



10th March 2021

Managing Director/CEO

Transmission Company of Nigeria

Plot 14, Zambezi Crescent, Maitama

Abuja, Nigeria

ATTENTION: GM (Company Secretary/ Legal Adviser)

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 PLC 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

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Preliminary and interlocutory applications and undertake your defence 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 defence, 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. **(See Enclosure for our opinion statement)**

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.

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 filed and properly served the parties a memorandum of Conditional appearance dated 8th of March, 2021 and the 14th of April 2021 has been fixed by the Court for the mention of the case. We hope to have all our processes filed before the date.

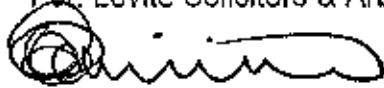
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Conclusively, we trust the contents of this letter are helpful, but please do let us know if you require any further information or other assistance.

Accept the assurances of our highest professional regards.'

Yours Faithfully,
For: Levite Solicitors & Arbitrators



D.G Ashonibare, Esq.LLM ACI Arb(UK)



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FEACL

OPINION STATEMENT

- **Declaration of 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. Ebuu & 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 Biobele 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.

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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 Citation (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.

Further to the above, It is our humble submission that In the first instance, Section 100(1), Part XIII (Interpretation and Citation), of the Electric Power Sector Reform Act, 2005 defines a Transmission System 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;

By virtue of the above definition and other 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 Transmission Company of Nigeria (The 1st Defendant)