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

SUIT N0. 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/ RESPONDENTS

AND

1. **TRANSMISSION COMPANY OF NIGERIA PLC**
2. **PORT HARCOURT ELECTRICITY DISTRIBUTION PLC**

... DEFENDANT/APPLICANT
...DEFENDANT/ RESPONDENT

PLAINTIFFS/RESPONDENTS' ADDRESS IN OPPOSITION TO 1ST DEFENDANT'S PRELIMINARY OBJECTION FILED ON THE 31/3/2021

1.00 INTRODUCTION

The 1st Defendant/Applicant filed a Notice of Preliminary Objection in this Suit on the 31/3/2021seeking to strike out this suit on grounds of alleged incompetence predicated on lack of jurisdiction of the Federal High Courtto entertain the suit and failure to disclose a reasonable cause of action against the 1st Defendant.

The Plaintiffs/Respondents are opposed to the said Preliminary Objection and have filed this address in furtherance of that opposition.

2.00 STATEMENT OF FACTS

2.1 The plaintiffs filed this suit in the Federal High Court wherein they claim entitlement to and payment of compensation for the adverse effect of the Defendants' High Tension Electricity Transmission Line that traverses their land which transmission line has injuriously affected their land and rights.

2.2 The 1st Defendant filed a Preliminary Objection to the hearing of this suit. The 1st defendant thinks in its preliminary objection that the Federal High Court lacks the jurisdiction to entertain this suit and also that this suit discloses no reasonable action against it. The Plaintiffs/Respondents contend otherwise.

3.00 ISSUE FOR DETERMINATION

It is submitted that the following two (2) issues arise for the determination of this Honourable Court in respect of the instant Preliminary Objection of the 1st Defendant:

1. **Whether the Federal High Court has the jurisdiction to entertain this suit.**

2. **Whether this suit filed by the plaintiffs discloses a reasonable cause of action against the 1st Defendant/Objector.**

4.00 ARGUMENT

4.01 Issue N0. 1 (Jurisdiction)

4.1(1) Under the 1st defendant/Objector's Issue N0. 1, it is falsely contended that the Plaintiffs' suit is in relation to a declaration of title to land, etc. and is thus outside the jurisdiction of the Federal High Court. It is humbly submitted that a communal reading of the Writ of Summons and Statement of Claim in this case will reveal that this suit is in respect of wrongs committed by the 1st defendant vicariously (through the Power Holding Company of Nigeria) by means of the passing of its high voltage electric (high tension) transmission line through the land of the Plaintiffs.

It is submitted that the contentions in paragraphs 3.7 – 3.10 of the objector's address in support of the preliminary objection are laced with outright falsehood and are skewed towards concealing the true substance of the Plaintiffs' case/claims. The 1st Defendant is a Federal Government Agency imbued with the responsibility of, inter alia, transmission of electricity on behalf of the Federal Government. It performs that responsibility by means of, inter alia, its high tension electric transmission lines.

The cause of action and the complaints/claims of the plaintiffs in this suit are in respect of a tort it committed in connection with the setting up and use of the said electric transmission line. It is not a case of declaration of title to land and there is no claim for declaration of title to land in this suit.

The pleadings on the title or devolution of title of the land on the plaintiffs are merely introductory and meant to show that the place where the said electric transmission lines caused the losses/damages complained of is land owned by the Plaintiffs. This is to establish the locus standi of the Plaintiffs to maintain this action over the said losses caused by the Defendants' said electric transmission line.

4.1(2) By the provisions of Sections 1, 2 & 3 of the Electric Power Sector Reform Act 2005, the Power Holding Company of Nigeria was an agency of the Federal Government of Nigeria that was set up and owned by the Federal Government of Nigeria to succeed to the assets, rights, obligations and liabilities of the National Electric Power Authority (which was also an agency of the Federal Government of Nigeria).

It is noteworthy that in paragraph 3(a) of the 1st defendant/objector's Affidavit in Support of motion (the Preliminary Objection in contest), the objector admitted that **".....the 1st Defendant/Applicant is one of the successor companies of Power Holding Company of Nigeria."**

4.1(3) By the combined provisions of Sections 8, 9 & 10 of the aforementioned Act of 2005, the 1st defendant/objector as a successor company to the Power Holding Company of Nigeria (referred to as initial Holding Company in the said Act), is an agency of the Federal Government as it was set up (incorporated) and is owned by the Federal Government of Nigeria to carry out the functions which PHCN hither to performed on behalf of the said Federal Government, which include the transmission of electric power in Nigeria.

Under Section 251 (1) (p) (q) & (r) of the Constitution of the Federal Republic of Nigeria 1999, the Federal High Court is imbued with exclusive jurisdiction over any matter where the Federal Government or its agency is a party. See the book **"Understanding the concept of jurisdiction in the Nigeria Legal system"** by Hon. Justice Obande F. Ogbuinya, pages 317-324.

4.1(4) It is submitted that from the foregoing, the 1st defendant is an agency of the Federal Government and the subject matter of this suit is its High Tension Electric Transmission Line which it uses in performing its said functions (of transmission/distribution of electric power) as an agency of the Federal Government. It is submitted that this suit consequently falls within the purview of Section 251(1) (p), (q) & (r) of the said Constitution. See NEPA v. Edegbenro (2002) 12 SCNJ 173 @ 183-184 & 185-186 [(2002) 18 NWLR (Pt. 798) 79 @ 100], where the apex court clarified the law respectively as follows:

> **"In the light of all these, therefore, the action on hand came squarely within the provisions of section 230(1)(s) of the 1979 Constitution. It would appear on the surface, therefore, that the action would be one within the exclusive jurisdiction of the Federal High Court.....A careful reading of paragraphs (q), (r) and (s) reveals that the intention of the lawmakers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court in respect of actions in which the Federal Government or any of its agencies is a party....."**

> **"From what I have said earlier in this judgment the aim of paragraphs (q), (r) and (s) of sub-section (1) of section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal goverament or any of its agencies was a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action....."**

See also W. R. P. C. Ltd. v. Agbuje (2005) 5 NWLR (Pt, 917) 63 @ 89-90.

