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Energy & Natural Resources
3rd May 2018.



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**DEALING IN PETROLEUM PRODUCTS WITHOUT LICENSE IS CRIMINAL:
CASE REVIEW OF *M. V. LONG ISLAND V. FRN (2018) LPELR-43479 (CA)*⁴**

Introduction:

The Nigerian Court of Appeal (Lagos Division) affirmed the position of the law that it is criminal to deal in petroleum products without a license in its recent decision delivered in the case of *M.V. Long Island v. FRN*.⁵ As a Preliminary issue, the court restated the principle of law that the fact that the 1st accused (M.V. Long Island or the Vessel), is inanimate does not mean that it is incapable of committing a crime and of being prosecuted and convicted in accordance with applicable law. Being a legal person, the 1st accused can be criminally liable for the actions of its officers and or owners.⁶

Facts of the Case:

The Appellant alongside several others were arrested by the Nigerian Navy for engaging in illegal activities, specifically; for dealing in petroleum products without license from appropriate authorities contrary to the Miscellaneous Offences Act.⁷ The Appellant was arrested with approximately 200 metric tons of petroleum products on board the 1st Appellant - the vessel itself, *M.V. Long Island*. Neither the owner of the Appellant nor the charterer held a valid license to carry, deal with or in, the petroleum product found on the Vessel.

They were accordingly arraigned on a three-count charge preferred against the Appellant and others for conspiracy, dealing in petroleum products without a license and storing petroleum product without lawful authority before the Federal High Court sitting in Lagos.

They all pleaded not guilty to these charges and after a full trial, the Court found all of them guilty and sentenced the 4th - 22nd accused persons to 2 years imprisonment with an option of fine of ₦200,000.00 on each count while the Appellant, (1st accused person at the lower

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⁴ (2018) LPELR-43479(CA).

⁵ See n. 4.

⁶ Section 65 of the Companies and Allied Matters Act, Bolton Engr. Co. Ltd v. Graham & Sons (1957) 1 QB 159.

⁷ CAP. M17 LFN 2004.

Court) and its cargo were forfeited to the Federal Government of Nigeria. The 2nd and 3rd accused persons were sentenced to a fine of ₦200,000.00 each on Counts I, II and III.

This decision aggrieved the Appellant, hence the appeal.

Relevant Legislations:

The statutes considered by the Court of Appeal include the following:

1. The Petroleum Act (Cap. P10) LFN 2004;
2. Miscellaneous Offences Act (Cap. M17) LFN 2004;
3. The Evidence Act (No. 18) of 2011; and
4. The Economic and Financial Crimes Commission (Establishment) Act (No. 1) of 2004.

Decision:

In a unanimous decision, the Court of Appeal in dismissing the appeal answered the questions raised while holding as follows:

- **Whose duty is it to obtain licenses or authority required for dealing with petroleum products?**

The appellant had contended that it was not the responsibility of the vessel owner to obtain the necessary permit to deal with petroleum products. It was further argued that it is the person with the product that has the responsibility of obtaining the license and not the vessel. The court disregarded this argument as pedestrian and concluded that based on the findings of the lower court, the appellant did not have the necessary licence or permit to be on Nigeria's territorial waters with petroleum products on board. In any event, the licenses tendered on behalf of the appellant in an attempt to establish that the appellant had complied with the requisite regulatory requirements had expired.⁸

- **Can Indemnity arise with respect to criminal liability for illegal actions?**

The Appellant's counsel had argued before the Court that the charterer of the vessel had agreed to indemnify the Appellant and this absolved it of any liability arising from the agreement between the parties.

The court rejected this argument and held that Indemnity cannot arise with respect to criminal liability for illegal actions carried on by the Appellant. If the accused persons had knowingly conspired to go on an illegal venture, the Appellant as well as the other accused persons found culpable cannot escape liability as the agreement to indemnify the Vessel is

⁸ M.V. Long Island v. FRN supra, at p. 24.

strictly speaking a private affair between them and cannot be a basis to absolve the Appellant from criminal liability.

- **What is Petroleum Product?**

The Court left no room for misgivings as it clearly explained what amounts to Petroleum product when it held that:

“The meaning of Petroleum product is the meaning given to it by the Petroleum Act. Section 15 of the Act provides thus:

‘Petroleum products’ includes motor spirit, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant.”

