***959* AAA v Unilever Plc**

Court of Appeal (Civil Division)

4 July 2018

[2018] EWCA Civ 1532

[2018] B.C.C. 959

Gloster , Sales and Newey LJJ

4 July 2018

H1 *Jurisdiction—Kenyan company subsidiary of British parent—Claims arising from tribal violence—English proceedings against both subsidiary and parent—English proceedings requiring anchor defendant in the jurisdiction—Whether duty of care owed by parent to claimants—Proximity.*

H2 This was an appeal against a decision of the High Court ([2017] EWHC 371 (QB)) dismissing a claim by employees and residents of a tea plantation in Kenya, for breach of a duty of care owed to them by a Kenyan company and its English parent company.

H3 Following outbreaks of violence in Kenya at the time of elections in 2007, claims were brought in the High Court by the appellants, who were workers at and residents on a tea plantation, against the Kenyan operating company ("UKTL") and its UK-registered parent ("Unilever"). Unilever was one of the parents of a multinational group. The appellants claimed that UKTL and Unilever had breached a duty of care to them in failing to take effective steps from the violence, during which mobs from outside the plantation killed, raped and injured many victims, among them the appellants and their families. In order to proceed against UKTL in England, there had to be an "anchor" defendant, that is, a defendant resident or registered in England. The judge held, applying the three-part test in *Caparo Industries Plc v Dickman* [1990] 2 A.C. 605; [1990] B.C.C. 164, that UKTL and Unilever did not owe a duty of care, as the damage was not foreseeable, and it would be unreasonable to impose what would be in effect a requirement to act as a surrogate police force. Thus, she held that there was no arguable case; but said, however, that if there were an arguable case, the requisite proximity between Unilever and the appellants would be established and the case would be arguable in England. On appeal, the appellants' position was that the judge was wrong in her finding that there was no arguable case. Unilever argued that the judge was wrong to make that finding about proximity.

H4 Held, dismissing the appeal:

H5 1. It was clear that Unilever, as parent of UKTL, left risk management to its regional subsidiary. Unilever possessed no superior knowledge or expertise in relation to crisis management in Kenya than UKTL. Although by its own documentation Unilever did have responsibility for establishing a coherent framework for group members to manage risk, it specifically required subsidiaries to report to it on their implementation of risk and crisis management strategies. On the evidence, UKTL carried out its own crisis management training, drafted its own policies and received no specific advice from Unilever.

H6 2. To establish proximity sufficient to make Unilever an anchor defendant in the proceedings, it would have had to be shown either that Unilever had substantially taken over the management of UKTL, or that it had given advice to UKTL on how to manage the specific risk. The appellants accepted that the first of these did not apply. In relation to the second, they were nowhere near

showing ***960*** a good arguable claim against Unilever: all the evidence pointed to UKTL having received no relevant advice from Unilever. (*Chandler v Cape Plc [2012] EWCA Civ 525; [2012] 1 W.L.R. 3111* , *Lungowe v Vedanta Resources Plc [2017] EWCA (Civ) 1528; [2017] B.C.C. 787* , *HRH Okpabi v Royal Dutch Shell Plc [2018] EWCA Civ 191; [2018] B.C.C. 668* followed.)

H7 3. The court did not need to decide on the other grounds urged by the appellants, as the appeal failed by reason of the proximity issue alone.

Cases referred to:

- *Caparo Industries Plc v Dickman [1990] 2 A.C. 605; [1990] B.C.C. 164 (HL)*
- *Chandler v Cape Plc [2012] EWCA Civ 525; [2012] 1 W.L.R. 3111*
- *HRH Okpabi v Royal Dutch Shell Plc [2018] EWCA Civ 191; [2018] B.C.C. 668*
- *Lungowe v Vedanta Resources Plc [2017] EWCA (Civ) 1528; [2017] B.C.C. 787*

H9 **Representation**

- Richard Hermer QC and Robert Weir QC (instructed by Leigh Day Solicitors) for the appellants.
- Charles Gibson QC , Adam Heppinstall and Ognjen Miletic (instructed by DLA Piper UK LLP) for the respondents .

Judgment

Sales LJ:

1 This case concerns an attempt to sue in England a parent company (Unilever Plc, “Unilever”, which is registered here) of an international group, together with one of its operating subsidiaries (Unilever Tea Kenya Ltd “UTKL”), which is registered in Kenya. The claim is brought by the appellants, who are employees and former employees of UTKL or residents living on a tea plantation run by UTKL at the relevant time. In order to be able to sue UTKL in England, the appellants have to show that they have a good arguable claim against Unilever, which can then be treated as the so-called anchor defendant in this jurisdiction. A claim can then be included in those proceedings against UTKL as a necessary or proper party.