On 89, Para. B, the intermediate court stated as follows:

"In *University of Abuja v. Ologe (supra)*, the court held that the use of the expression "any of its agencies" in section 230(1) of the 1979 Constitution as amended is meant to cover all the organs established by law through which the Federal Goverament carries out its functions."

This decision of the intermediate court was upheld by the Supreme Court in **Agbufe v. W. R. & P. Co. Ltd.** (2013) ALL FWLR (Pt. 688) 829. See particularly page 851, paras. C-D. See also pages 853 & 855.

4.1(5) Also, in **Inegbedion v. Selo-Ojemen** (2013) ALL FWLR (Pt. 688) 907 @ 917paras. C-E, the apex court (per Alagoa, JSC) stated the law as follows:

"The question having now been settled that the 2nd respondent Otibhor Okhae Teaching Hospital, Irrua is an agency of the Federal Government, the next relevant question is whether the appellant's claim relates to the administration or management and control of the 2nd respondent. Paragraph 25 of the statement of claim is a claim in aggravated and/or exemplary damages for defamation, negligence and breach of doctor/patient confidence which undoubtedly relates to the administration or management of the Otibhor Okhae Teaching Hospital, Irrua sued as the 2nd defendant in the trial court and is 2nd respondent in this appeal and in the lower court. The effect of paragraphs (p), (q) and (r) of Section 251(1) of the 1999 Constitution is to vest exclusive jurisdiction on the Federal High Court over all civil causes and matters in which the Federal Government or any of its agencies is a party *NEPA v. Edegbero* (2002) 103 LRCN 2280 at 2281-2282 (2003) FWLR (Pt. 139) 1556."

See also **NNPC v. Udenze** (2016) ALL FWLR (Pt. 817) 726 @ 767 -768 paras. H-C, where the Court of Appeal (per Agube, JCA) had this to say.

"In the instant case, since the party proceeded against by the respondent (then claimant) is an Agency of the Federal Government, the Federal High Court has the exclusive jurisdiction to hear the matter notwithstanding the fact that part of the claim or the whole relates to interest or ownership of land which the appellants compulsorily acquired."

4.1(6) Conclusively, it is submitted that as an agency of the Federal Government is a party to this case, it does not matter that the suit touches on land. The Federal High Court still has jurisdiction over it.

See **Umo v. Desicon Engr. Ltd** (2016) ALL FWLR (Pt. 844) 2053 @ 2083-2084 paras. C- H, where the Court of Appeal held as follows:

"This issue of which court can exercise jurisdiction on land matters appears settled by the two sections of the Land Use Act cited above. This is not the end of the matter however, as this court, the Court of Appeal had made an exception to the blanket provision of sections 39(1) and 41 of the Land Use Decree. This court had pronounced that those provisions are

subject to the provisions of section 230 (1) (q) and (r) of Degree N0. 107 of (1993) now section 251 of the Constitution of the Federal Republic of Nigeria, 1999 whereby the Federal High Court would assume jurisdiction where the government of the Federation or any of its agencies is a party to the action. See Ona v. Atenda (2002) 5 NWLR (Pt. 656) 244 at 269-270, per Akintan JCA (as he then was). The learned jurist stated as follows:

> Jurisdiction is conferred on the High Court in section 39 in respect of lands in urban areas while the Area Courts and Customary Courts are conferred with jurisdiction to entertain claims in respect of lands in non-urban areas. There have been numerous decisions of the Supreme Court in which this decision of jurisdiction between the High Court and Area Court/Customary Court is affirmed, one of such decisions is *Abioye v Yakubu (1991) 5 NWLR (Pt. 190) 130, (1991) 6 SCNJ 69, (2003) FWLR (Pt. 83) 2212.* The point which must be made clear is that all the decisions in question are in respect of the interpretation given to the provisions of sections 39 and 41 of the Land Use Act. But since it has been clearly shown above that the provisions of the Land Use Act requiring the State Government to delineate portions of the lands in a State as urban as against non-urban areas are inapplicable in the Federal Capital Territory, the division of Jurisdiction between the High Court and the Area Court/Customary Court in the Federal Capital Territory will therefore not arise. It follows therefore, that the appropriate court having jurisdiction in land matter in the Federal Capital Territory is the High Court of the Federal Capital Territory by virtue of section 236 of the Constitution of the Federal Republic of Nigeria, 1979 since it has been shown that there is no customary right of occupancy in the Federal Capital Territory and that section 41 of the Land Use Act is also inapplicable in the territory.
>
> The jurisdiction of the court however, is subject to the provisions of section 230(1) (q) and (r) of Decree N0. 107 of '1993 (now section 251 of the Constitution of the Federal Republic of Nigeria, 1999) whereby the Federal High Court would assume jurisdiction where the government of the Federation or any of its agencies is a party to the action.

In the present appeal, both the Federal Ministry of Environment, Housing and Urban Development, and Honourable Minister of Housing and Urban Development are parties. The Federal High Court in the present appeal was therefore right to have assumed the jurisdiction on this matter, the subject of the appeal when it was before it, by virtue of section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 as the government of the Federation, the Minister in-charge of the issue in contention, and its supervision Minister, are all made as parties. ...."

4.1(7) Based on the foregoing, it is submitted that the preliminary objection lacks merit. This Honourable Court is urged to resolve Issue N0.1 formulated herein in the positive and against the objector.

