



Joint Applications in Fundamental Rights Cases: The Supreme Court's Progressive Decision in Total Exploration & Production (Nig) Ltd V. Okwu & Ors (2024) LPELR-62623(SC)

Over the years, fundamental rights litigation has become a growing area of focus in Nigerian law, with the courts taking a more proactive stance in enforcing constitutional rights under the Fundamental Rights (Enforcement Procedure) Rules 2009 (the “FREP Rules”). However, there has been a long-standing controversy as to whether multiple applicants can jointly file a single action to enforce their fundamental rights under the FREP Rules, with the Court of Appeal making conflicting pronouncements on the issue.

In a landmark decision that reshapes the landscape of fundamental rights enforcement in Nigeria, the Supreme Court of Nigeria has clarified this long-contested procedural issue in the case of Total Exploration & Production (Nig) Ltd V. Okwu & Ors (2024) LPELR-62623(SC). The Court’s answer to the question is a resounding yes. This decision marks a progressive shift in the trajectory of fundamental rights litigation in Nigeria, underscoring the judiciary’s commitment to substance over technicality in human rights matters.

Background: A Case of Alleged Military Brutality

The case originated at the High Court of Rivers State, where six applicants (employees of Pontecelli Nigeria Limited) brought a joint fundamental rights action under the FREP Rules. They alleged gross human rights violations, including arbitrary arrest, physical assault, and degrading treatment by the 9th Respondent (a military officer) and some other unidentified military escorts at one Obagi Base Camp allegedly belonging to Total Exploration & Production (Nig) Ltd (the Appellant).



They claimed the assault was orchestrated by a project manager of Darcet International Limited (the 7th & 8th Respondents respectively) over a personal vendetta. Darcet International Limited was one of the contractors of the Appellant. The applicants claimed they were detained at Obagi Base Camp, shot at (with two of them sustaining serious injuries), and that their vehicle was unlawfully impounded. The High Court held the Appellant vicariously liable and awarded ₦230 million in damages. On appeal, both the Court of Appeal and the Supreme Court upheld this decision.

For the first time on appeal to the Supreme Court, the Appellant challenged the jurisdiction of the trial court on the grounds that the fundamental rights action was improperly constituted, arguing that the six (6) applicants with distinct grievances cannot file a joint application under the FREP Rules.

This argument centered on the interpretation of Section 46(1) of the 1999 Constitution (as amended) and Order II Rule 1 of the FREP Rules, which provide that “any person” alleging an infringement of their fundamental rights may apply to a High Court for redress.

The Conflicting Positions of the Court of Appeal

Before the decision in the Total Exploration & Production (Nig) Ltd case, there was a judicial divide on the issue at the Court of Appeal:

In the case of **Kporharor Vs Yedi (2017) LPELR 42418(CA)**, two applicants filed a joint action for the enforcement of their fundamental rights following the seizure and detention of their bulldozer plant by the defendants. The Court of Appeal ultimately declared the suit incompetent due to the joint nature of the application. The court, in interpreting Order II of the FREP Rules, held that the enforcement of fundamental rights must be pursued by individual applicants, with each filing a separate application. This position was maintained in other Court of Appeal decisions such as **Udo Vs Robson (2018) LPELR 45183(CA)**, **Finamedia Global Services Ltd Vs Onwero Nigeria Limited (2020) LPELR 51149(CA)**, **Chief of Naval Staff & Ors Vs Archibong & Ors (2020) LPELR 51845(CA)**, amongst others.

