IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT

SUIT NO: FHC/PH/CS/08/2021

BETWEEN:

1. CHIEF(ENGR.) BALA CHARLES ASELEMI
2. CHIEF ILAYIRA CHARLES ASELEMI
3. MR. ROYAL JEREMIAH GODWILL
(for themselves and representing the Omaraka Community of Abua Central in Abua/Odual Local Government Area of Rivers state)

PLAINTIFFS

AND

1 TRANMISSION COMPANY OF NIGERIA PLC
2. PORT HARCOURT ELECTRICITY DISTRIBUTION PLC

DEFENDANTS

NOTICE OF PRELIMINARY OBJECTION BROUGHT PURSUANT TO ORDER 29 OF THE FEDERAL HIGH COURT(CIVIL PROCEDURE) RULES 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that the 1st Defendant herein named intends, at the hearing of this suit, to rely upon the following Preliminary Objection whereof is hereby given to you, viz:

1. **AN ORDER** of this Honourable Court striking out this suit for being incompetent having been commenced in the Federal High Court.
2. **AN ORDER** of this Honourable Court striking out the 1ST Defendant as a party to this suit for failure to disclose any reasonable cause of action against them

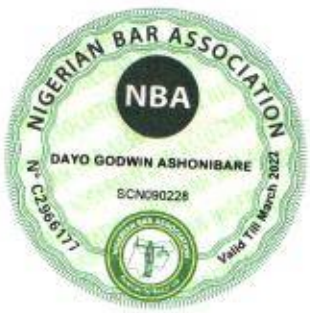
And for such Orders or Further Orders as this Honorable Court shall make in the circumstance

FURTHER TAKE NOTICE that the Grounds upon which the application is brought are:

1 The Respondents/Claimant commenced this suit at the Federal High court vide Writ of Summons and accompanying Processes dated the 26th day of January 2021.

2. The subject matter of this suit as presently constituted is on the Declaration of Title to Land, which is outside the jurisdiction of the Federal High Court.
3. By Virtue of Section 100(1), Part XIII (Interpretation and Citation), of the Electric Power Sector Reform Act, 2005 the regulations and rules governing the power sector, it is obvious that 33KV is not a Transmission line and as such does not belong to the 1st Defendant hence No reasonable Cause of Action has been disclosed against the 1st defendant in this suit
4. The suit is therefore incompetent, and this Honorable Court urged to strike it out in the interest of justice.

Dated this 26th day of March 2021.



Dayo G. Ashonibare, Esq.LLM **ACIArb. (UK)**
Ene Ashonibare, Esq
O. N. Igbafe, Esq
Simiat Sulaiman, Esq
D . A Dungs, Esq
(1st Defendant's Counsel),
Levite Solicitors & Arbitrators,
Suite SF 22 Anafara'a Plaza,
First Avenue, Gwarinpa
FCT-Abuja
ADDRESS FOR SERVICE
C/O
248A Sani Abacha Road,
G.R.A
Port Harcourt
River state

08033661414, 08034812254,
levitesolictors@gmail.com
info@levitesolicitors.com

FOR SERVICE ON:
PLAINTIFFS
C/O Counsel
H. D. D. Uwom Esq.
(Legal Practitioner)

Uwom, Wekulon & Co.
(Plaintiffs Counsel)
27, Bende Street, Town,
Port Harcourt
08033131982, 08152661085
Harcourt.Uwom@Gmail.Com
Harcourt.Uwom@Nigeranbar.Ng

2ND DEFENDANT
No 42 Obi Wali Road,
Rumuigbo, Port Harcourt.

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} DEFENDANTS

WRITTEN ADDRESS IN SUPPORT OF THE 1st DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION ON LACK OF JURISDICTION OF COURT

1.0 INTRODUCTION AND RELEVANT FACTS

1.1 The Plaintiff/ Respondents Commenced this suit at the Federal High Court vide a Writ of summons and accompanying processes dated 26th January 2021, praying this Honorable Court for the following Reliefs.