4.1(8) Alternatively, it is submitted that the law is that in order to determine the jurisdiction of the court in any matter, it is the claims of the plaintiffs as disclosed in the pleadings in the different paragraphs of the Statement of Claim that the court will consider in order to find out the nature of the cause of action. It is not the defence or depositions of the defendants

that will be considered. However, where it is not very clear to the court from the averments in the Statement of Caim that the court has no jurisdiction in the suit, the court will strike out the preliminary objection and go into the trial of the case. It is at the end of the trial that the court will clearly decide from the averments in the Statement of Claim and the evidence the issue of jurisdiction. In **U.B.N. Plc v. B.C.C. Plc** (2004) All FWLR (Pt. 206) 434 @ 452 para. C & 453, paras. A-D, the Court of Appeal stated respectively thus:

"In the ruling of the lower court, a discussion of issues of fact as deposed to in the affidavit evidence before the court was embarked upon. The trial Judge specifically made several findings of fact upon the notice of preliminary objection in which the appellants as defendants had not filed a statement of defence and issues properly joined in matters upon which findings were made. There is no doubt that this was a most irregular procedure. The question of the jurisdiction of a court to adjudicate on a matter is only to be settled by reference to the statement of claim filed by the plaintiff."

"In the statement of claim filed by the respondents in the case on hand, there was no averment that receivers/managers had been appointed for 1st respondent; or that any information concerning such appointment had been given to the respondents; or finally that the deed concerning the appointment of receivers/managers had been filed at the Corporate Affairs Registry, Abuja. All these matters were only within the knowledge of the appellants and should ordinarily constitute part of the averments in their statement of defence. The appellants, who had not filed a defence; and therefore not raised issue on the matters called on the court to determine the matter on their own terms. To do so would constitute an attempt to drive away the respondents from the judgment seat without a hearing. Even if the appellants were raising an important and threshold issue as jurisdiction, they still ought to have followed the proper procedure. As soon as it became apparent to the trial judge that the appellants were relying in their contention that the lower court lacked jurisdiction on a matter that was not manifest or patent on the respondents' statement of claim, the lower court should have at that stage struck out the notice of preliminary objection with liberty to the appellants to agitate the matter in their pleadings."

4.1(9) See also **Jadesimi (nee Okotie-Eboh) v. Okotie-Eboh** (1986) 1 NWLR (Pt. 16) 265 @ 275-276, paras. H-C, [(1986)1 SC 479 @ 503-504], where the apex court stated thus:

"..... In *Aina v. The Trustee of Nigerian Railways Pension Fund* (1970) 1 All NLR 281, it was said,

> **"It is only in exceptional cases when it is absolutely clear that it is likely to dispose of the action that a Judge consents to a hearing of a preliminary issue even on a point of law before the action is heard in full. Such points could always be taken in the course of the hearing if there is any doubt whether a preliminary issue will dispose of the matter."**

There is no doubt this is the rationale for the procedure of raising preliminary objections to an application or an action....."

It is therefore submitted that where this Honourable court finds that from the pleadings of the plaintiffs, it is not unambiguously clear whether this case is outside the court's

jurisdiction, the court ought to strike out the preliminary objection and go into trial of the substantive case so that the issue of jurisdiction can be clearly decided at the close of the evidence and based on the pleadings of the claimant and the evidence led by the parties. See **U.B.N. Plc v. B.C.C. Plc** (supra) @ 452 para. C & 453, paras. A-D, **Jadesimi (nee Okotie-Eboh) v. Okotie-Eboh** (supra) @ 275-276, paras. H-C.

This will obviate the quagmire of a situation where the case is transferred by this Honourable court to the State High Court and at the trial in the latter court, it is discovered that from the facts/evidence it is the Federal High Court and not the State High Court that has jurisdiction to entertain the matter.

4.1(10) However, assume without conceding that Issue No. 1 is resolvable in the negative and the Federal High Court is found not to have jurisdiction to entertain this matter, it is submitted that this Honourable Court has the power to transfer this matter to the State High Court as required by the law in Section 22(2) of the Federal High Court Act Cap. F12 of the Laws of the Federation 2004.

4.02 Issue N0.2 (Disclosure of cause of action)

4.2(1) Under its Issue 2 (the 2nd ground for the Preliminary Objection), the 1st defendant/objector contends that the Plaintiffs' suit in this matter does not disclose a reasonable cause of action against it (1st defendant). The plaintiffs/respondents adopt the definitions of a "cause of action" as illustrated in the authorities cited by the 1st defendant/objector in paragraphs 4.4, 4.5 & 4.6 of the address accompanying its preliminary objection in issue.

In **Dantata v. Mohammed** (2000) 5 SCNJ 17 @ 34 [(2000) FWLR (pt. 21) 889 @ 917 paras. B-C] the Supreme Court approved of the following statement of the law on the subject:

> **"Similarly, a reasonable cause of action has been defined to mean-:**
>
> ***"A cause of action which (when only the allegations in the statement of claim are considered) has some chance of success."***
>
> **Per Uwais, J S.C. as he then was, in Oshoboja v. Amuda (1992) 6 NWLR (Pt. 250) 690 at 702.**
>
> **It is trite law that in the determination of a reasonable cause of action in the statement of claim only and the facts contained therein are deemed admitted. The admitted facts will then be examined to ascertain if they would entitle the plaintiff to the remedy sought. See Shell B. Petroleum Development Co. v. Onasanya (1976) 6 S.C. 59."**

Similarly, in the determination of a reasonable cause action in a case, the facts contained in the Statement of Claim are deemed admitted for the purposes of the preliminary objection. The said admitted facts will then be considered by the Court to see whether they would entitle the plaintiff to a remedy. Where that is the case, there is

a reasonable cause of action. See **Chukwu v.Akpelu** (2014) 13 NWLR (Pt. 1424) 359 @ 380, paras E-F.

4.2(2) At the risk of being repetitive, it is humbly submitted that in deciding whether or not the suit disclosed a cause of action, the law stipulates that it is only the averments contained in the pleadings/processes filed by the plaintiffs (respondents) that should be considered by the court. Also, in law, for the purposes of such application/preliminary objection on the suit allegedly not disclosing a cause of action, the facts stated in the pleadings of the plaintiffs/respondents are deemed to be admitted by the objector as correct.