2 The pattern of the issues which arise is similar to that in relation to other recent cases in which individuals have sought to bring proceedings in tort in England against an English parent company and its foreign subsidiary in respect of events occurring in the foreign country where that subsidiary carries on its operations: *Lungowe v Vedanta Resources Plc [2017] EWCA (Civ) 1528; [2017] B.C.C. 787* and *HRH Okpabi v Royal Dutch Shell Plc [2018] EWCA Civ 191; [2018] B.C.C. 668* . In the present case, the appellants contend that they were the victims of serious inter-tribal violence at the time of the 2007 presidential election in Kenya, when they were targeted by marauding mobs which came onto the tea plantations operated by UTKL where they worked and lived. They claim that both UTKL and Unilever owed them a duty of care in tort to take effective steps to protect them from this violence, which duty was breached in each case.

3 This is an appeal from the decision of Elisabeth Laing J, in which she held that the appellants had no arguable claim against either Unilever or UTKL. No duty of care was owed by either of those companies. This was because, applying the three part test for a duty of care in *Caparo Industries Plc v Dickman [1990] 2 A.C. 605; [1990] B.C.C. 164* , the judge held that the damage suffered by the

appellants was not foreseeable by either UTKL or Unilever. Further, in relation to Unilever, the judge held that it would not be fair, just and reasonable to impose a duty of care, since the duty alleged required, in effect, that Unilever should act as a surrogate police force to maintain law and order, whereas Unilever had been entitled to rely on the Kenyan authorities to do that. On the other hand, the judge held, albeit with hesitation, that there was a sufficient degree of connection between the ***961** activities of (and omissions to act by) Unilever, as the ultimate holding company of UTKL, and the damage suffered by the appellants so as to satisfy the test of proximity, according to guidance given by this court in *Chandler v Cape Plc [2012] EWCA Civ 525; [2012] 1 W.L.R. 3111* . The judge held that it was reasonably arguable for the appellants that limitation defences would fail. She also said that if, contrary to her view, there were viable claims against both Unilever and UTKL, then England would be the proper forum to hear those claims.

4 The appellants appeal in relation to the judge's ruling that neither Unilever nor UTKL owed the appellants a duty of care. Unilever has put in a respondent's notice to argue that the judge should have found that there was no duty of care owed by Unilever on the additional ground that, contrary to her view, there was no proximity between Unilever and the appellants in respect of the damage suffered by them, according to the guidance in *Chandler v Cape Plc (above)* . Unilever and UTKL also sought to challenge that part of the judgment in which the judge held that, if viable claims in tort existed against Unilever (as anchor defendant) and UTKL, England is the appropriate place for trial of those claims. Unilever also cross-appealed in relation to a previous case management decision by the judge, by which she declined an application by Unilever that the claim against it should be stayed on case management grounds, until after a trial had taken place in Kenya of the appellants claims against UTKL.

5 We heard extensive and interesting arguments from the parties on all these issues for the purposes of the appellants' appeal. However, as Gloster and Newey LJJ and I are in agreement that the appeal should be dismissed by reason of the proximity point in relation to Unilever set out in its respondent's notice, with the result that there is no anchor defendant for proceedings in England, it is not necessary to deal with the other issues. It would serve no useful purpose to do so. Indeed, it would be inappropriate to do so. If there is to be a trial, it will have to take place in Kenya against UTKL and against Unilever, if the appellants are able to join it in proceedings in Kenya. In those circumstances it is far better that we leave issues of foreseeability and what was fair, just and reasonable in terms of imposition of duties of care regarding events in Kenya in 2007 to the Kenyan courts, which are obviously more familiar with Kenyan society than we are, rather than trying to express opinions about them ourselves. The Kenyan courts will also be better placed than we are to rule upon the effect of the Kenyan Occupiers Liability Act, on which the appellants seek to rely in framing their case in tort against UTKL. Accordingly, we express no opinion in relation to the judge's reasoning on these issues.

Factual background

6 A detailed account of the corporate relationship between Unilever and UTKL and of events surrounding the presidential election of December 2007 in Kenya appears in the judgment below. For present purposes, a short summary is sufficient.