1. A declaration that the plaintiff are entitled to compensation from the defendants in respects of the plaintiffs' land in omaraka community in Abua in Abua/Odua Local government Area of Rivers State of Nigeria which is adversely traversed and affected by the defendant's electricity transmission lines (formerly National Electric Power Authority's electricity transmission lines but now inherited by the defendants) thereby rendering the land unsuitable for any development and/ or useless for any other purpose.
2. The sum of One Billion, Four Hundred and Eighty Five Million, Thirty Nine Thousand, Two Hundred and Thirty Five naira(N1.485,039,235) as

compensation or damages for losses, disturbance, loss of use of land/loss of value of land and injurious affection suffered by the plaintiffs as a result of the defendants taking over part of the plaintiffs' land situate at Omaraka, Abua Central, Abua/Odua local Government Area of Rivers State compulsorily and passing through it the defendants' High Tension (33KVA) electric power Transmission Line from Ahoada to Abonnema without payment of any compensation for the loss of use of Land, loss of Value of Land, disturbance and other injurious affections from the said transmission line or in the alternative, the sum of N1, 485,039,235 being compensation for the loss of the use of the said land and/or loss of value of the land.

1.2 Upon receipt of the Plaintiff's Writ of Summons, the 1st Defendant filed a memorandum of Conditional appearance and this Notice of preliminary Objection challenging the jurisdiction of this Honorable Court for reasons contained therein. This written address is delivered in support of the Defendant/Applicant's Notice of Preliminary objection dated 26th March, 2021.

1.3 The Defendant/ Applicant contend that this Honorable Court lacks the jurisdiction to entertain this suit and in consequence thereof, the suit ought to be struck out. The Defendant/Applicant seeks the following reliefs in its notice of Preliminary Objection:

1. **AN ORDER** of this Honourable Court striking out this suit for being incompetent having been commenced in the Federal High Court.
2. **AN ORDER** of this Honourable Court striking out the 1ST Defendant as a party to this suit for failure to disclose any reasonable cause of action against them

And for such Orders or Further Orders as this Honorable Court shall make in the circumstance.

1.4 The grounds upon which the Preliminary Objection is brought are that:

1 The Respondents/Claimant commenced this suit at the Federal High court vide Writ of Summons and accompanying Processes dated the 26th day of January 2021.

2. The subject matter of this suit as presently constituted is on the Declaration of Title to Land, which is outside the jurisdiction of the Federal High Court.

3 By Virtue of Section 100(1), Part XIII (Interpretation and Citation), of the Electric Power Sector Reform Act, 2005 the regulations and rules

governing the power sector, it is obvious that 33KV is not a Transmission line and as such does not belong to the 1st Defendant hence No reasonable Cause of Action has been disclosed against the 1st defendant in this suit

4. The suit is therefore incompetent, and this Honorable Court urged to strike it out in the interest of justice.

2.0 ISSUE FOR DETERMINATION

i. ***Whether this Honourable Court Has the Jurisdiction to entertain matters relating to Declaration of Title to Land and Compensation***

ii. ***Whether the plaintiff has disclosed a reasonable cause of action against the defendant.***

3.1. ARGUMENT ON ISSUE (1) ONE

Whether this Honourable Court Has the Jurisdiction to entertain matters relating to Declaration of Title to Land and Compensation.

3.2. It is our submission that by virtue of the provision of Section 251 of the 1999 constitution of the Federal Republic of Nigeria (As Amended), the subject matter of this suit is not within the exclusive jurisdiction of the Federal High Court.

3.3. Jurisdiction has been held to be the corner stone, the life wire and blood line in any legal proceedings. Any proceedings built without jurisdiction is bound to crumble like a pack of cards. Without jurisdiction, a court loses its legitimacy to make any binding Order in a dispute submitted to it for adjudication including an order of transfer. The importance of jurisdiction in legal proceedings cannot be over emphasized. The Courts have consistently maintained the above position in a plethora of cases. We refer your Lordship to the case of **AKERE & ORS V. GOVERNOR OF OYO STATE & ORS** (2012) LPELR – 7806 (SC) where the Court held:

> The overriding importance of jurisdiction cannot be over stated. It is the life blood of any litigation before a court properly so called. It is so fundamental that when a court has no jurisdiction, any action taken by that court would be a nullity notwithstanding the fact that the proceedings were well conducted.