In law, in such a preliminary objection and when a suit is challenged on grounds of lack of reasonable cause of action, the defence of the applicant (objector) and/or the affidavit with exhibits in support of the motion/objection are not relevant or are not to be considered. This is because, it is only the averments/facts contained in the writ of summons and Statement of Claim that are considered. Consequently, for the purposes of such an application (objection) as the one in the instant case, the facts contained in the Statement of Claim in this case are deemed admitted by the applicant (objector) as true/correct.

See **F.U.M.B. Ltd. v. Aerobell Nig. Ltd.** (2005) All FWLR (Pt. 281) 1651 @ 1677, paras. A – C, where the Court of Appeal, per Salami, JCA, clarified the law as follows:

"In deciding whether or not a cause of action had been disclosed, recourse must be had to the writ of summons, particulars of claim (if any) and statement of claim and not to the statement of Defence. The reason being that the defendant is presumed to have taken the averments contained in the statement of claim as correct."

See also the Supreme Court decision in **Woherem v. Emerenwa** (2004) All FWLR (Pt. 221) 1570 @ 1584, paras. B-H [(2004) 7 SCNJ 119 @ 133-134].

Also, in considering whether a suit discloses a reasonable cause of action, the court is required in law to consider the broad (not the narrow) purport of the facts disclosed in the pleadings of the plaintiff/objector. See **Labode v. Otubu** (2001) FWLR (Pt.43) 207 @ pp. 229, paras. G – A & 234, paras B – C.

4.2(3) What is relevant at the stage of the preliminary objection is whether the pleadings of the plaintiffs/respondents raise some questions fit to be decided by the court. If there are such questions, then there is a reasonable cause of action. The issue is not whether the plaintiffs' case is weak or would succeed at the substantive trial when those questions are determined. See **Dada v. Ogunsanya** (1992)3 NWLR (Pt. 232) 754 @ 765 & 767 – 768, paras H – A, **Henry Stephen Eng. Ltd v. S. A. Yakubu (Nig) Ltd** (2009) 10 NWLR (Pt. 1149) 411 @ 428 & 434. See also the unreported decision of the Court of Appeal in **Appeal No. CA/PH/532/2013: Gas Line Engineering Company Ltd. v. Chief Aaron Atemie & Ors** delivered on the 17/11/2014.

In **Thomas v. Olufosoye** (1986) 1 NWLR (Pt. 18) 669 at 671, the Supreme Court stated as follows:

"A cause of action with some chance of success **when only the allegations in the pleadings are considered. The practice is clear. So long as the statement of claim or the particulars disclose some cause of action or raise some question fit to be decided by a judge or jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out."**

In **Nissan (Nig.) Ltd. v. Yoganathan** (2009) All FWLR (Pt. 494) 1585 @ 1595, paras. B – D, the Court of Appeal (per Rhodes-Vivour, JCA, as he then was) stated the law as follows:

" The well laid-down position of the law is that once the statement of claim discloses some cause of action, or raises some question of fact or law fit to be decided by the judge, then the fact that the case is weak or/and unlikely to succeed is no ground for striking out the pleadings or the name of the the defendant. The defendant must accept the claimant's averments of facts and say that even if the said averments were correct, no cause of action is disclosed."

4.2(4) The law is also settled that in order to determine the question whether a cause of action is disclosed by a claim in a case, the only relevant processes to be looked into and considered by the court are the writ and Statement of Claim filed by the claimants or plaintiffs setting out the facts which form the basis of the suits. For the decision of the question, no other process is relevant and the court cannot consider other processes such as Statement of Defence or evidence of facts contained in affidavits outside the facts set out in the Plaintiff's pleadings. In the determination of the question whether a cause of action was disclosed, the law is that a court should not consider or take into account the weakness of a plaintiffs' claim because the vital consideration is whether the facts deposed to or averred in the Statement of Claim show or disclose some questions which are fit and deserve to be decided by a court. Once the facts in the plaintiffs' pleadings raise some issues of law or facts calling for determination by the court, then a cause of action is disclosed in the suit even if weak and not likely to succeed. Thus, a suit can only be said not to disclose a cause of action if no facts appear in the Statement of Claim which if proved by the claimant would entitle him to a judicial remedy or they are such that the defendant cannot understand what claim he is required to answer or meet. See **U.B.N. Plc v. Umeoduagu** (2004) All FWLR (Pt. 221) 1552 @ 1561, **Idachaba v. Ilona** (2007) 6 NWLR (Pt. 1030) 277.

See particularly the decision in **Woherem v. Emerenwa** (2004) All FWLR (Pt.221) 1570 @ 1584, paras. B – H [or (2004) 7 SCNJ 119 @ 133 – 134], where the Supreme Court (per Iguh, JSC,) affirmed the law as follows:

"The principle of law is well established that an application by way of a preliminary objection for the dismissal of a suit in limine may be made on points of law and where there are no facts in dispute for the purpose of determining such an objection.....The applicant relies only on the facts as stated by the plaintiff in his writ of summons and statement of claim. The facts stated by the plaintiff in his writ of summons and statement of claim are for that purpose deemed to have been admitted by the defendant/applicant.

.....Where, however, disputes as to facts appear on the pleadings of the parties, as is the case in the present application, it is only open to a defendant to raise a preliminary objection on the face of the plaintiff's writ of summons if the said defendant accepts the plaintiff's averments of fact either on the writ of summons or on his statement of claim but submits that even in those circumstances no cause of action would appear to have been disclosed .....But, if facts exist, which must first be adduced in or established by evidence to enable a point of law to be sustained, the preliminary objection may not properly be taken....Similarly if the facts to sustain the preliminary point are obscure or at large, a preliminary objection may not properly be taken. A matter, therefore, which is raised by way of a preliminary point but which may be answered if evidence is adduced cannot be properly raised as a preliminary objection. Such a matter is more properly answered by evidence during the trial and shall constitute an issue for determination at the trial.
In the present case, the facts relied upon by the respondents as to when the appellant's cause of action arose neither appeared in the writ of summons nor in the statement of claim. They are facts that may more properly be answered when evidence is adduced at the trial and therefore constitute issues for determination. I think the learned counsel for the appellant is quite right in his submission that the court below, with respect, was in grave error in gratuitously going into the merits of the substantive suit in a preliminary objection when no evidence on facts in issue had been led."