7 For many decades, UTKL has operated an extensive tea plantation in the southern Rift Valley near the town of Kericho. In the surrounding area, the Kalenjin are the principal tribal group. However, few Kalenjin work at the plantation. UTKL became an operating company in the Unilever group in the 1980s, as a result of corporate acquisitions by that group.

8 Over the years UTKL has drafted in an extensive workforce at the plantation, drawn from other parts of Kenya and other tribal groups including the Kikuyu, Kisii and Luo. The workforce reside on the plantation, together with their relatives. The appellants are members of these groups. In 2007, some 20,000 people were employed on the plantation. Together with their relatives, this meant that about 100,000 people lived on the plantation. About 30–50% were from the Kisii tribe. ***962**

9 There has been a long history of significant violence at Kenyan elections, much of it based on tribal rivalries. This has included violence in the Rift Valley and around Kericho. However, until the election in December 2007, the plantation had been free from the tribal violence which affected the surrounding area at election times.

10 Tribal tensions were high in relation to the presidential election on 27 December 2007, which was a close run affair between Raila Odinga of the Orange Democratic Party and Mwai Kibaki of the Party of National Unity. Mr Odinga was supported by the Kalenjin and some other tribes, including the Luo. Mr Kibaki, who was the winning candidate, was from the Kikuyu tribe and was supported by the Kisii and other tribes.

11 After the results were announced, there was what the judge described as a nationwide breakdown in law and order. Across Kenya 1,333 people were killed, many more were injured and there was extensive damage to property. Criminal rioters drawn from the Kalenjin and Luo invaded the plantation in large armed mobs and targeted people from other tribes who were living there, including the appellants. The mobs committed murders, rapes and other violent assaults and damaged property. The 218 appellants suffered in this violence in various ways. Seven of the appellants were murdered, and in their cases it is their estates which claim.

12 The appellants claim that Unilever and UTKL failed to have in place adequate crisis management plans to protect them against post-election violence of this kind, which they say was foreseeable. However, as already noted, the judge found that it was not (even arguably) foreseeable that post-election violence of this kind would spill over from the surrounding area into the plantation, since nothing remotely comparable had ever before happened on the plantation. The plantation is self-contained and extensive and had not been affected by previous bouts of post-election violence in the Rift Valley. Further, the judge found that it was not foreseeable that law and order would break down generally in Kenya and that the police would be unable to provide protection to the inhabitants of the plantation.

Relationship between Unilever and UTKL

13 In 2007 and 2008 Unilever was the ultimate holding company of UTKL. Unilever owned all the shares in Brooke Bond Group Ltd, which in turn owned 88.2% of the shares in UTKL and hence had control of UTKL. Unilever and its Dutch sister company, Unilever NV, are managed together as joint holding companies for the Unilever group. It is convenient to refer simply to Unilever in this judgment.

14 Unilever and UTKL are, of course, separate legal persons. At the relevant time UTKL's business was managed locally by UTKL itself. Mr Richard Fairburn was the managing director. He has provided two witness statements. He explains that the UTKL management team never had any cause to refer to anybody else within the Unilever group for advice regarding the running of the plantation or its relations with the local community in Kenya. In 2007 there was no one in the group outside of UTKL with relevant expertise or experience, since by then the Unilever group had become almost exclusively a consumer goods business. Unilever did not have superior knowledge or expertise in

relation to local political or ethnic matters. As I explain in further detail below, there is no good basis in the relevant documents bearing on these matters to challenge Mr Fairburn's evidence about this.

15 For the purposes of the proximity issue arising on the appeal, it is necessary to go into more detail than the judge in relation to the guidance and advice given by Unilever to UTKL regarding having a crisis management plan in place and in relation to warnings of possible electoral violence in Kenya in December 2007. ***963***

16 The consolidated Unilever Group accounts for 2007 explain that the two parent companies and the other group companies operate as a single economic entity. The building blocks of its organisation are regions, categories of product (foods and home and personal care) and functions (finance, HR, IT, communications and legal). The group's system of risk management was outlined and it was stated that "Responsibility for establishing a coherent framework for the Group to manage risk resides with the Boards [of the two parent companies]". Reference was made to potential economic instability in developing economies and it was said, "in cases of extreme social disruption, protecting our people is always the priority".

