and SNEPCo's jurisdiction applications are dismissed.

(9) For any claimants falling within [and that must read paragraphs 5 and 7] STASCO's and SNEPCo's jurisdiction applications dated 28 September 2018 are granted and the court will not exercise its jurisdiction to try the claims against either STASCO or SNEPCo."

40. It is quite clear that following the jurisdictional challenges in September and October 2019, and the judgment and consequentials hearing in March 2020, the court determined the jurisdiction challenges brought by the defendants, but subject to and contingent on any determination of the issues of limitation for any given claimant.

41. Following that judgment, on 20 April 2020 the claim form in the Jalla Protective Proceedings was issued. One of the significant changes that had been made in the claimants' case is that whereas initially it was pleaded that the affected communities and individuals were all based on the coast, i.e. at the shoreline, the case has now suffered a fundamental shift and the current pleadings now allege that some claimants and communities were based on the coastline but others were further inland.

42. For completeness in terms of procedural issues, on 14 August 2020 a third judgment was issued by the Learned Judge, following a further hearing in May in which he referred to this fundamental shift at paragraph 25. The judge stated that having regard to matters set out in recent witness statements filed by the claimants, the defendants realistically accepted that they could not pursue the first three of their intended lines of arguments, that is with regard to a strike out:

> "They are, however, entitled and right to point out that the evidence marks a fundamental shift from the basis on which these proceedings were instituted and run until September 2019; this is now presented as an action about damage suffered over a wide area, up to 50 kilometres or more from the coast, and not simply along the Atlantic coast. The implications for the need to adduce wide ranging factual and expert evidence are obvious."

43. The Learned Judge considered the authorities and applicable principles of CPR 19.6 against the pleaded case and determined that the claimants did not satisfy the requirement of "the same interest" for the purposes of CPR 19.6. Therefore, the proceedings could not continue as a representative action. On that basis the court struck out the representative elements of the proceedings, leaving just the personal claims of Mr Jalla and Mr Chujor, the two named claimants, to continue.

44. An application for permission to appeal against that finding, namely the striking out of the representative elements of the claim has been granted.

The current position

45. Therefore, the position is that there are two outstanding appeals: (a) the first in relation to the issue of continuing nuisance, which I understand is to be heard by the Court of Appeal at the beginning of December; and (b) the second regarding the representative elements of the claims that have been struck out from the Jalla main proceedings for which permission has been given but for which no hearing date has yet been set.

46. To take stock of the current position, in the main Jalla proceedings there are now only two claimants, that is Mr Jalla and Mr Chujor. The court has determined the jurisdictional issues

in the main Jalla proceedings, but subject to the issue of limitation. The court has already determined that those outstanding limitation/jurisdiction issues should be dealt with by the preliminary trials for which directions have already been given.

47. It is common ground between the parties that the issues of jurisdiction need to be determined before the substantive issues. However, there is a difference of opinion between the claimants and the defendants as to how the court should go about determining that matter. The court has to have regard in particular to the ongoing appeals and what implication they might have for any further hearings. The court must also take into account the other proceedings, namely the Jalla Protective Proceedings, and, if they continue, the Akinruntan proceedings. The acknowledgements of service by the defendants in relation to both those other sets of proceedings seek to challenge jurisdiction and an application challenging jurisdiction has been issued in the Akinruntan Proceedings.

Parties' submissions

48. Turning to the competing submissions put forward by the parties. First of all, the claimants' position is that there should be an early hearing, in the first half of 2021, to determine any jurisdictional challenges raised in relation to the Jalla Protective Proceedings and the Akinruntan Proceedings, and that those should be tried by the court before the court grapples with the issues of limitation.

49. Mr Dunning QC, leading counsel for the claimants, submits that the jurisdictional issues should be resolved first. He submits that the Jalla Protective Proceedings do not raise the same issues on limitation as the Jalla Main Proceedings. In the Jalla Main Proceedings, the jurisdictional challenges, had to take into account the fact that STASCO had been added to the claim by a purported amendment, and therefore the issue was whether it could be said that the amendment was brought within the limitation period. However, that issue would not arise, he submits, in the Jalla Protective Proceedings because there are no outstanding applications to amend that would affect the jurisdictional issues.

