



The Limits of Ministerial Authority Under the Petroleum Industry Act, 2021
(as amended) –
A Brief Review of *Eurafric Energy Limited v. Ministry of Petroleum Resources & Ors.* (FHC/L/CS/628/2021)

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Introduction

The decision of the Federal High Court in *Eurafric Energy Limited v. Ministry of Petroleum Resources & Ors.* in suit number FHC/L/CS/628/2021 (the “**Eurafric Case**”) represents one of the most recent substantive judicial examinations of executive authority under the Petroleum Industry Act, 2021 (as amended) (the “**PIA**”).

The judgement in this dispute (which arose from a specific controversy concerning the Dawes Island Marginal Field (the “**DIM Field**” or “**Field**”)), addresses the scope of ministerial authority, the enforceability of statutory procedures in licensing decisions, and the status of accrued rights during the transition from the Petroleum Act 1969 (the “**Petroleum Act**”) to the legal, fiscal and regulatory regime established by the PIA.

For upstream operators, investors and financiers, the *Eurafric Case* signals a clear message that ministerial discretion under the PIA operates within defined statutory limits, and those limits are judicially enforceable.



Background to the dispute

Eurafric Energy Limited (“**Eurafric**”) was awarded a marginal field licence in relation to the DIM Field (the “**Licence**”) in 2003 for a period of five (5) years. Eurafric subsequently renewed the said Licence and caused same to be extended, in 2011 and 2016, respectively.

Following the initial award of the Licence, Eurafric entered into a Farm-Out Agreement dated April 27, 2004 (“**FOA**”) with the Nigerian National Petroleum Company Limited (“**NNPCL**”) (formerly the Nigerian National Petroleum Corporation) and Chevron Nigeria Limited (“**Chevron**”). On April 6, 2020, the defunct Department of Petroleum Resources (“**DPR**”) issued a “Notice of Revocation” (the

“Notice”), alleging that EurafriC had failed to commence production from the DIM Field. The DIM Field was subsequently re-awarded to Petralon 54 Limited (“**Petralon**”), which held thirty-five percent (35%) participating interest in the Field and was ostensibly EurafriC’s joint venture partner.¹

EurafriC instituted legal proceedings before the Federal High Court (the “**Court**”), challenging actions attributable to the DPR which, according to EurafriC, interfered with its legal interests in the DIM Field. In its claim, EurafriC characterized DPR’s impugned conduct as unlawful executive action inconsistent with the governing statutory framework; and not as a purely commercial disagreement. Indeed, the EurafriC Case required the Court to determine whether executive authority over petroleum interests or operations had been exercised in compliance with applicable legislation.

Specifically, the reliefs sought included, amongst others:

- **Declaration** that the Minister of Petroleum Resources (the “**Minister**”) lacked statutory authority to take the impugned steps in the manner adopted;
- **Declaration** that such actions were ultra vires, unlawful, null and void; and
- **Orders of perpetual injunction** restraining further interference with EurafriC’s claimed legal interests and preventing the recognition of competing arrangements inconsistent with those interests.

The statutory context: from the Petroleum Act to the PIA

On a preliminary note, it is important to state that the dispute arose prior to the enactment of the PIA, and under the Petroleum Act, further to which the Minister exercised extensive discretion in relation to the grant, renewal, modification and revocation of oil prospecting licences and oil mining leases. Instructively, whilst the statutory framework in the Petroleum Act centralized regulatory authority in the Minister; the PIA has since restructured the regulatory oversight architecture of the Minister as it introduced a regime of institutional sequencing, such that several aspects of the Minister’s authority are no longer exercised in isolation. Indeed, the PIA establishes a statutory framework that allocates defined regulatory responsibilities between and



among different independent government functions and/or agencies.

Specifically, Section 3 of the PIA preserves the Minister’s role in policy formulation and general supervision of the petroleum industry. However, the power to grant Petroleum Prospecting Licences and Petroleum Mining Leases under Section 3(1)(g) of the PIA is expressly subject to the recommendation of the Nigerian Upstream Petroleum Regulatory Commission (the “**Commission**”).

Core issues considered by the court

In the EurafriC Case, the Court was required to consider the following principal issues:

1. **Whether the DPR possessed the authority to revoke the licence?**

In applying the doctrine of *delegatus non potest delegare*, the Court held that the statutory power of revocation is vested in the Minister and cannot be delegated without express statutory authorization as provided in Section 12 of the Petroleum Act and thus the Notice ought to have been signed by the Minister, not the Director of Petroleum Resources.

The Court further held that EurafriC’s right and interest in the Field was not lawfully revoked because the Field is not a revocable instrument, considering the meaning and definition of a ‘Marginal Field’ in the First Schedule of the Petroleum Act and the Guidelines for Farm Out and Operation of Marginal Fields of 2001. Specifically, Section 17(4) of the Petroleum Act defines a “*marginal field*” as “such field as the President may, from time to time, identify as a marginal field.”

¹EurafriC and Petralon became joint venture partners pursuant to the execution of a Farm-In Agreement, which also effected the transfer of a 14% participating interest in the DIM Field to Tako E&P Solutions Limited.



In this regard, *Eurafric* sought a declaratory relief that the DIM Field, having been so designated, could not be treated as a revocable instrument. The Court granted the relief sought on the basis that a marginal field, as defined in the First Schedule to the Petroleum Act and the Guidelines for Farm-Out and Operation of Marginal Fields, 2001, cannot be deemed a revocable instrument and held that *Eurafric's* rights and interests in the Field were not and could not be lawfully revoked.