4.2(5) Based on the foregoing, in deciding whether the plaintiffs' suit discloses a cause of action against the 1st defendant/objector who raised the preliminary objection, this Honourable court is required to examine only the writ of summons and the Statement of Claim of the plaintiffs/respondents filed in that suit. The Honourable court is required in law to consider the broad (not the narrow) purport of the facts disclosed in the pleadings of the plaintiffs/respondents. See **Labode v. Otubu** (2001) FWLR (Pt.43) 207 @ pp. 229, paras. G – A & 234, paras B – C.

This point was made abundantly clear in **U.B.N. Plc v. Umeoduagu** (2004) All FWLR (Pt. 221) 1552 @ 1561, paras. E – F, where the Supreme Court (per Kalgo, JSC,) stated the law as follows:

> **"Also, ...this court held that in determining whether or not the pleadings disclose any reasonable cause of action, the trial court will only examine the writ of summons and the statement of claim. It will not examine the statement of defence or any defence by way of affidavit."**

This decision followed an earlier decision of the Supreme Court in **Labode v.Otubu** (supra) @ 228, paras. G-H, where Uwais, JSC, as he then was, stated that

> **"..the trial court will only examine the writ of summons and the statement of claim. It will not examine the statement of defence or any defence by way of the affidavit in support of the application to strike out or dismiss the action."**

Similarly, where as in the instant case, the facts relied upon to sustain the preliminary objection are in dispute, it is not a proper case for a preliminary objection but one for trial. If, as in this case, facts exist which must first be adduced or established in evidence to enable a point of law to be sustained, the preliminary objection is not proper. Also, a matter which is raised by a preliminary objection but which may be answered if evidence

is adduced cannot be properly raised as a preliminary objection. Such a matter is more properly answered by evidence during trial and shall constitute an issue for determination at the trial. See **Woherem v. Emereuwa** (supra), **Akinbi v. Mil. Gov'r, Ondo State** (1990) 3 NWLR (Pt. 140) 525 @ 531 – 532, paras. G – A & 534, paras. D – F, **S.D.C. Cementation (Nig.) Ltd. v. Nagel & Co. Ltd.** (2003) FWLR (Pt. 156) 861 @ 879-880, paras. G-E.

4.2(6) It is humbly submitted that a community of the pleadings of the Plaintiffs/Respondents (which are deemed true/correct for the purposes of the Preliminary Objection) will reveal that a reasonable cause of action is disclosed against the 1st Defendant/Objector as well as the 2nd Defendant. See particularly paragraphs 2, 2(A) & 10 – 27 of the Statement of Claim.

When all the said pleaded facts and averments on the ownership by the defendants of the high voltage (high tension) electric transmission line in issue (formerly owned by NEPA and PHCN) and breach of the rights of the plaintiffs/their community, in the Statement of Claim are taken as true for the purposes of the preliminary objection, it is clear that the plaintiffs have a reasonable cause of action. See **Bello v. A-G Oyo State** (1986) 12 SC 1 @ 82-83 where the apex court stated thus:

> **"It is clear that at the close of the pleadings and when the action was ripe for hearing, the plaintiffs/appellants had disclosed sufficient facts the existence of which will enable them to obtain from the court a remedy against the defendant.**
>
> **Plaintiff is required to state only the material facts upon which he relies to obtain relief or remedy against the defendant. The writ of summons as endorsed, admittedly inelegantly, but still acceptable, stated that plaintiffs were claiming ₦ 100,000 as damages for the illegal killing of their bread-winner, ... The proposition that a plaintiff has no cause of action merely because the defence has a valid defence is clearly not acceptable. 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."**

4.2(7) In any case, the Statement of Claim discloses causes of action on tort, declaration of rights of the plaintiffs/respondents in relation to the damages caused by the high tension electric transmission line of the defendants.

Similarly, it is humbly submitted that the relief for declaration of such rights of the plaintiffs and their community as contained in the Statement of Claim is an independent cause of action based on Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999. In **Adigun v. A-G Oyo State** (1987) 3 SC 250 @ 404-405, the apex court (per Karibi – Whyte, JSC) clarified the law thus:

> **"I think it is in our jurisprudence quite elementary that our High Court has always had the jurisdiction to make a declaration in all cases where the plaintiff conceives he has a right, even if there is no complete and subsisting cause of action.... The declaration sought is under section 6 (6)(b) and sections 236(1) of the constitution 1979. It is an exercise of judicial power between persons for the determination of questions as to the**

civil rights and obligations of such persons. It is also a civil proceeding in which the existence of a legal right falls for determination. See Attorney-General of Bendel State v. A-G of Federation & ors. (1982) 3 NCLR. 1. The action for declaration, as this is a procedural device for ascertaining and determining the rights of parties or for the determination of a point of law. Actions for declarations of title under customary law are common and familiar features of our land litigation."

4.2(8) See also Danatata v. Mohammed (2000) 5 SCNJ 17 @ 34- 36, (2000) FWLR (Pt.21)889 @ 917-918, Onu, JSC, had this to say:

"…..The Reliefs set out by the plaintiff in his Writ of Summons had earlier been copied out in (a) and (b) respectively. They represent his (Plaintiff's) legal right vis-à-vis the 1st defendant's obligation – the latter which culminated in his (Defendant's) flagrant refusal to fulfill his side of the transaction in relation to which the plaintiff had pleaded in paragraphs 4, 11, 12 and 13 of the said Statement of Clam ……..These facts are deemed to have been admitted by the defendant for the purpose of demurrer proceedings. Since the plaintiff is still the holder of the Certificate of Occupancy of the said land and, therefore, has an enforceable legal right, that right entitles him to a declaration in law, bearing in mind that the reliefs are meant to declare an existing state of affairs in law. The declaration sought by the plaintiff against the defendants is, therefore, clearly for the determination of questions as to the plaintiff's civil rights and obligation. It is also a civil proceeding in which the existence of a legal right falls for determination. See Attorney –General of Bendel State v. A.G. Federation &Ors. (1982) 3 NCLR 1.