50. On that basis it is proposed that the relatively narrow compass of the jurisdictional challenges that would be made in the Jalla Protective Proceedings and/or the Akinruntan proceedings can and should be determined before the court grapples with the issues of limitation which Mr Dunning perhaps fairly, I think, characterises as being preliminary issues that in the normal run of things would be decided quite separately from issues of jurisdiction.

51. Lord Goldsmith QC, leading counsel for the defendants, invites the court to go ahead and fix the date for the trial of the preliminary issues that have already been ordered by Stuart-Smith J but he submits that the scope of the hearing should be expanded to encompass trial of the same issues arising in the Jalla Protective Proceedings and the Akinruntan Proceedings.

52. However, the defendants too propose that there be a separate hearing in advance of the limitation issues hearing and that is to determine a number of threshold legal issues. There are six of them and they are as follows:

    a. whether the legal professionals and representatives acting in the Jalla proceedings are properly authorised by the claimants to bring the claims in these proceedings;

    b. whether the court has jurisdiction pursuant to CPR 19.6 to try the claims in the Jalla Protective Proceedings and Akinruntan Proceedings on a representative basis;

    c. whether the court can fairly and proportionately determine the claims in the Jalla Protective Proceedings as it is currently constituted, namely comprising a vast number of individual claimants who purport to claim on behalf of themselves and of a number of communities;

    d. which limitation period applies under Nigerian law to the claims in each set of proceedings;

    e. whether on the basis of the judgment given on 2 March and the evidence currently on the record any of the claims are statute-barred or excluded from the court's jurisdiction; and

    f. whether the claimants in the Jalla proceedings have abused and continue to abuse the court's process.

53. Lord Goldsmith submits that it would be appropriate for the court to deal with those issues in advance of the full limitation preliminary issues because they could have the effect of knocking out a number of the claimants, thereby making the case and the proceedings as a whole more manageable. Further, it would have the effect of dealing with the issue of whether some of the claimants could not proceed in a more cost-effective manner, always a factor that the court must take into account.

54. The response to that by Mr Dunning is that first of all, the threshold issues that have been identified are either not properly legal issues or are simply too vague; further, they would need to be dealt with by way of a proper application with pleadings, proposals for evidence and factual evidence and expert evidence; but in any event, it is not appropriate for them to be determined by the court prior to determination of the issue of jurisdiction. Mr Dunning's position is that if Lord Goldsmith wishes to go ahead and have these matters tried in advance of anything else that they must elect whether they are going to abandon any challenge to jurisdiction.

Discussion

55. In considering the way forward I start by referring to the overriding objective set out in CPR part 1.1. The “overriding objective” is to enable “the court to deal with cases justly and at proportionate cost”.

56. That includes “so far as is practicable”:

> (a) ensuring that the parties are on an equal footing;
> (b) saving expense;
> (c) dealing with the case in ways which are proportionate -
> (i) to the amount of money involved;
> (ii) the importance of the case;
> (iii) the complexity of the issues; and
> (iv) to the financial position of each party;
> (d) ensuring that it is dealt with expeditiously and fairly;
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
> (f) enforcing compliance with rules, practice directions and orders.”

57. The overriding objective is a very significant factor that I take into account when deciding what is the most appropriate way to take this case forward, given the position in which the court and the parties find themselves.

58. It seems to me, having read through the materials that have been supplied by the parties, and having read carefully the judgments of Stuart-Smith J (as he then was) that, firstly, the issue of limitation is a material issue that needs to be determined at an early stage. It needs to be determined because it is an essential part of the jurisdictional challenge that has been raised by the defendants in the Jalla Main Proceedings.

59. Secondly, the issue of limitation is going to be a central issue in the jurisdictional challenges in the Jalla Protective Proceedings and the Akinruntan Proceedings. I understand the submission made by Mr Dunning that the test that the court will apply in those proceedings is different to the test applied in respect of the jurisdictional challenge in the Jalla Main Proceedings.

