

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY 11<sup>TH</sup> DECEMBER, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/1849/20**

**BETWEEN:**

**IFEYINWA IKEATUEGWU ESQ.**

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**APPLICANT**

**AND**

**ABUJA ELECTRICITY DISTRIBUTION  
COMPANY PLC**

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}

**RESPONDENT**

## **JUDGMENT**

On the 16<sup>th</sup> day of June, 2020 Ifeyinwa Ikeatuegwu Esq. instituted this action – Originating Summons against Abuja Electricity Distribution Company Plc, raising the two questions for interpretation and seeking for the consequence as contained in the face of the Summons. The questions are:

- (1) “Whether having regard to the clear and unambiguous provision of Reg. 10 (2) (b) of the Nigeria Electricity Regulatory**

**Commissions Customer Service Standards of Performance for Distribution Companies 2007 and checking of and fiddling with the Claimant's pre-payment Metre No: 07084115570 by the Defendant's officials on the 7<sup>th</sup> May, 2020 is unlawful, ultra vires, null, void and amounts to unlawful tampering of the Claimant's said prepared metre.**

- (2) Whether having regard to the clear provision and unambiguous stipulation of the Reg. 5, 6, 7, 8, 9, 10 and 11 of the NERC Connection and Disconnection procedure for Electricity Services 2007 and having regard to the fact that no Court of law adjudged the Claimant guilty of metre tampering as alleged by the Defendant, the Disconnection of the Electricity supply from the Claimant's 2 Bedroom Bungalow at No. 14 Samuel Anagala Street, Byazhin Chikakore, Kubwa, Abuja without prior written warning and written Notice of Disconnection after the disconnection and continuance thereof, is unlawful and amounts to an offence punishable under S. 94 (1) (a & (b) of the Electric Sector**

**Reform Act 2005 and Regulation 11 of the NERC's Connection and Disconnection Procedure for Electricity Services 2007".**

The Plaintiff had urged Court to grant the following consequence Orders upon the Court's determination of the 2 questions:

- (1) A Declaration that by virtue of the provision of the said Regulation 10 (2) (b) NERC Customer Service Standards of Performance for Distribution Companies 2007 the howsoever checking touching and fiddling with Claimant's pre-payment Metre No: 07084115570 by Defendant's officials on 7<sup>th</sup> of May, 2020 as well as the so called Electricity Inspection Report are unlawful, ultra vires the Defendant, null, void and of no effect and amounts to unlawful tampering of the Claimant's said pre-payment metre.**
  
- (2) A Declaration that the touching and checking of the Claimant's pre-payment metre on the 7<sup>th</sup> of May, 2020 amount to tampering with the said Metre.**

- (3) A Declaration that by virtue of the stipulation of Reg. 5, 6, 7, 8, 9, 10 & 11 of the NERC connection and disconnection having no procedure for Electricity Services, 2007 and having regard to the fact that no Court of law adjudged the Claimant guilty of metre tampering as alleged by the Defendant, the disconnection of Electricity Supply to the said residence of the Claimant without prior written warning and without written Notice of the Disconnection after the disconnection and continuance thereof is unlawful and amount to an offence punishable under S. 94 (1) (a) & (b) of the Electric Power Sector Reform Act 2005.**
- (4) An Order compelling the Defendant to pay Claimant One Hundred and Fifty Million Naira (₦150, 000,000.00) as exemplary and punitive damages for its lawlessness and the said unlawful disconnection.**
- (5) Order of mandamus compelling Defendant to reconnect the said electricity supply.**

**(6) Perpetual Injunction restraining Defendant, their official agents, workers and privies from unlawful inspection tampering with the said metre and the said unlawful disconnection.**

**(7) Omnibus.**

She supported the application with an Affidavit of 19 paragraphs which she deposed to in person. She attached 4 documents as Exhibit marked as **EXH A – D.**

In her Written Address she raised 2 Issues for determination which are:

**(1) “Whether having regard to the provision of Regulation 10 (2) (b) of NERC standard performance for Distribution Companies 2007 the checking, touching and fiddling of the said metre as well as the Inspection Report issued are unlawful, ultra vires null, void and amounts to unlawful tampering of the Claimant’s said metre.**

**(2) Whether having the stipulations of the said Reg. 5 – 11 of NERC Connection and Disconnection procedure 2007 the said disconnection of electricity in the said**

**residence of the Claimant without prior written warning or written Notice of disconnection after the disconnection and continuance thereof, is not unlawful, null and void”.**

**On Issue No.1**, Counsel on her behalf submitted that action of the Defendant on the 7<sup>th</sup> of May, 2020 is unlawful, ultra vires the Defendant, null and void and of no effect having regard to Reg. 10 (1) (2) (b) of NERC Customer Service Standard of Performance for Distribution Companies.

By Regulation 10 Sub Regulation (2) NERC’s Customer Service Standard of Performance for Distribution Companies 2007. The Defendant and its official are not legally enabled or empowered to read, check, touch and fiddles Claimant’s pre-payment metre as they did on the 7<sup>th</sup> of May, 2020 at her property.

That the Defendant’s actions are unlawful, ultra vires, null, void and of no effect and tantamount to metre tampering. That reading of metre is governed by Electric Power Sector Reform Act 2005 and NERC Customer Service Standards of Performance for Distribution Company as gazetted in Nigeria Official Gazetteer No. 102 Government Notice No. 102 of 21<sup>st</sup> December, 2007.

That the Defendant is governed and are subject to the dictates of applicable law and cannot therefore act in an unlawful manner as they did on the 7<sup>th</sup> of May, 2020 and cannot therefore violate the provision of the said law. They urged the Court to grant their Claims.

On Issue No.2, the Plaintiff submitted that connection and disconnection of electricity supply are governed by the said Electric Power Sector Reform Act 2005 and its subsidiary legislation.

That by the provisions of **Regulation No.5 (1)** condition for disconnection of electricity. That **Reg. 6 – 8** set out conditions to be fulfilled by Electricity Distribution Companies which includes the Defendant before disconnecting electricity supply from a customer address.

That **Reg. 9** provide that they shall leave a written Notice of disconnection advising customer on date of disconnection, reason, action taken by customer for reconnection and the authorized phone number of the distribution company to enable the customer contact them.

That action of the Defendant was unlawful and arbitral with compliance to the due procedure permitted by extant law contrary to provision of **Reg. 11 of the 2007 Act** as well as **S. 94 (1) of Electric Power Sector Reform Act 2005.**

The Plaintiff concluded that the action of the Defendant is unlawful and violated the extant Electricity laws.

The Plaintiff urged the Court to grant her Claims as prayed.

The Defendant was served with the Originating Summons on the 16<sup>th</sup> July, 2020 and the acknowledged same as shown in their stamp marked and signed in the Endorsement and Return copy of the Process. They did not respond to the said Originating Process.

But on the 3<sup>rd</sup> of December, 2020 they filed a Preliminary Objection which the Court just dismissed. The Court also ensured that they were served with the Hearing Notice on the 16<sup>th</sup> of July, 2020 for the sitting of 28<sup>th</sup> of September, 2020. They did not come to Court or entered appearance or have representation by any Counsel. From this it is evidently clear that the Court gave the Defendant all the opportunity possible to be heard in this case but they refused, neglected and slept on their right.

They have not even the courtesy to respect the Court by appearing in person.

On the 16<sup>th</sup> of November, 2020 this Court heard the matter as scheduled having given the

Defendant due notification for over one month and 8 days.

It is the law that facts not denied are deemed admitted. Again non-response to an action means that the case of the Plaintiff is unchallenged, uncontroverted and un-rebutted. But the Court is still bound to take a deep and critical look into such fact to be sure that it has merit before it can state that such action is meritorious and will earn the Court's decision in its favour.

This action is an Originating Summon. The Plaintiff has raised 2 questions as contained in the face of the Suit which this Court had earlier in this Judgment stated verbatim. It is imperative for this Court to determine those questions in order to see if there is any merit in this case.