17 The Group accounts explained the corporate governance structure for the group at pp.33 et seq.. It was stated that the Boards of the joint parent companies in the group had "ultimate responsibility for the management, general affairs, direction and performance of the business as a whole". Reference was made to the group's audit committee, which "assists the Boards in fulfilling their oversight responsibilities in respect of the integrity of Unilever's financial statements; risk management and internal control arrangements …". It was stated that "Unilever has designed internal risk management and control systems to provide reasonable (not absolute) assurance to ensure compliance with regulatory matters and to safeguard reliability of the financial reporting and its disclosures". This section included the following statement:

"Unilever policies

The implementation of and compliance with our governance structure is facilitated through a business-orientated policy framework. Unilever policies are universally applicable within the Unilever Group. They are mandatory and have been developed to ensure consistency in key areas within our worldwide operations. They cover operational and functional matters, and govern how we run our business, in order to comply with applicable laws and regulations."

The policies referred to included the group's Risk Management Policy.

18 The structure outlined in the Group accounts was fleshed out in a document entitled, " The Governance of Unilever ", as it stood in 2007. It was again stated that the group was in effect a single economic entity with a Group Chief Executive and Executive Team. These were responsible for the operational running of the Unilever Group, including "Managing Risk and Corporate Reputation" by "Preparing for approval by the Board, and implementing and managing, the policy and processes on Risk Management" and "Implementing and managing compliance with all Unilever Policies". The document again referred to group wide Unilever policies, which had been developed "to provide a set of mandatory rules designed to ensure consistency in key areas within our world-wide operations" and covering "operational or functional matters in respect of which they govern how we run our business".

19 In July 2005 Unilever issued "The One Unilever Operating Framework", which remained in place in 2007. This described how Unilever was moving from a largely decentralised management approach across the group to one with "more globally led processes across geographies" and a

single executive “ExCo” or “UEX” top management team. The three pillars of group organisation were Categories, Regions and Functions. The Group Chief Executive and UEX were stated to be accountable for all aspects of Company operations, managing business performance and overall profit responsibility for the Group.

20 Unilever’s Corporate Relations department in London issued Unilever’s relevant crisis management policy in March 2003, entitled “Crisis Management in Unilever: Accept, Act and Communicate”. This stated that it was Unilever’s policy to have written procedures in place in operating companies, regions and centrally. UEX and national managers, among others, were ***964*** responsible for ensuring that “Procedures are in place, and people identified and trained, so that units are prepared to manage crises” and that “Compliance with policy is monitored”. “SVP Supply Chain” were “the designated divisional crisis co-ordinators” responsible for ensuring that procedures were “translated into specific processes within the Business” and for guidance on when issues were to be escalated. The document stated, “It is the responsibility of national and regional managements to ensure that all operating units, within their jurisdiction, are covered by crisis management plans”, and the heads of corporate departments and regional presidents were required to “assure ExCo annually (via the Positive Assurance Process) that procedures are in place to assess compliance with the policy.” A crisis escalation procedure was set out. This included the following statement:

“Successful crisis management relies on the local unit sharing information—at the earliest opportunity—with the next level of management. While the Region, for example, must be disciplined enough not to become involved in the actual detail of the crisis, it will provide critical strategic input into the crisis management process in the initial phase and be ready to act should the crisis broaden.”

21 The Unilever “crisis management” document referred to the potential for assistance from crisis management experts in Unilever and external agencies co-ordinated by the corporate relations department in London.

22 In 2007 Unilever’s corporate risk management policy stated:

“All Unilever units must maintain procedures for the self-assessment of business risks, operating controls and compliance with Corporate Policies … This allows UEx and the Board to manage the business in compliance with corporate governance requirements.

…

Annual Positive Assurance

Unit heads must provide a statement to their line manager as determined annually in the Positive Assurance instructions issued by the Corporate Risk Management department, confirming that [business risks have been reviewed, relevant actions have been included in management plans etc] …”

23 There was then a positive assurance procedure up through the group structures to, ultimately, the Group Chief Executive.

24 As part of this process, a crisis management process policy was in place in 2007 at regional level in the group (for the Africa, Middle East and Turkey, or “AMET”, region). This indicated that it was the responsibility of managers of units at the national level (such as UTKL), amongst others, to ensure that appropriate procedures were in place, with people identified and trained, so that those

units were prepared to manage crises. The policy also referred to the possibility of seeking advice and guidance from external consultants in the event of a crisis.