3.4. Jurisdiction is a fundamental requisite in all cases; it is a condition that cannot be waived. The Supreme Court in the case of **Zakari v. Nigeria Army & Anor. (2015) LPELR-24721(SC)**, held on the fundamental nature of jurisdiction of a court.

> **"Jurisdiction is the blood that gives life to the survival of an action in a court of law without which the action being like an animal drained of its blood, ceases to be alive bereft of any blood in it and indeed without life, any effort at resuscitation it remain a futile exercise".**

3.5. It is a well settled law that Courts are creatures of statute and it is the statute that confers on it jurisdiction. Though this is may be extended by the legislature and not the courts, for it is part of the interpretative functions of the court to expound the jurisdiction of the court but not to expand it. See **Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517 at page 561; (1989) 20 NSCC (Pt. 111) 225; (1989) ALL NLR 575; (1989) 9 SCNJ 1.**

> ***The provision of section 251 0f the constitution of Nigeria 1999 is noticeably clear and unambiguous. It is the section that confers jurisdiction on the Federal High Court, which jurisdiction clearly does not include a claim for declaration of title.***

According to per J.I Okoro, IN **CENTRAL BANK V. Rahamaniyya Global resources, legalpedia electronic citatation(2020) legalpedia (SC)1085;**

> **"The National Assembly has not yet conferred any additional jurisdiction in land matter on Federal High Court. The Federal High Court can therefore not assume jurisdiction over matters to land disputes where there is no statute conferring such jurisdiction on it. I have found no provision section in 251(l) (P)(Q) of the constitution of the Federal Republic of Nigeria 1999 OR section 39 of the Land Use Act 1978 conferring jurisdiction on the federal high court t entertain proceeding for declaration of title of land.".**

3.6. In **Omotesho &ors v. Abdullahi & ors(2008) 2 NWLR(Pt.1072)p.526particularly page 536**, the court of appeal, per Ogunbiyi JCA (as she then was) declared thus:

> **"By virtue of section 39(1)(a) of the land use act, the high court has exclusive jurisdiction over proceeding in respect to any land subject of a statutory right of occupancy granted by the Governor Thus, the Federal High Court is not empowered with the Jurisdiction to entertain actions over land matters. In other words , the federal high court is not one of the courts vested with the jurisdiction by virtue of section 39 &**

41 of the Land Use Act to entertain actions over land matters not being a State High Court or an area or Customary Court or Court of equivalent cadre. And the jurisdiction will not lie in the court by the mere fact that one of the parties is a Federal Government Agency".

3.7. It is our submission that the case of the plaintiff in this suit as presently constituted is for the Declaration of Title to Land and Compensation, the Federal High Court is not one of the courts vested with the jurisdiction by virtue of section 39 & 41 of the Land Use Act to entertain actions over land matters. It is only the State High Court or an Area or Customary court or court of equivalent cadre that has the jurisdiction to entertain such matters. The jurisdiction will not lie in the court by the mere fact that one of the parties is a Federal Government agency and we urge my lord to so hold that the claimant's failure to commence this Suit vides the State High Court is very fundamental and Incapable of being cured. We pray the court to strike out this suit for incompetence and lack of jurisdiction.

3.8. Conclusively on this issue, we commend My Lord to the case of **IGP and 2 Ors v. Mobil Producing (Nigeria) Unlimited and 15 Ors (2018) 14 NWLR Pt 1639 Pg 229 @ 393 Para B-C where the Court held thus;**

"It has become trite that where legislation has provided for the doing of anything in a specific manner, nothing short of that Specification will suffice in doing that thing provided for."

4.1 ARGUMENT ON ISSUE (2) TWO

Whether the plaintiffs has disclosed a reasonable cause of action against the 1st defendant.