- **Can the vessel used in commission of the offence be forfeited?**

The Appellant relied on Section 25 of the EFCC Act to argue this issue before the Appeal Court even though the trial Court never mentioned the EFCC Act nor relied on it in making the order of forfeiture. On the contrary, the statutory provision relied upon by the trial Court in making the order of forfeiture of the appellant vessel is Section 17 of the Miscellaneous Offences Act which states thus:

“(17) Any person who without lawful authority or an appropriate licence:

a. imports, exports, sells, offers for sale, distributes or otherwise deals with or in any crude oil, petroleum or petroleum product in Nigeria;

b. does any act for which a license is required under the Petroleum Act, shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life, and in addition, any vehicle, vessel, aircraft or other conveyance used in connection therewith shall be forfeited to the Federal Government.”

Based on the foregoing provision, the Appellate Court discountenanced the argument of the Appellant and upheld the decision of the trial court forfeiting the vessel to the Federal Government of Nigeria.

- **What is the meaning of the words “deal with” or “deal in” as used in the Act?**

Section 17 of the Miscellaneous Offences Act provides as follows:

“Any person who without lawful authority or an appropriate licence-

(a) Imports, exports, sells, offers for sale, distributes, or otherwise deals with or any crude oil, petroleum or petroleum product in Nigeria.

(b) Does any act for which a licence is required under the Petroleum Act.

Shall be guilty of an offence and liable on conviction to imprisonment for life and in addition, any vehicle, vessel, aircraft or other conveyance used in connection therewith shall be forfeited to the Federal Government."

Apparently, the Act did not define what constitutes "deal with" or "deal in" as used. Based on this, the appellant had contended that to identify the proper meaning of the words "deal with" or "deal in" as used in the Act, it must be interpreted *ejusdem generis*, which is to say; to "deal with" must be in relation to the commercial use of the product. The court discountenanced this argument, observing that such an interpretation will do total violence to the intendment of the legislature, whether applied to commercial or private purposes including conveying or transporting of petroleum products, since the law is clear that a licence is required when the subject matter relates to petroleum products.⁹

The court had recourse to the Supreme Court case of **Abacha v. FRN**,¹⁰ where the term was previously defined. According to the Supreme Court, "*The phrase - "deal with" means to take action on, to be about or concern with*".

Comments

Petroleum and its allied resources play a prominent role in the economic well-being and stability of Nigeria as a country as it accounts for the vast majority of the foreign exchange the country earns to power its economy, hence the need to enact and enforce adequate laws that regulate the production, distribution and transportation of petroleum products.

Despite the abundance of relevant legislations regulating the procedure for dealing with or in petroleum products, many individuals and even corporate bodies have continuously flayed these procedures to illegally participate in dealing with these products. Nigeria has suffered great economic losses as a result of the nefarious activities of entities who deal in petroleum products without license as their activities amount to economic sabotage resulting in an erosion of the revenue which could have accrued from the sale of crude oil on the international market.¹¹ Specifically, the activities of oil theft, pipeline vandalism and allied nefarious activities have negatively affected the government's various efforts in the electricity value chain to achieve critically-needed stable and sustainable power supply for the country's development and these ultimately continue to pose a direct threat to the national economy, political stability, territorial integrity and national security of the country.

⁹ See the Court of Appeals decision at p. 36.

¹⁰ (2014) LPELR-22014(SC), Per Ariwoola, J.S.C, quoting from Chambers dictionary.

¹¹ Eboh, M., "Nigeria loses N13 billion to oil theft, vandalism in one month", Vanguard, Tuesday, May 31, 2016, p. 21.

The Appellant had wrongly contended that it was not responsible for obtaining license to deal with petroleum products since that responsibility falls on the charterer who had hired it to merely convey the product on its behalf and who had agreed to indemnify it for any loss or liability in the process of conveying the same products on its behalf.

The Court of appeal rightly discountenanced this argument (as tenable as it may sound) since the offence of dealing with petroleum products without lawful authority is a strict liability offence and the contention of the Appellant was correctly dismissed by the Court in the absence of credible evidence before the trial Court that the product on board the vessel was black oil. The allegation was that the accused persons were dealing with petroleum products without appropriate authority. Upon the presentation of that evidence, a negative assertion, the Appellant and other accused persons did not tender any valid licence of authority for the vessel to carry such product or for the owners of the vessel or charterer to be in control of the vessel while loaded with petroleum products.