This ruling by the Court begs the question that if a marginal field is not a revocable instrument, what then is the precise juridical nature of the rights conferred under a marginal field designation, and to what extent are such rights insulated from administrative withdrawal or reallocation?

2. Whether any statutory conditions precedent to the exercise of that authority to revoke had been satisfied?

The Court sought to determine whether the mandatory procedures under Paragraph 26 of the First Schedule to the Petroleum Act and Sections 96-99 of the PIA were adhered to in the revocation of the Licence. Summarily, the Minister is required to inform the licensee of the grounds for revocation and invite the licensee to issue an explanation in that regard before a revocation notice is issued. Based on the facts presented to the Court, the Court found that these mandatory statutory requirements were not complied with, and thus the purported revocation was rendered unlawful and inconsistent with *Eurafric's* right to fair hearing.

3. Whether the non-execution of the Farm-Out Agreement by NNPC rendered the agreement invalid and deprived *Eurafric* of locus standi?

From the facts of the *Eurafric* Case, *Petalon* had filed a preliminary objection challenging the jurisdiction of the Court on the basis that an unsigned document is worthless and incapable of conferring legal benefit, relying on judicial authorities such as *Tumbido v. I.N.E.C.*² and *Nammagi v. Akate*.³

However, the Court held that the non-execution of the FOA by NNPC was immaterial to the validity of *Eurafric's* interest. Indeed, invoking the principle in *MTN (Nig.) Communications Ltd. v. Corporate Communications Investment Ltd*⁴, the Court held that *Eurafric* possessed the requisite legal capacity to institute the action as there was mutual assent by the performance of obligations, regardless that the FOA was not executed. Consequently, based on the facts of the case, coupled with the conduct of the parties, the Court dismissed the jurisdictional objection

4. Whether the government was estopped from revoking the licence for an alleged lack of production after having previously sanctioned the export of oil from that same field?

The Court ruled that the Ministry of Petroleum Resources (the “Ministry”) and the Minister are estopped from revoking the Licence on the alleged grounds of failure to achieve production. The Court’s ruling was premised on the fact that the Commission previously granted approvals for the evacuation and export of about sixty-two thousand (62,000) barrels from the Field. To this end, the Court held that the Ministry’s issuance of the aforesaid evacuation and export approvals effectively acknowledged *Eurafric's* operational efforts of attaining production within the Field. A subsequent revocation of the Licence, premised on the Field not reaching production, was therefore inconsistent with the Ministry’s prior conduct and was therefore legally unsustainable.

Judicial treatment of ministerial discretion

A significant feature of the *Eurafric* Case is the Court’s treatment of the discretion of the Minister.

Instructively, the Court did not treat statutory sequencing requirements as mere formalities, as where legislation prescribed procedural steps, the Court ruled that compliance

²(2023) LPELR (60004)

³(2021) 3 NWLR (Pt. 1762) 170 (SC)

⁴(2019) 9 NWLR (Pt. 1678) 427

with those steps validated the executive action. The Court further affirmed the justiciability of petroleum licensing decisions and in this regard reached a conclusion that Ministerial authority does not insulate executive decisions from judicial review.

Indeed, by granting declaratory and injunctive reliefs against the Minister and the Ministry, the Court reinforced the availability of meaningful remedies for statutory non-compliance by governmental functions or regulatory authority.

The *Eurafric Case* therefore reinforces the principle that statutory authority recognized under legislation must be exercised within the boundaries defined by the statute.

Other key observations from the court's decision

In analyzing the Court's decision in the *Eurafric Case*, it is instructive to state that the Court adopted an interpretative posture that reinforces the PIA as the dominant legal and regulatory framework governing Nigeria's petroleum industry. Indeed, the Court's reliance on the PIA appears to serve the following purposes:

(a) Statutory clarification - The Court referenced Section 318 of the PIA in defining terms such as "licence" and "permit," effectively treating the PIA as the authoritative source of determining contemporary petroleum terminology. In doing so, the Court signaled that the industry's current legal vocabulary is anchored in the new regime preserved under the PIA, even where the dispute may have originated under a previous statute.

(b) Codification of procedural safeguards - The revocation procedures set out in Sections 96–99 of the PIA are more detailed and structured than those contained in the Petroleum Act. By invoking these provisions, the Court underscored that modern Nigerian petroleum law expressly prohibits summary revocation without notice, defined grounds, and an opportunity to remedy default.

(c) Reinforcement of enduring principles - The PIA's requirement for a "notice of default" and a remediation period of not less than ninety (90) days demonstrates that procedural fairness is a continuing structural principle of petroleum governance and not a vestige of the former regime. The Court's reasoning suggests that these safeguards are not newly invented protections but comprehensively outlined expressions of long-standing administrative law requirements.

(d) Procedural compliance is determinative - Compliance with the PIA's institutional framework is not optional. Requirements such as Commission's recommendation, notice of default, and institutional sequencing are conditions of validity and mandatory requirements. Non-compliance may render an executive action null and void.

(e) Regulatory clarity and litigation risk - The decision signals that courts are prepared to scrutinize petroleum governance decisions for statutory compliance. This enhances regulatory accountability but also underscores the importance of proactive risk management.

Conclusion

Pending any judicial review, the decision in *Eurafric Energy Limited v. Ministry of Petroleum Resources* is an important judicial engagement with the PIA, as it demonstrates that the restructured regulatory model introduced by the PIA is legally enforceable and that ministerial authority or actions must align with extant statutory provisions.

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