60. However, on the issue of location of the claimants, which is a critical factor in considering limitation, the defendants' case is that on the evidence currently before the court the claimants do not have an arguable case. The defendants rely on a number of rather serious discrepancies in the evidence, mistakes and/or discrepancies in the description and/or location on maps of the communities affected. They rely on those discrepancies to try and persuade the court that none of the claimants in any of the proceedings has a reasonably arguable case. That argument will be made in respect of any jurisdictional challenge that is made by the defendants in the Jalla Protective Proceedings and the Akinruntan Proceedings.

61. I respectfully agree with the approach taken by Stuart-Smith J that the court should grasp that nettle now and determine the issue of limitation. As to the timing, given the way in which the jurisdictional challenges have been fought and articulated by the defendants, the court will not be determining a standalone series of preliminary issues as to limitation. The court will be determining the issues of limitation so that it can reach a final resolution on the jurisdictional challenges.

62. For that reason I am satisfied that the appropriate way forward is to adopt, but adapt, the orders that have already been made by Stuart-Smith J and move forward to the preliminary issues on limitation.

63. I have considered whether there would be any benefit in having an earlier hearing to determine some of the jurisdictional challenges. Of course that could be done with a relatively short hearing and I note that a fairly speedy timetable could be adhered to as submitted by Mr Dunning.

64. However, I have to have regard to the history of this matter. What was supposed to be a short procedural hearing back in September 2019 effectively took until August of this year to conclude. I am not satisfied that if I ordered preliminary jurisdictional challenges to be dealt with by the court in a hearing in the first part of next year that it would resolve all of those jurisdictional issues. If anything I think it is likely to encourage the parties to identify more and more complexities to add to these proceedings, for the very understandable reason that they wish to guard against, to hedge their bets against, a decision against them on these issues. So I discount that as a way forward.

65. I have also considered the benefits of having an early determination of some of the threshold issues as urged upon the court by the defendants.

66. The first is the issue of proper authorisation on the part of the claimants. I do not propose to fix a hearing to determine that but I note that Mr Dunning has indicated that the solicitors now acting for the claimants could give an indication of the authorisation in respect of the communities within 12 weeks, and in respect of the individuals by next May. It seems to me that that is a sensible way forward and I will leave it at that. But I do emphasise there does need to be clarity in relation to the authorisation. I agree with Lord Goldsmith that it is unsatisfactory for thousands and thousands of claimants to proceed in hearings in a case where there might not be proper authorisation for them to be represented.

67. The second issue is whether or not the court has jurisdiction pursuant to CPR 19.6 to try the claims on a representative basis. However, as Lord Goldsmith accepted, in fact the Jalla Protective Proceedings have been commenced by the claimants as individuals as well as representatives. Therefore, it does not seem sensible to deal with that as a separate issue at this stage. In any event, given that the whole issue of CPR 19.6 is going to be before the Court of Appeal, it seems to this court that actually it would be better to simply await the Court of Appeal decision. It is very likely that whatever is decided in the Jalla Main Proceedings will apply to the Jalla Protective Proceedings.

68. The third issue concerns whether, given the way in which the Jalla Protective Proceedings have been constituted, the court can fairly and proportionately determine the claims. That is a matter of case management that will need to be grappled with but only once the court has determined that it has jurisdiction to deal with those claims. So again, I think that should await the jurisdiction disposal.

69. The fourth issue is the limitation period under Nigerian law. It is already anticipated that that will be included in the limitation preliminary issues. Subject to the court's findings on date of damage, it may not matter. The defendants' primary case is that many, if not most of these claims are statute-barred regardless of whether one applies a five year or a six year limitation period. But in any event, regardless of those matters, the court is quite satisfied that that can be dealt with within the preliminary issues.

70. The fifth issue is whether or not the claims are statute-barred, but that is precisely the basis for the preliminary issues ordered by Stuart-Smith J. Although the main reason for having the preliminary issues on limitation is to determine the issue of jurisdiction, once the court has made findings on date of damage applicable limitation period and whether or not they give rise to a defence, that will in practice resolve the issue of limitation and whether or not any of the claims are time barred.

71. Finally, there is the issue of whether the claimants have abused the court's process. For the reasons given in relation to the third issue, ie the constitution of the claims, it seems to me that that should await determination of the jurisdiction questions.