From the foregoing, it can be seen that the plaintiff's claim does not only have "some chance of success", Following what Uwais, CJN said in Oshoboja vs. Amuda (supra), the plaintiff's Certificate of Occupancy remains valid and that it also gives him the right to claim a declaration that he is the person entitled to the said land.

As a declaratory relief is independent and a separate cause of action on its own, in that it is the law that the jurisdiction of the Court to make a declaration is not confined to cases where a plaintiff has a complete and subsisting cause of action but may also be employed in all cases where the plaintiff conceives he has a right. See the dictum of Karibi-Whyte, JSC, in Adigun vs. Attorney-General of Oyo State (1987) 1 NWLR (pt. 53) 678 at 741, where the learned Justice said:-

> "… I think it is in our jurisprudence, quite elementary, that our High Court has always had the jurisdiction to make a declaration in all cases where the plaintiff conceives he has right even if there is no complete and subsisting cause of action…"

See also Igbokwe vs. Udobi (1992) 3 NWLR (pt. 228) 214, where Oguntade, JCA, relying heavily on the dictum of Bankes, L.J. in *Guaranty Trust Company of New York vs. Hannay& Company* (1915) K. B. 536 at 572 stated as follows:-

> "..It is the person, therefore, who is seeking relief, on whom a right to relief is alleged to exist, whose application to the Court is not to be defeated because he applies merely for a declaratory judgment or order and whose application for a declaration of his right is not be refused merely because he cannot establish a legal cause of action.."

Also, in **Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria** (1987) 1 NWLR (Pt. 49) 284 @ 303, paras. F-G, the Supreme Court (per Oputa, JSC,) stated as follows:

> **"A declaratory judgment is merely a judicial statement confirming or denying a legal right of the applicant."**

See also **Oforkaja v. Taraba State Govt.** (2003) FWLR (Pt. 178) 1036 at 1061, paras B-E.

4.2(9) As it has been averred in the Statement of Claim that the said legal rights of the plaintiffs and their community have been violated by the defendants, such rights are in law enforceable without the need to prove damages suffered.

See **Soleh Boneh Ltd .v. Ayodele** (1989) 1 NWLR) (Pt. 99) 549 @ 559, para. F where the Court of Appeal stated as follows:

> **"Where there is infringement of a legal right, there is a right of action without actual damage being proved, as this imports damage so long as it is something which the law can fix upon as being sufficiently substantial to constitute an interference."**

In any case, the classification of forms of action is obsolete in our jurisprudence. To insist on them will amount to "going back to Egypt" [biblically speaking]. The law is that where there is a right there is a remedy. **Ubi jus ibi remedium.** See **Bello v. A.G Oyo State** (1986) 12 SC 1 @ 69-70 & 85 where the Supreme Court said respectively as follows:

> **"The respondent has contended that counsel did not in fact advert his mind to the Torts Law because his reliance on the maxim of ubi jus ibi remedium, (meaning where there is a right there is a remedy), suggested that he knew there was a right but that there was no remedy; and is asking the court to provide one. That may well be the case. Even in such a situation the court cannot in the discharge of its sacred duty to do justice be inhibited by the ignorance or carelessness of counsel. The injustice resulting to the cause of the litigant from such demonstration of ignorance or carelessness does not adversely affect counsel whose fees remain undiminished. I think I am speaking the mind of all engaged in the administration of justice, not only in this court but in all courts in this country, that the day the courts allow the inarticulacy or ignorance of counsel to determine the result of an action before it, that day will herald the unobstrusive genesis of the unwitting enthronement of injustice aided by the court itself by default. I think it is erroneous to assume that the maxim ubi jus ibi remedium is only an English common law principle. It is a principle of justice of universal validity couched in Latin and available to all legal systems involved in the impartial administration of justice. It enjoins courts to provide a remedy whenever the plaintiff has established a right. The court obviously cannot do otherwise. It is enjoined to eschew reliance on technicalities in the determination of dispute - ...The substance of the action rather than the form should be the predominating consideration..."**

> **"I have already stated that the writ of summons and statement of claim sufficiently disclose that the claim can be founded under the Torts Law. Even if this was not the case, I think this court has attained a stature in its pursuit of justice that a claimant who has established a recognized injury cannot be turned back on the ground that he had not stated the head of law under which he was seeking a remedy. ..Besides, the respondent's**

argument is predicated on the contention that the writ of summons has not used the appropriate words to describe the injury in respect of which he is claiming damages. This argument is reminiscent of the old forms of action at common law."

See **Labode v. Otubu** (2001) FWLR (Pt.43) 207 @ 234, paras. A-H.

4.2(10) Further, it is out of place for the 1st defendant/applicant to rely on the averments in the supporting affidavit to their said preliminary objection and the exhibit thereto as a basis for their said objection and arguments seeking to deny that the high tension electric transmission line in issue in this case does not vest or is not the property of the 1st defendant and to use that as a basis for its preliminary objection. That is a matter to be raised in the Statement of Defence as a defence which would be resolved during the substantive trial. Such controversial matters contained in the said affidavit and the exhibits thereto are matters for trial and not for a preliminary objection like the one in issue.

When the averments in the pleadings of the plaintiffs, the depositions in the supporting affidavit/exhibits to the preliminary objection and those in the counter affidavit are looked at, it is clear that there is controversy between the parties on issues such as who owned the subject matter transmission line that caused the injury complained of in this suit?, etc. These are issues for determination at the substantive trial through evidence and th9s proves that there is a reasonable cause of action in the suit. They are not matters for a preliminary objection or decision at an interlocutory stage of the case.

