



**RENEWAL OF OIL MINING LEASE - A REVIEW OF DECISION
OF THE COURT OF APPEAL IN THE MINISTER OF PETROLEUM
RESOURCES v. SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA (2021) LPELR-55436(CA)**

BACKGROUND

The Nigerian Petroleum Act confers on the Minister of Petroleum Resources (the Minister) the powers to grant Licences and Leases (Oil Mining Lease (OML)) to petroleum operators duly registered in Nigeria amongst other powers. The Minister is also empowered to renew OMLs for a period not exceeding twenty (20) years provided the application for such renewal is made to the Minister not later than twelve (12) months before the expiration of the existing OML.¹

The case under review examines the powers of the Minister to renew OMLs particularly whether the Minister has the discretion to grant or refuse the renewal of an OML where a petroleum operator has satisfied the statutory prescribed conditions for renewal? The impact of this case on the provisions of the newly enacted Petroleum Industry Act 2021 will be also be highlighted.

BRIEF FACTS

In October 2017, Shell Petroleum Development Company of Nigeria (SPDC) applied to the Minister of Petroleum for a renewal of its OML 11 which was due to expire on 30th June, 2019. The application was made pursuant to **Paragraphs 10 and 13(1) of the First Schedule to the Petroleum Act** which requires that an application for renewal of an OML be made in writing to the Minister, not less than twelve (12) months before the expiration of the OML. SPDC made this application within the timeline prescribed by the Petroleum Act. However, even though SPDC fulfilled all its obligations under the OML 11 as well as the conditions for the renewal of OMLs, including payment of the application fee of US\$2,000,000 (Two Million United States Dollars), the Minister refused to grant the application for a renewal.



Rather than grant the renewal, the Minister wrote a letter dated 8th January, 2018 through the Department of Petroleum Resources (DPR) to SPDC, proposing that OML 11 will be split into three blocks to be owned and operated separately and that SPDC shall be allowed to make a choice from the three blocks with the remaining two blocks reverting to the Federal Government of Nigeria.

Dissatisfied with the failure of the Minister to renew the entire OML 11, SPDC commenced an action at the Federal High Court seeking among other reliefs for a declaration that SPDC is entitled to a renewal of OML 11 in respect of the whole of the leased area comprised in OML 11.

DECISION OF THE FEDERAL HIGH COURT



The Federal High Court held that by virtue of **Paragraph 13(1) of the 1st Schedule to the Petroleum Act** it is mandatory for the Minister to renew OMLs once the operator has fulfilled the conditions prescribed by law for the renewal of OMLs. In essence, the Federal High Court held that it is obligatory for the Minister to grant the renewal, when the stated conditions have been satisfied. The Federal High Court relied on **Paragraph 13(1) of the 1st Schedule to the Petroleum Act** which provides that on the application for renewal of an OML, **"the renewal shall be granted if the lessee has paid all rent and royalties due and has**

otherwise performed all his obligations under the lease." The Court held that the use of the word "shall" in the provision of **Paragraph 13(1) of the 1st Schedule to the Petroleum Act** means that the Minister has no discretion but to renew an OML once the petroleum operator has fulfilled all the conditions for the renewal. The Federal High Court was of the view that there was nothing indicating that SPDC did not meet the conditions set out by law in **Paragraph 13(1) of the First Schedule to the Petroleum Act**. The Court accordingly ordered the Minister to renew the OML 11 in favour of SPDC.

THE APPEAL

The Minister dissatisfied with the decision of the Federal High Court lodged an appeal at the Court of Appeal. The Court of Appeal reversed the decision of the Federal High Court and held that the Minister has the discretion to either grant or refuse to grant the renewal of an OML. The Court of Appeal relied on **Paragraph 13(1) of the 1st Schedule to the Petroleum Act** which provides that:

"The lessee of an oil mining lease shall be entitled to apply in writing to the Minister, not less than twelve months before the expiration of the lease, for a renewal of the lease either in respect of the whole of the leased area or any particular part thereof, and the renewal shall be granted if the lessee has paid all rent and royalties due and has otherwise performed all his obligations under the lease."

The Court of Appeal relied on the above provision to hold that the Minister rightly exercised his discretion in splitting OML 11 into three blocks instead of renewing the entire OML. This is because according to the Court of Appeal, the renewal of OMLs falls squarely within the discretionary powers of the Minister and the renewal of such lease may be with such new terms and conditions as the Minister may consider necessary.