72. For those reasons I am satisfied that the next hearing in this case, subject to any interim procedural hearings, should be the preliminary issues that have already been ordered by Stuart-Smith J to determine the limitation defences.

73. I should say something briefly about the outstanding appeals. It is likely that the decision in relation to the continuing nuisance will be given by the Court of Appeal in the early part of next year. The could have the effect of giving the claimants a longer period of limitation within which to commence proceedings. However, Lord Goldsmith is correct that that would only affect the nuisance claims; it would not affect the negligence claims, and there are good reasons for going on to determine jurisdiction and limitation in respect of those claims, so as to resolve a number of other issues that might arise in the proceedings.

74. In any event, given the likely timetable for dealing with the preliminary issue trial, it is likely that the nuisance appeal will be dealt with at a relatively early stage. If and insofar as it does have some major impact on the preliminary issues trial, there will be plenty of time to make adjustments.

75. With regard to the representative claims appeal, that does not directly affect the issues of limitation and jurisdiction. Of course it may change the landscape of the proceedings. For example, if the claimants in the Jalla Main Proceedings lose that appeal, then of course there are only two claimants in those proceedings. That may make a very significant difference to the way in which the claim is pursued, if at all. However, this court cannot simply sit back and wait until that appeal has been heard before making any orders for timetabling further steps in this claim. It would be unfortunate if the court had to start case management from scratch, following the appeal. I do not think that that would be in the interests of any of the parties.

Decision

76. For the above reasons, I will order that the preliminary issues in relation to limitation as ordered by Stuart-Smith J (as he then was) on 27 March 2020 in claim HT-2017-000383 shall be expanded to include the trial of the same issues arising in HT-2020-000143 and BL-2019-002334. For clarification, that will include the issue of which limitation period applies under Nigerian law to the claims in each of those sets of proceedings and, potentially, any outstanding jurisdiction issues.

77. In terms of the timetable, it would appear that there has been some delay and therefore it has to be adjusted. The order of 27 March 2020 requires the claimants to file and serve their pleading and evidence in respect of limitation by 24 November 2020. The claimants are proposing that they would be ready to serve their pleading by the end of July 2021. That seems to me to be a bit late. However, given that the preliminary issue trial is likely not to be listed until early 2022, I can, I think, give a little bit more time to the claimants. I am considering a potential date of 7 May 2021 for pleadings and evidence, a further CMC shortly after the service of the claimants' case and evidence, and the defendants' case, factual and expert evidence to be filed and served by 29 October 2021.

78. There should be a further hearing between the service of the claimants' evidence and the defendants' because the court may be asked to make rulings on the nature and extent of the evidence that the claimant will adduce for the purposes of the preliminary issue hearing. Although I am not going to order a schedule today, it is certainly something that I will consider once I have seen the claimants' evidence. One way forward is to have a schedule of each claimant who wishes to pursue a claim to identify the location of their property, cross-referenced to a sufficiently detailed map, so that it is meaningful, to identify the date of damage that is alleged, summary of the facts relied upon and a description of the damage.

79. The reason that I think that that will at some point be necessary is because at that point the parties can start having constructive discussions as to how they are going to try the preliminary issue. One possibility is for each side to pick their favourite claimants; another is to try and categorise the claimants by reference to the alleged date, the location, the type of damage. There are many other ways in which it can be dealt with. But until the claimant has set out its case and its evidence on these matters it is simply not possible to have a meaningful dialogue as to how the case will be tried.

80. I emphasise the court will try the preliminary issue but I would rather that the court did not impose on the parties a sampling or other approach. I would prefer that the parties identified the most appropriate way forward based on their own assessments of the evidence that is going to be put before the court to enable it to resolve the dispute. So, I raise the promise, or threat, of a schedule but I am not going to order it at this stage.

81. I probably ought for completeness deal with the Akinruntan Proceedings. I am going to include them in the order because it is not clear, on the basis of the recent letters, whether or not they are still part of these proceedings or wish to continue. I will include liberty to apply in the order. As I have indicated, they must clarify their status sooner rather than later.