LEVITE
SOLICITORS & ARBITRATORS

10 March 2021

Managing Director/CEO
Transmission Company of Nigeria
Plot 14, Zambezi Crescent, Maitama
Abuja, Nigeria

ATTENTION: Michael Oma-Ikaige, Esq

Sir,

RE: SUIT NO: FHC/PH/CS/08/2021 – CHIEF (ENGR) BALA CHARLES ASELEMI & TWO OTHERS V. TRANSMISSION COMPANY OF NIGERIA & ANOR

We refer to our various meetings with respect to the above subject matter and thank you sincerely for engaging our services.

The purpose of this letter is to inform you that we have gladly accepted the brief as contained in the letter of instruction and to inform of our proposed approach to the brief.

Facts of the Case

The Plaintiffs have taken out a Writ of Summons and other accompanying documents against you and Port Harcourt Electricity Distribution PsLC at the Federal High Court, Port Harcourt Judicial Division seeking a declaration that they are entitled to compensation from the Defendants in respect of their land at Omakara Community) Abua/Odual Local Government Area of Rivers State, Nigeria, which they claim is adversely traversed by the Defendant's electricity transmission lines (formerly National Electric Power Authority's Electricity transmission lines but now inherited by the Defendants) and thereby, rendering the land unsuitable for any development and/or useless for any purpose. As a result, the Plaintiffs are claiming 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 for the loss of value and use of land and other injurious affections from the said transmission line which the Plaintiffs alleged were passed at the above reference land compulsorily.

You have therefore instructed us to assist you with this matter, including reviewing the relevant court documents, preparing and filing your defense in this matter including any

Suite SF22 Anafara'a Plaza Opposite IBB POLO Club First Avenue,
Gwarinpa FCT-Abuja
08050402554 info@levitesolicitors.com
levitesolicitors@gmail.com

Preliminary and interlocutory applications and undertake your defense until final determination at the Federal High Court.

Our Approach

Our approach will be to file a conditional memorandum of appearance together with the statement of defense, a list of witnesses to be called at the trial, written statements on oath of the witnesses, copies of all documents be relied on at the trial and a list of non- documentary exhibits if any.

However, we are currently reviewing the relevant laws to enable us determine whether or not the Federal High Court is the appropriate venue to litigate this matter. In the event that the answer is the negative, then before the hearing of the substantive matter,. we shall file a preliminary objection challenging the court's jurisdiction to entertain the matter as pa the writs against the 1st defendant. The matter will be struck off against the 1st Defendant assuming the court agrees with our preliminary objection. The matter will proceed to trial if the court dismisses the preliminary objection.

To enable us properly prepare, we shall be grateful if you could please set out by way of an email, your proposed position with respect to this matter. For example, does the electricity transmission line belong to you and if not why not. Please let us also have all evidence you wish to rely on this matter and the other facts you intend to rely on that will assist us in preparing the defense in this matter. **(See Enclosure for our supporting authorities)**

Our Professional Fee

Our professional fee for obtaining your detailed instructions, reviewing the writ of summons, Statement of Claim, list of witness, witness statement on oath and documents to be relied upon, preparing a conditional memorandum of appearance, statement of defense, preliminary objection, if necessary and all accompany documents, corresponding with you and advising you generally on your position is an agreed fee of N3, 500,000.00 (Three million five hundred thousand Naira only) plus 7.5% VAT.

We sincerely hope that One half of this amount would be paid to enable us proceed with our line of action.

Steps Taken

We have taken the following steps in line with our mandate.

- Filed Memorandum of Conditional appearance filed on the 8th of March, 2021.

Next Steps

The immediate steps would as follows:

1. Send us a detailed email with your answer to the Plaintiffs' claims.
2. Schedule a meeting in order to review your response in 1 above

Suite SF22 Anafara'a Plaza Opposite IBB POLO Club First Avenue, Gwarinpa FCT-Abuja
08050402554 **info@levitesolicitors.com**
levitesolicitors@gmail.com

3. Determine when you were served in order to know if there would be need to file an application for extension of time within which to file statement of defense etc.

4. Obtain the names and necessary particulars of witnesses

5. Receive and review any documents including licenses issued by regulatory agencies etc.

6. Prepare initial documents in readiness for review by TCN

Conclusively, we trust the contents of this letter are helpful, but please do let us know if you require any further information or other assistance.

Accept the assurances of our highest professional regards.