We also align with the position of the court in restating the law that the defence of indemnity cannot arise with respect to criminal liability for illegal actions carried on by the Appellant. If the accused persons had knowingly conspired to go on an illegal venture, the Appellant as well as the other accused persons found culpable cannot escape liability. The argument that the charterer agreed to indemnify the Appellant is strictly speaking a private affair between them and cannot be basis to absolve the Appellant from criminal liability. As the Court further added, no matter how lofty the terms are between the parties, it cannot inure any benefit to the Appellant. So the issue of indemnity was a non-starter.

We believe that the Appellant's contention that the Charterer had agreed to indemnify it of any liability holds no water as such agreement does not exculpate it from a strict liability offence and it was clearly conceived as an after-thought aimed at escaping punishment from the long arms of the law.

With regards to the elements of the offence, the position of the law is clear as decided in an earlier case which the court relied on in making its decision i.e., the case of **Frank Opoku Anim & Ors v. FRN**¹² where the learned jurist, Saulawa, JCA held that:

"To prove the offence in question, the prosecution must show that the appellants had dealt with or in crude oil or petroleum product in Nigeria without lawful authority."

In the case under review, the court was correct that as a strict liability offence, dealing with petroleum products above the limit exempted by Section 4 (2) of the Petroleum Act¹³ is

¹² (2014) LPELR- 23219 (CA) 29 at 34.

¹³ The exceptions under section 4 (2) of the Petroleum Act are: "where the storage, sale or distribution is not more than 500 litres of kerosene, and such other categories of petroleum products as may be exempted by

criminalised and punishable as the culprits cannot escape liability on the basis of not being negligent.

On the issue of “dealing with” petroleum products as defined in the enabling laws, we are in support of the court’s decision that the term “deal with” used in the legislation encompasses even mere transportation of the products on behalf of a charterer. It is our view that the court arrived at a just decision on this issue, when it held that when words are clear, the Court would not look for any deeper meaning in order to determine culpability. In any case, the Courts had interpreted similar provisions wherein the term “dealing with” was used and the need to apply the *ejusdem generis* rule did not arise.

We equally agree with the finding of the court that whether for commercial or private purposes including conveying or transporting of petroleum products, the law is clear that a licence is required when such products have to do with petroleum products as holding otherwise will nullify the intendment of the legislature as conveyed the relevant provision.

The position of the Court on forfeiture of the Appellant vessel to the Federal government is commendable and in line with the provision of Section 17 of the Miscellaneous Offences Act contrary to the argument of the appellant’s counsel who contended that such forfeiture was not envisaged by the law. One can opine that the intendment of the draftsman in requiring a forfeiture of any vehicle, vessel, aircraft or other conveyance used in dealing with petroleum products without license is to serve as deterrence to others who may be nursing similar aspirations.

In the light of the foregoing, it is apposite to commend the court for joining hands with the state to fight economic sabotage of the common resources of the nation and reaffirming the position of the law that obtaining a valid license from the authority is *sine qua non* to dealing with petroleum products whether for commercial or private purpose.

We believe that this decision aligns with the various efforts to fight corruption, economic sabotage, anti-money laundering, and complies with the transparency requirements of the industry. It will send out a clear message, with the threat of criminal punishment, to all persons and entities (whether foreign or local) dealing in any way with petroleum products within Nigerian territorial space to first apply and obtain the requisite license from the appropriate authorities.

This will further enable the licensing authorities to keep proper records of the quantum of petroleum products leaving the nation’s oilfields as this lack of accurate data has hindered effective planning, and encouraged corruption in the system, resulting in heavy financial loss to the state and hampered proper record keeping.

the Minister by order published in the Federal Gazette; or where the storage of petroleum products is undertaken otherwise than in connection with the importation, sale or distribution of petroleum products.”

Finally, the stakeholders in the upstream, downstream, or midstream of the Nigerian Petroleum industry, who always require one licence or the other or DPR Consent, must ensure that all such appropriate consent and license is obtained to avoid unpleasant experience.

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