25 Unilever produced a "Crisis Prevention and Response Policy" in 2008, which reflected its governance structures in place at the relevant time. This set out principles for sharing information about crises within affected parts of the group and for escalation of decision-making to the most appropriate part of the group organisation. It stated:

"Each crisis is best managed as close to the issue/incident as possible. The most appropriate people to manage an issue/incident are those who know it best. However, those people must be trained and have processes in place." ***965**

26 UTKL produced its accounts for 2007 as a separate company. They set out the distinct governance structures which applied within UTKL itself.

27 UTKL prepared its own "crisis and emergency management" policy. The version of this which was in place in December 2007 had been compiled in August 2007 by UTKL's own management. It covered a range of crises or emergencies which might affect UTKL. It stated that one of its objectives was to "protect the health and safety of [UTKL's] consumers, customers, its employees, dependants, contractors, visitors and the environment". Two sorts of crisis identified in the policy were "country instability" (including civil unrest associated with elections) and "riot and ethnic clashes", and possible triggers were said to include "land invasion by indigenous people reclaiming historic land" and "armed attack on company property or personnel." It was noted that "special arrangements may be necessary if there is a targeted ethnic group", including if necessary to evacuate them.

28 The evidence showed that UTKL carried out its own crisis management training programme. Neither in drafting its crisis management policy, its occupational health and safety policy nor in training its staff for crisis management was it subject to direction or any specific or detailed advice from Unilever.

29 The relevant assurance letter from Mr Fairburn to the group regional level (Unilever Central Africa), dated 19 November 2007, showed that the process of providing risk management assurance up to Unilever's head office described above was followed in respect of UTKL. UTKL's immediately relevant risk management policy was prepared by UTKL. Mr Fairburn wrote to confirm that UTKL had given the positive assurance return which was required and that he had reviewed all the risks to which his operating unit (which included UTKL) was exposed, and that relevant actions to meet risks had been identified and included in strategic and operational plans in relation to that unit. Unilever did not dictate or advise upon the terms of these plans, but simply sought and was given assurance that an appropriate policy was in place at the relevant level.

30 I have gone through the evidence on this aspect of the case in some detail, both because (in light of the way in which she decided the case) the judge did not set this out and in order to explain that there is no basis in the relevant documentary evidence to call in question the witness evidence filed by Unilever and UTKL to the effect that risk management policy so far as it applied to UTKL was framed at the local UTKL level. That was done by making use of the knowledge of UTKL's personnel regarding the risks which might arise locally. This is the account which emerges from, in particular, the witness statements of Mr Fairburn (as managing director of UTKL at the relevant time) and Mr Steve Williams, the chief legal officer and company secretary for Unilever from 1985–2010. Far from undermining this account, the documents to which we were referred confirm it.

31 The appellants contend that UTKL would have received advice about the political risks in relation to the presidential election in 2007 from the external risk consultants retained by Unilever, called control risks group ("CRG"). Emails dated 31 December 2007 and in early January 2008 were sent by CRG to regional and UTKL management. These referred to the risk of political violence in Kenya, but did not indicate that it was likely in the vicinity of the plantation, let alone on the plantation itself. An email from CRG dated 2 January 2008 stated that CRG did not believe evacuation (sc. from Kenya) was necessary. Such advice as was sent by CRG related to the position in Kenya at a national level and was very general, as one would expect from such a service. It was not directed to giving the management of UTKL any precise information, let alone instructions, regarding how the general risk of election violence in Kenya might impact upon UTKL, the plantation or persons residing there and how UTKL should respond.

32 We were also referred to information which indicated that Unilever had access to other Unilever employees or consultants who assisted the group with aspects of crisis prevention and response (John ***966*** Arthur and Dr Louise Moody of Coventry University). There is nothing in the material about these individuals to suggest that they had any role in advising UTKL about how to construct its own policies in relation to risk and how to react to the political violence in Kenya in late 2007 or 2008.

33 In an effort to bolster their case, the appellants also adduced evidence in the form of a report from another risk consultancy, Result Group (Global risk and crisis management), regarding the sort of advice which they were offering to clients at the relevant time in 2007 and 2008. Result Group was not a consultancy which Unilever employed, but this material was put before us in an effort to indicate the sort of advice which CRG would have been likely to have provided to Unilever or UTKL in the same period. However, even if one were prepared to accept that the Result Group material provides an indication of what CRG was likely to have been advising at the relevant time (as to which I am doubtful), the Result Group material does not assist the appellants on this part of their case. The Result Group report contained some more detail about specific events than the CRG advice referred to above, but it was still advice relating to the position in Kenya at a national level and was very general. Again, even if advice of the kind set out in the report had been sent to the management of UTKL, it would not have provided them with any precise information, let alone instructions, regarding how the general risk of election violence in Kenya might impact upon UTKL, the plantation or persons residing there and how UTKL should respond.