From the controversial facts and exhibits to the supporting affidavit and counter affidavit, it is clear that further evidence or light is required to resolve the issues in controversy. Such a case is not for preliminary objection. Such facts ought to be pleaded in the Statement of Claim and Statement of Defence and the matter ought to then go on trial for the determination/resolution of the issues/facts in controversy. They are not relevant for the purposes of the preliminary objection. See **Ohwuta v. A/G Anambra** (2006) All FWLR (Pt. 333) 1775 @ 1784 – 1786, paras. F – A, where the Court of Appeal (per Galadima, JCA, as he then was) stated the following:

"... Under the rules, however, certain preliminary objections and demurrer may be heard provided that *inter alia*, preliminary objections which are capable of determining and disposing of the entire suit would not be tried, if further light or evidence or material beyond those existing at the stage of the application would be required. Such issues would be properly reserved for trial by oral evidence. See Emechetа v. Ogueri (1996) 5 NWLR (Pt. 447) 227.....

In the instant case, at the time of the application to strike out the respondent's name, the only process of court that stood to be considered was the statement of claim dated 28/4/94, which in law, had superseded the writ of summons. I agree with the learned counsel for appellants that the affidavit of one Emmanuel Anosike, sworn on 4/5/94 in support of the motion on notice for striking out the respondent's name, was not merely formal and introductory but it sought to introduce pieces of evidence that should have been properly pleaded in a statement of defence. It is to be noted also that exhibit E.A1 and the lease agreement between the parties formed the basis and gravamen of the respondent's

application and the ruling of the trial court. As I have pointed out above, a preliminary issue capable of dispensing with further trial of a suit would be tried if no further light or evidence would be required outside the processes presently existing. The whole gamut of the appellants' case against the respondent is that they leased the land in dispute to the respondent and it failed to inform the appellant when the steps were being taken to grant certificate of occupancy to the 2nd defendant and as such used or caused to be used that land leased to it within the area in a manner inconsistent with the plaintiffs' interest and so the appellants have suffered damages. Appellants therefore claim from the respondent order forfeiting the lease and injunction from interfering with the appellants' right of ownership.

In the light of the above, I am of the view that further evidence would be required outside the processes presently existing. By now seeking to introduce exhibit E.A1 via the affidavit in support of the respondent's application and also by expecting the appellants to exhibit the lease agreement, to their statement of claim, which is unprocedural, the respondent has obviously admitted that further light or evidence would be required in the trial of application for striking out the respondent for want of cause of action.

From the foregoing, it is clear that the statement of claim of the appellants are deemed admitted, the existence of the lease agreement between the appellants and the respondent is not in doubt or controversy. It accords with the law, therefore that, in the absence of any equitable or legal defence, the statement of claim, particularly its paragraphs 12, 13 and 18 should be regarded as raising reasonable causes of action and therefore the reliefs in paragraph 18 are not only legal, competent and valid, but are also properly laid out. This being so, the respondent is a proper party to the suit by virtue of Order 3, rule 1. It is a party against whom the relief of the appellants exists, as clearly couched in paragraph 18(2), (3) and (4) directed specifically to the respondent."

Consequently, it is humbly submitted that the preliminary objection and its basis lack merit. The Court of Appeal is humbly urged to dismiss same.

4.2(11) In response to paragraph 4.2 of the 1st defendant/Objector's address, it is submitted that it is wrong for the 1st Defendant/Objector to pick and choose a few paragraphs of the Statement of Claim and contend that the suit discloses no reasonable cause of action. The law is that in order to determine what the case of a plaintiff is and/or whether it discloses a reasonable cause of action, all the paragraphs of the Statement of Claim must be read conjunctively or together, not in isolation.

In **Econet Wireless (Nig.) Ltd. v. Econet Wireless Ltd.** (2014) 7 NWLR (Pt. 1405) 1 @ 23, paras. F- G, the Court of Appeal (Kaduna Division) stated as follows:

"It is trite law that in dealing with pleadings, a court must read all the paragraphs together to get a flowing story of a party and not a few paragraphs in isolation and it is the totality of the pleadings that states the case of the party – *Okachi v. Animkwoi* (2003) 18 NWLR (Pt. 851) 1 and *Mobil Oil Plc. v. Drexel Energy and Natural Resources Ltd.* (2004) 1 NWLR (Pt. 853) 142."

In **Titiloye v. Olupo** (1991) 7 NWLR (Pt. 205) 519 @ 543, para. D, the Supreme Court (per Akpata, JSC,) held as follows:

" ..., before a court can reach a decision as to whether or not certain facts had been admitted without the need of proving them, or whether they have impliedly been admitted thus requiring no proof, the entire pleadings of the parties must be considered."

See also **Adegboyega v. Awe** (1993) 3 NWLR (Pt. 280) 224 @ 239 paras. A – H, **NBC PLC v. Oboh** (2000) FWLR (Pt.29) 2379 at 2391 - 2392, paras. D – D & 2389-2390 paras. D – G.

4.2(12) It is submitted that paragraph 4.3 of the 1st defendant/objector's address is misconceived. It is wrong for the objector to apply the definition of "**transmission system**" in the interpretation section (section 100(1) of the Electric Power Sector Reform Act, 2005 to the words **"Electric Power Transmission Line"** used in the Statement of Claim in this suit. The two expressions do not apply to the same circumstances. "Transmission line" is not the same thing as the "Transmission system" defined in Section 100(1) of the said Act of 2005.

As shown above, the 1st defendant/objector admitted in paragraph 3(a) of its supporting affidavit that it is a successor company of the Power Holding Company of Nigeria (the initial holding company under the said Act of 2005).

In paragraphs 2, 2(A), 12, 12(A), 13, 14, 15, 16, 16(A) & 18 – 21 of the Statement of Claim (deemed in law to be admitted by the defendant/applicant/objector for the purposes of the Preliminary Objection), it is averred that the said High Tension Electric Transmission Line that caused the loss/damages complained of by the Plaintiffs (and which is the basis for the claim in this suit) was owned by the Power Holding Company of Nigeria (who inherited same from the National Electric Power Authority). See Sections 1 & 3 of the said Act of 2005.