In contrast, the same Court of Appeal held in cases such as **Government of Enugu State Vs Onya (2021) LPELR-52688(CA)**, **Incorporated Trustees of Digital Rights Lawyers Initiative & Ors v. National Identity Management Commission (2021) LPELR 55623(CA)**, **National Security Adviser v. Tabe (2022) LPELR 57209(CA)**, **Ejeh Vs Ali (2022) LPELR 57593(CA)**, **Enakarhere v. Oduduru (2022) LPELR 58310(CA)**, **Oghenegueke v. Inspector General of Police (2023) LPELR 60233(CA)** and **Nuwawan & Ors v. Inspector General of Police (2023) LPELR 61580(CA)** etc., that the law and the rules governing enforcement of fundamental rights do allow for the filing of a joint application by two or more applicants where their complaints flow from the same cause of action and that such a joint application is competent.

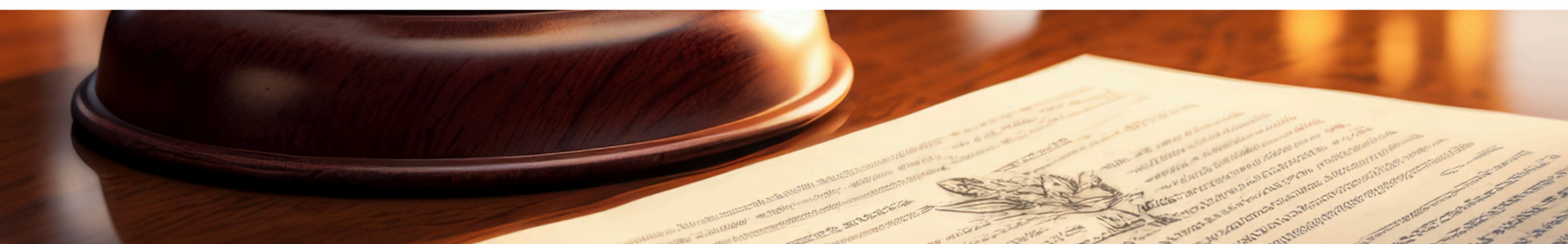
This divergence created uncertainty for both litigants and practitioners in the field of human rights litigation.

The Supreme Court's Verdict: A Liberal and Purposeful Interpretation

In delivering the lead judgment in the case of Total Exploration & Production (Nig) Ltd, Hon. Justice Habeeb Abiru, J.S.C., emphasized that the phrase “any person” used in Section 46(1) of the 1999 Constitution (as amended) and Order II Rule 1 of the FREP Rules must be interpreted broadly to include more than one individual. The Court leaned on both constitutional principles and the overriding objectives of the FREP Rules, which mandate expansive and purposive interpretations that favour the enforcement of rights.

The Apex Court concluded as follows:

“The truth and reality is that there is no express provision in the Fundamental Rights (Enforcement Procedure) Rules 2009 that forbids two applicants from filing a joint petition for enforcement of their fundamental rights.... The Courts have interpreted this provision as permitting persons who have rights arising from one common cause to file a joint action as co-claimants to ventilate the rights, notwithstanding some of the reliefs sought may be different.”



Notably, the Court also relied on Order XV Rule 4 of the FREP Rules, which allows recourse to the High Court Civil Procedure Rules in the absence of express provision. The applicable Order 14 Rule 4 of the Rivers State High Court (Civil Procedure) Rules 2010 permits co-claimants to file joint actions where their claims arise from the same transaction, even if the reliefs differ.

The Supreme Court affirmed the competence of the joint application and restated the judiciary's duty to prioritize access to justice over procedural formalism. Justices Jummai Hannatu Sankey, J.S.C. and Mohammed Baba Idris, J.S.C. supported the lead judgment.

Conclusion

The Supreme Court's decision in Total Exploration & Production (Nig) Ltd v. Okwu & Ors (2024) is not just a victory for the six applicants, it is a precedent-setting affirmation of Nigeria's evolving human rights jurisprudence. It resolved and laid to rest conflicting appellate decisions. This is a signal to all stakeholders that fundamental rights litigation is not to be obstructed by technicalities or procedural rigidity.

Key Contacts



Dayo Adu
Managing Partner



Mercy Airiohuodion
Senior Associate



Joshua Adedokun
Executive Associate