34 None of this material gives any grounds for calling in question the evidence of Mr Fairburn that "expertise in relation to the local political situation and how this could be effectively handled was only found within UTKL and nowhere else within Unilever Group"; "The UTKL management team never had any cause to refer to anybody else within Unilever Group for plantations advice or assistance of any type such questions or issues"; "All decision making as to how to handle the crisis was undertaken by members of [UTKL's own Crisis Management Team]" and "None of the decisions as to how to handle the crisis required the input or guidance of PLC …"; and that UTKL had sole responsibility for devising its own relevant policies and for deciding what to do when the crisis arose.

Discussion

35 Having set out the relevant factual background in relation to the proximity issue (i.e. whether the appellants have any properly arguable case against Unilever in the light of *Chandler v Cape Plc [2012] EWCA Civ 525; [2012] 1 W.L.R. 3111* and related authorities), the legal analysis can proceed much more shortly. It is common ground that principles of English law govern this part of the case.

36 There is no special doctrine in the law of tort of legal responsibility on the part of a parent company in relation to the activities of its subsidiary, vis-à -vis persons affected by those activities. Parent and subsidiary are separate legal persons, each with responsibility for their own separate activities. A parent company will only be found to be subject to a duty of care in relation to an activity of its subsidiary if ordinary, general principles of the law of tort regarding the imposition of a duty of care on the part of the parent in favour of a claimant are satisfied in the particular case. The legal principles are the same as would apply in relation to the question whether any third party (such as a consultant giving advice to the subsidiary) was subject to a duty of care in tort owed to a claimant dealing with the subsidiary. Helpful guidance as to relevant considerations was given in *Chandler v Cape Plc* (above); but that case did not lay down a separate test, distinct from general principle, for the imposition of a duty of care in relation to a parent company.

37 Although the legal principles are the same, it may be that on the facts of a particular case a parent company, having greater scope to intervene in the affairs of its subsidiary than another third party might have, has taken action of a kind which is capable of meeting the relevant test for imposition ***967** of a duty of care in respect of the parent. The cases where this might be capable of being alleged will usually fall into two basic types: (i) where the parent has in substance taken over the management of the relevant activity of the subsidiary in place of (or jointly with: see *Vedanta Resources* , at [83]) the subsidiary's own management; or (ii) where the parent has given relevant advice to the subsidiary about how it should manage a particular risk. As to claims of the first type, see *Chandler v Cape Plc* ; *Vedanta Resources* at [83]; and *HRH Okpabi* at [86]–[89] and [127] (Simon LJ) and [141] (Sales LJ). In *Okpabi* , Sir Geoffrey Vos C helpfully highlighted and contrasted the second type of case at [196], where he said:

"… One can imagine … circumstances where the necessary proximity could be established, even absent the kind of specific facts that existed in *Vedanta* … Such a case might include the situation, for example, where a parent required its subsidiaries or franchisees to manufacture or fabricate a product in a particular way, and actively enforced that requirement, which turned out to be harmful to health. One might suggest a food product that injured many, but was created according to a prescriptive recipe provided by the parent. …"

38 In the present case, counsel for the appellants rightly accepted that they could not say that their claim was within category (i). Plainly, the management of the affairs of UTKL was conducted by the management of UTKL. As Sir Geoffrey Vos C said in *Okpabi* , also at [196]:

"… it would be surprising if a parent company were to go to the trouble of establishing a network of overseas subsidiaries with their own management structures it if intended itself to assume responsibility for the operations of each of those subsidiaries. The corporate structure itself tends to militate against the requisite proximity …"

39 Instead, the appellants say that their claim falls within category (ii). They seek to rely upon advice which they say was given by Unilever to UTKL in relation to the management of risk in respect of political unrest and violence in Kenya.

40 In my judgment, however, the appellants are nowhere near being able to show that they have a good arguable claim against Unilever on this basis. The witness evidence and the documentary evidence, reviewed above, shows that UTKL did not receive relevant advice from Unilever in relation to such matters. The evidence also shows clearly that UTKL understood that it was responsible itself for devising its own risk management policy and for handling the severe crisis which arose in late 2007, and that it did so.

41 For these reasons, I would dismiss the appeal, relying on grounds different from those relied on by the judge.

Newey LJ:

42 I agree.

Gloster LJ:

43 I also agree.