However, the assets, liabilities, rights and obligations of the initial Holding Company (Power Holding Company of Nigeria) passed on to the 1st defendant as a successor company thereof. See Sections 8 & 10 of the 2005 Act.

In the same vein, by dint of Section 13 of that Act, any cause of action which existed against the initial Holding Company (Power Holding Company of Nigeria) shall be enforced or continued to be enforced against the 1st defendant as the successor Company.

4.2(13) From the foregoing, it is clear that the plaintiffs' suit discloses a reasonable cause of action against both defendants. If the averments in the statement of claim are presumed to be admitted and true for the purposes of the objection, some serious questions of fact and law fit to be decided by a judge are disclosed in the suit. Whether or not the case is weak is immaterial. A reasonable cause of action is disclosed. See **Dada v. Ogunsanya** (supra) @ 765 & 767 – 768, paras H – A, **Henry Stephen Eng. Ltd v. S. A. Yakubu (Nig) Ltd** (supra) @ 428 & 434, **Thomas v. Olufosoye** (supra) at 671 and **Nissan (Nig.) Ltd. v. Yoganathan** (supra) @ 1595, paras. B – D.

4.2(14)Based on the foregoing, this Honourable court is urged to resolve the two Issues formulated herein in the positive against the 1st Defendant/Objector and to dismiss the Preliminary Objection in contest.

5.00 Conclusion

The instant application of the 1st defendant/objector lacks merit and this Honourable court is humbly urged to dismiss same.

6.00 Summary of Points

(1) This suit falls within the purview of the constitutional jurisdiction of this Honourable court as the Federal High Court. This Honourable court consequently has jurisdiction to entertain it.

(2) In the alternative, if this Honourable court forms the opinion that this case is within the jurisdiction of the State High Court and outside the jurisdiction of the Federal High Court, this court is empowered by Section 22 of the Federal High Court Act to transfer it to the State High Court and not to strike it out.

(3) This suit discloses a reasonable cause of action against both defendants.

Dated this 25th day of June, 2021.

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7.00 List of Legal Authorities

A. Book

The book **"Understanding the concept of jurisdiction in the Nigeria Legal system"** by Hon. Justice Obande F. Ogbuinya, pages 317-324.

FEDERAL HIGH COURT
CASHIER'S OFFICE
DATE 25-6-2021

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B. Statute

1. Constitution of the Federal Republic of Nigeria, 1999 (as amended)
2. Federal High Court Act
3. Electric Power Sector Reform Act, 2005

C. Decided Cases

1. NEPA v. Edegbenro (2002) 12 SCNJ 173 [(2002) 18 NWLR (Pt. 798) 79
2. W. R. P. C. Ltd. v. Agbuje (2005) 5 NWLR (Pt. 917) 63
3. Agbule v. W. R. & P. Co. Ltd. (2013) ALL FWLR (Pt. 688) 829
4. Inegbedion v. Selo-Ojemen (2013) ALL FWLR (Pt. 688) 907
5. NNPC v. Udenze (2016) ALL FWLR (Pt. 817) 726
6. Umo v. Desicon Engr. Ltd (2016) ALL FWLR (Pt. 844) 2053
7. U.B.N. Plc v. B.C.C. Plc (2004) All FWLR (Pt. 206) 434
8. Jadesimi (nee Okotie-Eboh) v. Okotie-Eboh (1986) 1 NWLR (Pt. 16) 265
9. Dantata v. Mohammed (2000) 5 SCNJ 17 [(2000) FWLR (Pt. 21) 889
10. Chukwu v. Akpelu (2014) 13 NWLR (Pt. 1424) 359
11. F.U.M.B. Ltd. v. Aerobell Nig. Ltd. (2005) All FWLR (Pt. 281) 1651
12. Woherem v. Emerenwa (2004) All FWLR (Pt. 221) 1570 [or (2004) 7 SCNJ 119
13. Labode v. Otubu (2001) FWLR (Pt.43) 207
14. Dada v. Ogunsanya (1992)3 NWLR (Pt. 232) 754
15. Henry Stephen Eng. Ltd v. S. A. Yakubu (Nig) Ltd (2009) 10 NWLR (Pt. 1149) 411
16. Appeal No. CA/PH/532/2013: Gas Line Engineering Company Ltd. v. Chief Aaron Atemie & Ors (unreported) delivered on the 17/11/2014
17. Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669
18. Nissan (Nig.) Ltd. v. Yoganathan (2009) All FWLR (Pt. 494) 1585
19. U.B.N. Plc v. Umeoduagu (2004) All FWLR (Pt. 221) 1552
20. Idachaba v. Ilona (2007) 6 NWLR (Pt. 1030) 277
21. Labode v. Otubu (2001) FWLR (Pt.43) 207
22. Akinbi v. Mil. Gov'r, Ondo State (1990) 3 NWLR (Pt. 140) 525
23. S.D.C. Cementation (Nig.) Ltd. v. Nagel & Co. Ltd. (2003) FWLR (Pt. 156) 861
24. Bello v. A-G Oyo State (1986) 12 SC 1
25. Adigun v. A-G Oyo State (1987) 3 SC 250
26. Danatata v. Mohammed (2000) 5 SCNJ 17 @ 34- 36, (2000) FWLR (Pt.21)889
27. Western Steel Works Ltd. v. Iron & Steel Workers Union of Nig. (1987) 1 NWLR (Pt. 49) 284
28. Oforkaja v. Taraba State Govt. (2003) FWLR (Pt. 178) 1036
29. Soleh Boneh Ltd .v. Ayodele (1989) 1 NWLR) (Pt. 99) 549
30. Onwuta v. A/G Anambra (2006) All FWLR (Pt. 333) 1775
31. Econet Wireless (Nig.) Ltd. v. Econet Wireless Ltd. (2014) 7 NWLR (Pt. 1405) 1
32. Titiloye v. Olupo (1991) 7 NWLR (Pt. 205) 519
33. Adegboyega v. Awe (1993) 3 NWLR (Pt. 280) 224
34. NBC PLC v. Oboh (2000) FWLR (Pt.29) 2379

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