



Press Summary

10 May 2023

Jalla and another (Appellants) v Shell International Trading and Shipping Co Ltd and another (Respondents)

[2023] UKSC 16

On appeal from: [2021] EWCA Civ 63

Justices: Lord Reed (President), Lord Briggs, Lord Kitchen, Lord Sales, Lord Burrows.

Background to the Appeal

This appeal concerns the tort of private nuisance (a civil wrong) in the context of a major oil spill. The question at issue is whether there is a continuing private nuisance and hence a continuing cause of action. This is an important question because it affects when the limitation period for the bringing of claims (which in English law for torts is normally six years) starts to run.

The claimants and appellants, Mr Jalla and Mr Chujor, are two Nigerian citizens. The defendants and respondents are both companies within the Shell group of companies.

The Bonga oil field is located approximately 120km off the coast of Nigeria. On 20 December 2011, at 3:00am an oil leak lasting about six hours occurred during a cargo operation. The leak was caused by a rupture in one of the flowlines when crude oil was being transferred to a waiting oil tanker (the “**Bonga Spill**”). It is estimated that the equivalent of at least 40,000 barrels of crude oil leaked into the ocean. The defendants are alleged to be liable for the operation behind the Bonga Spill.

The claimants have brought an action in the tort of private nuisance against the defendants for undue interference with the use and enjoyment of land owned by them caused by oil pollution from the Bonga Spill. They allege that the oil migrated from the offshore Bonga oil field to reach the Nigerian Atlantic shoreline where they claim it has had a devastating impact and has not been removed or cleaned up. Although the defendants dispute these claims, maintaining that the spill was successfully contained and dispersed offshore and that it did not impact the shoreline, it is assumed for the purposes of this appeal that some quantity of oil reached the Nigerian Atlantic shoreline within weeks of 20 December 2011.

The issue of limitation arose when the claimants sought to make certain amendments to their claim form and particulars of claim over six years after the Bonga Spill.

The claimants argue that so long as undue interference with their land is continuing, because oil on their land has not been removed or cleaned up, there is a continuing cause of action for the tort of private nuisance that is accruing afresh from day to day.

That argument, which is being dealt with as a discrete preliminary matter, was rejected by the judge, and on appeal by the Court of Appeal. Mr Jalla and Mr Chujor now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously rejects the appeal. Lord Burrows gives the judgment, with which Lord Reed (President), Lord Briggs, Lord Kitchen and Lord Sales agree.

Reasons for the Judgment

It is being assumed for the purposes of this appeal that the tort of private nuisance may be committed where the nuisance emanates from the sea or is a single one-off event [2]. (The defendants' application for permission to cross-appeal on these issues was refused) [47-49].

The tort of private nuisance is committed where the defendant's activity, or a state of affairs for which the defendant is responsible, unduly interferes with (or, as it has commonly been expressed, causes a substantial and unreasonable interference with) the use and enjoyment of the claimant's land [2]. A claim in private nuisance is actionable only on proof of damage and is not actionable per se. This requirement is satisfied by establishing the undue interference with the use and enjoyment of the land. That includes physical damage to the land itself and damage to buildings or vegetation growing on the land. But commonly there will be an undue interference with the use and enjoyment of land – as by the impact of noise or smell or smoke or vibrations or being overlooked (as in *Fearn v Board of Trustees of the Tate Gallery* [2023] UKSC 4, [2023] 2 WLR 339) – even though there is no physical damage to the land or buildings or vegetation [3].

A continuing nuisance is in principle no different from any other continuing tort or civil wrong [31]. In principle, and in general terms, a continuing nuisance is one where, outside the claimant's land and usually on the defendant's land, there is repeated activity by the defendant or an ongoing state of affairs for which the defendant is responsible which causes continuing undue interference with the use and enjoyment of the claimant's land. For a continuing nuisance, the interference may be similar on each occasion but the important point is that it is continuing day after day or on another regular basis. So, for example, smoke, noise, smells, vibrations and overlooking are continuing nuisances where those interferences are continuing on a regular basis. The cause of action therefore accrues afresh on a continuing basis [26].

Applying the relevant principles to the facts of this case, the claimants' argument that there is a continuing nuisance, because on the assumed facts oil is still present on their land and has not been removed or cleaned up, is rejected.

If the claimants' submission were correct, it would mean that if the other ingredients of the tort of nuisance were made out, and a claimant's land were to be flooded by an isolated escape on day 1, there would be a continuing nuisance and a fresh cause of action accruing

day by day so long as the land remained flooded on day 1000 [35]. The effect of accepting the claimants' submission would be to extend the running of the limitation period indefinitely until the land is restored. [36].

There was no continuing nuisance in this case because outside the claimant's land, there was no repeated activity by the defendants or an ongoing state of affairs for which the defendants were responsible that was causing continuing undue interference with the use and enjoyment of the claimants' land. The leak was a one-off event or an isolated escape. The cause of action accrued and was complete once the claimants' land had been affected by the oil [37].

The facts of this case are therefore distinguishable from a tree root case such as *Delaware Mansions Ltd v Westminster City Council* [2001] UKHL 55, [2002] 1 AC 321. In that case, in contrast to this, there was an ongoing state of affairs outside the claimant's land, constituted by the living tree and its roots, for which the defendant was responsible and which, by further abstraction of water through the encroachment of the roots, caused continuing undue interference with the use and enjoyment of the claimant's land [38].

To accept the claimants' submission would undermine the law on limitation of actions, which is based on a number of important policies principally to protect defendants but also in the interests of the state and claimants, because it would mean that there would be a continual re-starting of the limitation period until the oil was removed or cleaned up [39].

It is not surprising that the claimants could cite no case directly supporting the position they were advocating. And while there may be no authority that directly contradicts that submission, it is contrary to principle and would have the unfortunate policy consequence of undermining the law of limitation [40].

The defendants were refused permission to cross-appeal, arguing that a private nuisance cannot be committed where the nuisance emanates from the sea or from a single one-off event such as the oil spill in this case.

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)