4.2. My Lord, it is our humble submission that the name of the 1st defendant should be struck out for failure of the plaintiff to disclose any reasonable cause of action against them. We humbly refer My Lord to Reliefs (2) of the plaintiff's Statement of Claim before this Honourable Court, failed to disclose any Cause of Action against the 1st defendant. My Lord Our Emphasis is on Line 8, 9 and 10 of the said 2nd Reliefs on the statement of Claim. We humbly reproduce same:

"The sum of One Billion, Four Hundred and Eighty Five Million, Thirty Nine Thousand, Two Hundred and Thirty Five naira (N1,485,039,235) as compensation or damages for losses, disturbance, loss of use of land/loss of

value of land and injurious affection suffered by the plaintiffs as a result of the defendants taking over part of the plaintiffs' land situate at Omaraka, Abua Central, Abua/Odua local Government Area of Rivers State compulsorily and passing through it ***the defendants' High Tension (33KVA) electric power Transmission Line from Ahoada to Abonnema without payment of any compensation for the loss of use of Land, loss of Value of Land,*** disturbance and other injurious affections from the said transmission line or in the alternative, the sum of N1,485,039,235 being compensation for the loss of the use of the said land and/or loss of value of the land".

4.3 We submit with respect that flowing from the above claim by the plaintiff, the said ***High Tension (33KVA) electric power Transmission Line*** purportedly to have caused the loss of use of land, loss of Value of Land, disturbance and other injurious affections from the said transmission line does not belong to the 1st defendant By Virtue of Section 100(1), Part XIII (Interpretation and Citation), of the Electric Power Sector Reform Act, 2005. The Act defines Transmission System line as follows:

> ***"transmission system" means a system, as defined by the Commission, consisting wholly or mainly of high voltage (greater than or equal to 132kV) electric lines for the conveyance of electricity within an undertaking or from one undertaking to another, including any transmission lines, transformers, switchgear and other works necessary for and used in connection with such electrical equipment, and the buildings as may be required to accommodate the transformers, switchgear and other works;***

4.4 It is our firm position that by virtue of the above stated and the main fact that the said transmission line does not belong to the 1st defendant, It is our submission that the instant suit does not disclose a reasonable cause of action against the 1st Defendant to warrant retaining them as a Party to this suit and we urge my lord to so hold. A cause of action has been defined by the Supreme Court in the case of **Unijos v. Ikegwuoha (2013) 9 NWLR (Pt.1360) 478**

> ***To mean facts which when proved will entitle a Claimant to a remedy against a Defendant.***

This ingredient is clearly lacking in this case as per the Statement of Claim before this Honourable Court, hence 1st defendant is not a necessary party to this suit.

4.5 What a cause of action entails was succinctly described in **HRH INYANG & ORS v. ARIKPO & ORS (2016) LPELR 41375(CA)**

> *"The words cause of action simply mean a factual situation, the existence of which entitles one person to obtain a remedy against another person. A cause of action consists of every fact that would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. In defining what may constitute a cause of action, the Supreme Court per Karibi-Whyte, JSC in Bello v, Attorney General, Oyo State (1986) 5 NWLR (Pt 45) 828 at 876 said: "I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the Plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus the factual situation on which the Plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the Defendant. In other words the factual situation relied upon must constitute the essential ingredients of an enforceable right or claim." The cause of action must be revealed in the pleadings of the claimant. The Court would therefore confine itself only to the averments in the Statement of Claim in the assessment of whether or not the plaintiff has a reasonable cause of action; Shell B.P. Petroleum Development Co. of Nigeria Ltd & Ors. v. Onasanya (1976) 6 S.C 89, 94; Fumudoh & Anor v. Aboro & Anor (1991) 9 NWLR (Pt 214) 210 at 231 - 232." Per OTISI, J.C.A. (Pp. 14-15, Paras. A-B)*

4.6. This position was also affirmed by the Supreme Court in the Case of **TIBA IYALAMU SAVINGS & LOANS LTD v. SUBERU & ANOR (2018) LPELR-44069(SC)**

> *The Supreme Court re-itrates what constitutes cause of action using the Locus Classicus case of Bello Vs A.G. Oyo State (1986) 5 NWLR (pt.45) 828 @ 876 A - B which this Court considered what constitutes a reasonable cause of action. His Lordship Karibi-Whyte, JSC opined thus: "I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognise as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognised by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other words, the factual situation relied upon must constitute the essential*