These are question raised for determination in the Originating Summon are on Reg. 10 (2) (b) NERC Customers Service Standard of Performance for Distribution Company 2007 vis a vis the action of the Defendant on the 7<sup>th</sup> of May, 2020 whether such action is not unlawful, ultra vires, null and void and amounts to unlawful tampering of the pre-paid metre of the Plaintiff.

To answer this question it is imperative to state in full the said provision of:

**Reg. 10 (1)**

**“Every Distribution Company SHALL obtain through its authorized representative an actual reading of all metres in all supply addresses within its Areas of supply every month but not later than once every 3 months**

**Reg. 10 (2) (b)**

**The provision of Sub-Regulation 1 of this shall be inapplicable where the customer has a pre-payment metre”.**

From the above, the above provision of obtaining an actual reading of metres is not applicable to the Plaintiff in this case because she is a customer that has a pre-payment **metre No: 07084115570**. The provision of the said **Reg. 10 (2) (b)** is not applicable to any customer with pre-payment metre including the Claimant in this case. To that extent the action of the Defendant and their agents on the 7<sup>th</sup> of May, 2020 at the place of residence of the Plaintiff is illegal, unlawful, null and void and condemnable. So this Court holds. The Defendants and their 2 agents have no right to take such action as they did. Their action is against the provision of the said Reg.10 (2) (b). The action of the Defendant and their Agents was done without

any legal backing or without due procedure permitted by law.

On the 2<sup>nd</sup> question whether on the stipulation of Reg. 6, 7, 8, 9, 10 & 11 NERC Connection and Disconnection Procedures for Electricity Service 2007 and the fact that no Court has adjudged Claimant guilty of Metre tampering and the disconnection of Electricity supply from the place of the Claimant without prior warning in writing and Notice of disconnection. The action of the Defendant is illegal, unlawful and punishable under **S. 94 (1) (a) & (b) of Electric Power Sector Reform Act 2005 and Reg. 11 NERC Connection and Disconnection Procedures for Electricity Services 2005.**

To answer the above question, it is imperative to state in summary each of the provision of the Regulation referred to therein.

### **Reg. 5**

**A Distribution Company may only disconnect supply to a customer's address when the customer has not paid the amount correctly billed for that supply address by relevant payment date.**

The above is applicable provided the payment date is clearly shown on the bill. Such date is at least

10 working days from date of delivery of bill to the said supply address. There was payment date number superseded by a subsequent payment date. The period between payment date and date of disconnection is not less than 3 months.

That Distribution Company must have verified from its record that the bill has not been paid and that they had given the customer warning that supply will be disconnected if payment is not made by payment date and warning contains. Such warning shall also contain the date of its delivery to the customer supply address or any other address provided by the customer and phone number and or address acceptable to the Distribution Company where the customer can request assistance for paying the outstanding Bill.

The Defendant failed to comply fully with the provision of Reg. No.5 as required.

In this case the Defendant did not write the Plaintiff before disconnecting as required. The Plaintiff was not owing the Defendant before the disconnection. She still has some unfinished Electricity Credit of **66.9** in her metre. The disconnection was not done in compliance with Reg. 5 (1) (b) which requires payment date to be at least 10 working days from date of delivery of the Bill. The 2 agents of the Defendant gave the so-

called bill on the 7<sup>th</sup> of May, 2020 at 2:00 pm the day they inspected the metre and barely 4 days after they disconnected the supply. That action is contrary to **Reg. 5 (1) (b)**.

Their action is illegal because as at **29<sup>th</sup> of March, 2020** the Plaintiff bought some Credit as shown in **EXH A**. Again by **EXH B, the Inspection Report** issued by the Defendant and their agents, the actual Unit in the metre as written by the Defendant's agents is **66.9 Units** showing the unspent Credit in the said metre which confirms that the Plaintiff was not indebted to the Defendant and still has some Credit which she pre-paid for.