Yours Faithfully,
For: Levite Solicitors & Arbitrators

D.G Ashonibare, Esq.LLM ACIArb(UK)

Suite SF22 Anafara'a Plaza Opposite IBB POLO Club First Avenue, Gwarinpa FCT-Abuja
08050402554 **info@levitesolicitors.com**
levitesolicitors@gmail.com

OPINION STATEMENT

- **Title To Land**

The Federal High Court cannot hear or confer title to land

IWEZOR & ORS v. C.O.P. RIVERS STATE & ORS (2017) LPELR-45208(CA)

Principle
JURISDICTION - JURISDICTION OF THE FEDERAL HIGH COURT
- Whether the Federal High Court has jurisdiction to entertain land matters
"The trial Federal High Court had no jurisdiction to entertain the suit which had, as its principal or main relief in the cause of action, a claim of title to and ownership of parcels of land. The determination of rights, liabilities and title to land which is now subsumed in the Land Use Act, 1978, Laws of the Federation of Nigeria, 2004, be it Statutory Right or Customary Right, - Actual or deemed Right, and their incidences, have been exclusively vested in State High Courts or Customary/Area Courts as the case may be.

1. IMPORTANCE OF JURISDICTION

Jurisdiction can be described as the power of the court to settle the matter. It is defined as the limit of judicial authority of extent to which a court of law can exercise its authority over suits.

It is not only necessary that the proceeding must be followed in bringing an action, but the court must also of itself have necessary legal backing i.e. jurisdiction, to preside over such matters. Jurisdiction is 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".

In **Keystone Bank Ltd V. Ebuh & Ors(2021) LPELR-52773(CA)**

"jurisdiction is the very basis on which any tribunal tries a case. It is the lifeline of all trials. A trial without jurisdiction is a nullity." Per Blobele Abraham George will,JCA (Pp 58-59 p. D-E), Also Ekpe v Ekpe &anor (2019) LPELR -48341(CA).

2. Position of Law in Respect Of Declaration of Title to Land in Federal High Court,

Suite SF22 Anafara'a Plaza Opposite IBB POLO Club First Avenue,
Gwarinpa FCT-Abuja
08050402554 info@levitesolicitors.com
levitesolicitors@gmail.com

The provision of **Section 251 of the constitution of Nigeria 1999** is very 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 251(I) (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 to entertain proceeding for declaration of title of land.".

In Omotesho & Ors V. Abdullahi & Ors (2008) 2 NWLR (Pt.1072) p.526 particularly 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."

Also, in Emejuru & Anor V. Abraham &Ors (2018) LPELR-46330(SC), the court held that the federal high court has no jurisdiction over land matters.

GRAY AREAS

1. We may be inclined to contend that the suit is statute barred.

- **Statute Barred**

The suit against the defendants is statute barred. Cause of action arose in 2007 against NEPA.

ADEGBAYI & ORS v. AKANDE (2018) LPELR-43881(CA)

Principle
LIMITATION LAW - LIMITATION PERIOD
- Effect of an action brought outside a statutorily limited period

"By the pleadings, the suit of Appellant hinges on a deed of conveyance (Exhibit B) executed in 1970. A suit which has limitation period of ten years (10 yrs.) which was commenced in 2005 against a grievance which occurred since 1982 most certainly was dead on arrival at the Registry of the trial Court such a suit is said to be statute barred or caught by the limitation period. (See BAUCHI STATE GOVERNMENT V. NPC & ANOR (2014) LPELR 23729 (CA). A suit which has run out of time is like a lifeless electric wire - it has lost all its potency." **Per MONICA BOLNA'AN DONGBAN-MENSEM, JCA (Pp 15 - 16 Paras E - A)**

If NEPA had simply folded up and not transferred to PHCN, the cause of action would have been statue barred. It is unreasonable to bring action to claim compensation for an action that arose in 2007.

Section 14 of the **ELECTRIC POWER SECTOR REFORM ACT** deals with Limitation of suit against a transferee. It states:

> An action or other proceeding shall not be commenced against a transferee in respect of any employee, asset, liability, right or obligation that had been transferred to the transferee if, had there been no transfer, the time for commencing the action or other proceeding would have expired.

2 We may also be inclined to say that NEPA/PHCN had earlier compensated the owners of said land in 2007 when the Cause of Action arose, this is what gave then the authority to install more power lines in 2014. That is if we can get documents to prove it.

Accept the assurances of our highest professional regards.

Yours Faithfully,
For: Levite Solicitors & Arbitrators

D.G Ashonibare, Esq

O.N Igbafe, Esq

Suite SF22 Anafara'a Plaza Opposite IBB POLO Club First Avenue, Gwarinpa FCT-Abuja
08050402554 **info@levitesolicitors.com**
levitesolicitors@gmail.com