ingredients of an enforceable right or claim." This definition was adopted by Obaseki, JSC in Afolayan Vs Ogunrinde (1990) 1 NWLR (pt.127) 269 @ 382 F - H. His Lordship stated: "In its simplest terms, I would say that a cause of action means: (1) a cause of complaint; (2) a civil right or obligation fit for determination by a Court of law; (3) a dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine. It consists of every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment." See also: Thomas Vs Olufosoye (1986) 1 NWLR (pt.18) 669; Adimora vs. Ajufo (1988) NSCC Vol. 19 (Part) 1003 @ 1005; (1988) 3 NWLR (Pt. 80) 1; P.N Udoh Trading Co. Ltd vs. Abere (2001) 11 NWLR (Pt. 723) 114 @ 129 B - C; Mobil Producing Nig. Unltd vs. LASEPA & Ors. (2002) 18 NWLR (Pt. 798) 1 @ 30 E - G." Per KEKERE-EKUN, J.S.C. (Pp. 43-45, Paras. F-B)

4.8. We submit with respect Sir that a community reading of the above cited authority My Lord can confidently and comfortably come to a conclusion that no reasonable cause of action has been disclosed against the 1st defendant. Our submission and conclusion is predicated on the ground that, a cause of action consists of every fact that would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment and the Plaintiffs have failed in doing so.

4.9. We urge My Lord to so hold, On the strength of the foregoing submission, this Honourable court is urged to resolve the issues raised for determination in favour of the 1st defendant, grant this application and save the 1st defendant from the agonising pain and cost of trial in the interest of Justice.

5.0. CONCLUSION

We urge My Lord to so hold, On the strength of the foregoing submission, this Honourable court is urged to resolve the issues for determination in favour of the 1st defendant grant this application and save the 1st defendant from the agonizing pain and cost of trial in the interest of Justice.

6.0 LIST OF AUTHORITIES

6.1 STATUTORY AUTHORITIES

i. 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (as amended)
ii. FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2019
iii. LAND USE ACT 1978

6.2. CASES

i. Zakari v. Nigeria Army &anor. (2015) LPELR-24721(SC)
ii. Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517 at page 561; (1989) 20 NSCC (Pt. 111) 225; (1989) ALL NLR 575; (1989) 9 SCNJ 1.
iii. CENTRAL BANK V. rahamaniyya global resources, legalpedia electronic citatation(2020) legalpedia (SC)1085
iv. Aigoro v. comm, L & H, Kwara state (2012)11 NWLR(Pt. 1310) 111@135 para B
v. Omotesho&ors v. Abdullahi &ors (2008) 2 NWLR(Pt.1072) p.526
vi. keystone bank ltd v. Ebuh&ors(2021) LPELR-52773(CA)
vii. Ekpe v. Ekpe &anor (2019) LPELR -48341(CA).
viii. IGP and 2Ors v. Mobil Producing (Nigeria) Unltd and 15 Ors (2018) 14 NWLR Pt 1639 Pg 229 @ 393 Para B-C
ix. Emejuru&anor v. Abraham &ors (2018) LPELR-46330(SC)

Dated this 26th day of March 2021.

Dayo G. Ashonibare, Esq.LLM **ACIArb. (UK)**
Ene Ashonibare, Esq
O. N. Igbafe, Esq
Simiat Sulaiman, Esq
D. A. Dungs, Esq
(1st Defendant's Counsel),
Levite Solicitors & Arbitrators,
Suite SF 22 Anafara'a Plaza,
First Avenue, Gwarinpa
FCT-Abuja

ADDRESS FOR SERVICE
C/O
248A Sani Abacha Road,
G.R.A
Port Harcourt
River state

08033661414, 08034812254,
levitesolictors@gmail.com
info@levitesolicitors.com

FOR SERVICE ON:

PLAINTIFFS
C/O Counsel
H. D. D. Uwom Esq.
(Legal Practitioner)
Uwom, Wekulon & Co.
(Plaintiffs Counsel)
27, Bende Street. Town,
Port Harcourt
08033131982, 08152661085
Harcourt.Uwom@Gmail.Com
Harcourt.Uwom@Nigerianbar.Ng

2ND DEFENDANT
No 42 Obi Wali Road,
Rumuigbo, Port Harcourt.
Rivers State

Introduction — 2

Arbitration Law — 2

Place — 2

Appointment — 2

Governing Law — 1½

Language — 1½

Seat

No of Arbitrators.