It is imperative to state that pre-paid metre means that customers pay in advance for the electricity service to be supplied even before it is supplied. That is the reason of the exemption of the pre-payment customer in **Reg. 10 (2) (b)** of the Act 2007.

This Court holds that the action of the Defendant in this case is unlawful and the disconnection without legal backing and without following due procedure permitted by law. Their action violated the said Reg. 5.

### **Reg. 6**

This Regulation is on manner upon which Disconnection can be done legally. It is where the connection is illegally connected to the company's network without notice where connection is considered dangerous to health or integrity or quality of the supply to other customers or where due to the customer act or omission metre cannot be accessed for reading for 3 consecutive bills.

In that case the company must have notified the customer about the inaccessibility in writing and had also requested in writing to have access and customer fails to allow access.

Again the company must have given warning to customer in writing that failure to provide access by a given date at least 10 working days before the supply can be disconnected.

In this case there is no evidence to show that there was any writing or warning to the Plaintiff. There is no evidence that there was inaccessibility to the metre or that the customer made access difficult or that the Defendant had notified him of access or requested access but customer failed to allow that. There is no evidence of 10 working days notice in writing about warning to disconnect supply. The only thing that resembled notice is EXH B which was less than 3 working days notice after the

Defendant came to read the metre illegally on the 7<sup>th</sup> of May, 2020.

There was no notification or warning to the Plaintiff about the Disconnection of supply.

### **Reg. 7**

This provision is that the company refuse to supply to a customer who refuses to provide form of identification acceptable to the company or where customer refuses to pay security deposit as requested by a company.

This applies where due notification for at least 10 days was given before disconnection if customer fails to provide the form of identification and or pay for the security as requested within the period stipulated in the disconnection Notice.

In this case, there was no disconnection Notice given to the Plaintiff before the light was disconnected by Defendant on the 11<sup>th</sup> of May, 2020. That action violates the unambiguous provision of the said Reg. 7. So this Court holds.

### **Reg. 8**

On request to disconnect supply of electricity made by (consent) of the customer. This Plaintiff did not request for disconnection of supply. Again the disconnection illegally done by the Defendant

and their agents was done without the Plaintiff's consent or request. The Plaintiff does not share the metre with anyone and had not obstructed access to the said metre for reading. That is why the Defendant's action is illegal, unlawful and violation of the Plaintiff's right.

**Reg. 9**

It is incumbent on the company to give Notice to customer after disconnection of supply. Such notice must to be in writing. Such written notice of disconnection shows/advices customer on date the disconnection will take place, the time and reason of the disconnection, what action the customer can take to have supply reconnected. The company shall also leave their contact address and telephone number where the customer can reach them.

**Reg. 10**      In this regulation

The company is prohibited from disconnecting the supply of electricity where customer has paid the amount billed.

Where payment arrangement has been made between customer and the company as to the payment or payment made based on such arrangement. Where the amount owed is less than the customer's monthly wage or where there is

complaint by the customer concerning unpaid bill in accordance with the company's customer compliant procedure which remains unresolved or where the charge is for unpaid metre maintenance charges.

In this case the disconnection done by the Defendant was not based on any of the above listed grounds. So the said disconnection from all indication is wrong, illegal and unlawful having not done in accordance with the extant provision of the Act.

**Reg. 11** – this Regulation provides penalties for wrong disconnection. In that it provides:

**Reg. 11**

**Any distribution company which disconnects electricity supply to a customer's premises in violation of this regulation commits an offense and is liable on conviction to pay the customer a penalty as stipulated in the table below for each or part of a day that supply is wrongfully disconnected”.**

From the above, once the provision of **Reg. 11** is violated the company is liable to pay penalty to the customer whose residence as in this place was wrongfully disconnected. By the said Regulation the penalty is payable per a day for the duration of the disconnection. The payment and amount

thereof is based on the amount which is stipulated in the Regulation.