The Court of Appeal, in determining whether the Minister was under a mandatory obligation to renew an OML once the lessee satisfies the statutory requirements as implied by the use of the word "shall" in Paragraph 13(1) of the 1st Schedule to the Petroleum Act, referred to the judgment of **Bello JSC**



(as he then was) *Ifezue Vs Mbadugha & Anor*¹, and held that ***“whenever a statute declares that a thing 'shall' be done, the natural and proper meaning is that a preemptory mandate is enjoined. But if the thing to be done has reference to the time of completing a public act by a public functionary, the enactment will generally be regarded as merely directory....”***

According to the Court of Appeal, if the *Petroleum Act, 2004* and *Paragraph 13(1) of the 1st Schedule to the Petroleum Act* are considered as a whole, then the word 'shall' used in *Paragraph 13(1) of the 1st Schedule to the Petroleum Act*, can only mean a permissive action. The Minister may, all things being equal, exercise a discretion, and renew the lease. Clearly, the Minister, in deciding whether to renew an OML or not, would consider factors such as, propriety, economic sense, socio-political atmosphere, security and sovereignty of the country, in addition to the stated requirements of payment of rent, royalties and other obligations to be performed by SPDC under the lease. If the word "shall" is used in a mandatory sense, it therefore means that Nigeria as represented by the Minister has no control over its resources and lacks a sovereign status to refuse to enter into a contractual agreement with another party to mine or exploit its oil resources. It will also mean that the country must enter into an agreement to allow someone else to explore and exploit its petroleum resources in perpetuity, once the rents and royalties are paid and the application for renewal is made twelve (12) months before the expiry of the current mining lease.

¹ (1984) LPELR—1437 (SC)

The Court also held that the Federal High Court greatly erred in law in its interpretation of Paragraph 13 as being mandatory and stated that the word “shall” used in paragraph 13, could only connote and mean a permissive action and could not be construed to displace the discretion given to the Minister in granting OMLs. The Court of Appeal referred to section 2 of the Petroleum Act which confers discretionary powers on the Minister in granting OMLs as expressed with the use of the word “may” under Section 2 of the Petroleum Act which provides that:

"(1) Subject to this Act, the Minister may grant-
(a) a licence, to be known as an oil exploration licence, to explore for petroleum;
(b) a licence, to be known as an oil prospecting licence, to prospect for petroleum; and
(c) a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum."

This same discretion in the grant of OMLs extends to the renewal of OMLs. In the context in which the word “shall” is used in Paragraph 13 of the 1st Schedule to the Petroleum Act, it does not connote compulsion on the Minister to renew the OML. It connotes permissiveness. The Minister may renew it or part of it or refuse to do so. The Minister cannot be compelled to act in a particular way.

COMMENTARY

This case has for the time being settled the controversy on the extent of the powers of the Minister as it relates to the renewal of petroleum leases under the Petroleum Act. The possibility however, of future litigation on the interpretation of the Petroleum Industry Act of 2021 as it relates to licenses, leases and renewals cannot be overruled. This is because the wording of section 87 of the Petroleum Industry Act which provides for the renewal of Petroleum Mining Lease is similar to the provisions of Paragraph 13 of the 1st Schedule to the Petroleum Act. Section 87 of the Petroleum Industry Act provides that:

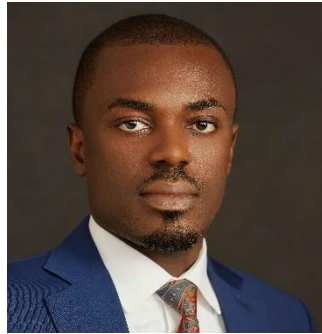
- 1. A lessee of a petroleum lease may, not less than 12 months before the expiration of the lease, apply in writing to the Commission for a renewal of the leased area or any part of it.**
- 2. The petroleum mining lease shall be renewed by the Commission where it is satisfied that the lessee:**
 - a. has fulfilled its obligations relating to the development of the leased area;**
 - b. has fully met all payment requirement under this act or any other enactment in respect of royalties, rents, taxes and fees relating to the petroleum mining lease;**
 - c. is not in default of any obligation or condition relating to the lease; and**
 - d. has discharged all operational obligations in compliance with applicable rules and regulations.**

Perhaps in recognition of the earlier decision of the Federal High court, the PIA in Section 87 (3) and (4) addresses the fact that the Commission may determine the terms on which the renewal of the PML will be based and may in the public interest, change impose or add new conditions for the purposes of renewal of leases.

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