In this case the Defendant had without notice and due procedure wrongfully disconnected the supply of electricity from the residence of the Plaintiff who is their customer who had a prepaid metre. As at the day of the disconnection the Plaintiff was not indebted to the Defendant and had a Credit of **66.9 Units of Electricity**. She allowed the Defendant's agents access to her metre and did not obstruct them from accessing the metre. She had 66.9 Units and prepaid for supply of electricity on the 29<sup>th</sup> of March, 2020. The Defendant came to her house without notice in writing on the 7<sup>th</sup> of May, 2020. They issued her EXH 2 which supposed to be done before they came. They came back on the 11<sup>th</sup> of May, 2020 barely 4 days after their initial visit on the 7<sup>th</sup> of May, 2020. The Plaintiff allowed them access to her residence and her metre. There was no previous billing which she had to pay. By virtue of **Reg. 10 NERC Customer Service Standards of Performance for Distribution Company 2007**, the Distribution Company like AEDC, the Defendant is supposed to obtain from their authorized representative the actual reading of metre from customer who have no prepaid metre. The Plaintiff from every indication is a pre-payment metre holder. The

provision of the Reg. 10 of the said NERC Customer Service Standards 2007 does not affect her. She had a prepaid metre. Metre No: 07084115570.

By their act of disconnecting the Electricity supply the Defendant without written warning and written Notice of disconnection as required by the said laws and the continued disconnection thereof is an offence and violation of the said laws. They are guilty of metre tampering. The checking of the said metre is unlawful and it amounts to unlawful tampering of same. So this Court holds.

It is the law, going by the provision of S. 94 (1) (a) & (b) Electric Power Reform Act and the 2007 Regulations:

**“Any person who contravenes any provision of this act or any Regulation thereunder commits an offence ...”**

The above provision of the Act needs no interpretation. Again by the provision of **Reg. 11** of the said **NERC Connection and Disconnection Procedure for Electricity Services 2007** provides that:

**“Any Distribution Company which disconnects electricity supply to a customer’s premises in violation of this regulation commits an offence and is liable on conviction**

**to pay the customer a penalty as stipulated  
....”**

From the above, the Defendant violated the said provision of the Act and the Regulation. They are liable to pay penalty to Plaintiff because of their unlawful act. So this Court holds.

The Defendant by their action committed an offence under both the Act and under the Regulations of 2005 & 2007. This Court so holds.

By the Regulation No. 11 they are to pay penalty for everyday that they disconnected the said electricity supply wrongly.

The Plaintiff had shown that the Defendant disconnected supply from her residence since the 11<sup>th</sup> of May, 2020 without giving her due notification or warning or any bill. That she was not indebted to the Defendants as at that day. She has from the fact shown that the disconnection was done in her residence at No. 14 Samuel Anagala Street Byazhin – Chikakore, Kubwa Abuja within the FCT since the 11<sup>th</sup> of May, 2020. By that information she is entitled to be paid One Thousand Naira (₦1, 000.00) = per day from the 11<sup>th</sup> of May, 2020 until the Defendant reconnects the supply of Electricity.

From all indication the Defendant is wrong. The Plaintiff is entitled to the Relief.

This Court therefore holds and answers the 2 questions in the positive in favour of the Plaintiff. The Court therefore grants the Relief of the Plaintiff and give the following consequential Orders to wit:

Reliefs 1, 2, 3, 5 & 6.

Relief 6 granted to the extend that they can only do inspection and disconnection where necessary following due procedure of law as provided and laid down in the Act and subsidiary legislation.

The Defendant are to pay the Plaintiff Ten Million Naira (₦10, 000,000.00) as exemplary and punitive damage for illegally disconnecting her light without due notice and in violation of the extant provisions of the Act and Regulations.

The Defendant are also to pay the Plaintiff One Thousand Naira (₦1, 000.00) per day from 11<sup>th</sup> of May, 2020 until they reconnect electricity supply to her premises at the said No. 14 Samuel Anagala Byazhin – Chikakore, Kubwa Abuja.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2020 by me.**

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**K.N. OGBONNAYA**  
**HON. JUDGE**