

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 13**  
**CASE NUMBER : SUIT NO: CV/723/2023**  
**DATE: : THURSDAY 23<sup>RD</sup> JANUARY,**  
**2025**

**BETWEEN:**

**MRS. EUNICE A. OMESILI ..... CLAIMANT**

**AND**

**ABUJA ELECTRICITY DISTRIBUTION } DEFENDANT**  
**COMPANY PLC. (AEDC) }**

## **JUDGMENT**

The Claimant approached this Honourable Court vide an Originating Summons dated and filed on 21<sup>st</sup> December, 2023 praying the following question for determination:-

1. Whether Pursuant to the provisions of the Electricity Power Sector Reform Act, 2005 now repealed but saved by Electricity Act, 2023 and Regulations thereto, the Claimant herein is not entitled to compensations for the wrongful acts of the Defendant to wit; wrongful disconnection of power supply to her house, failure and neglect to address the complaints of the Claimant for over 4 years leading to avoidable expenses, trauma and hardship.
2. Whether the principle "ubi jus ibi remedium" (where there is a wrong there is a remedy) is applicable in the extant case in view of the circumstances of this case as to entitle the Claimant to damages.

The Claimant's claims against the Defendant are as follows in the event that the aforementioned questions are answered in the affirmative;

1. A Declaration that the Defendant's action to: Arbitrary disconnection of the Claimant's Electricity supply to her resident behind Fabulous International Nursery and Primary School, Saburi Dei Dei, Abuja on the 20<sup>th</sup> March, 2019 without Notice is unlawful.
2. A Declaration that the Defendant's action to wit: removal and taking away and continued detention of the Claimant's recleen wires that supplied power to the Claimant's house situate behind Fabulous International Nursery and Primary School, Saburi Dei Dei, Abuja on the 20<sup>th</sup> March, 2019 is unlawful;
3. A Declaration that the Defendant's action to wit; issuance and service of estimated bill No: 54130585265 for the sum of N8,955.77k on the Claimant's residence aforesaid and account name, which said bill is on a meter number entirely different from the Claimant's prepaid meter no: 14201454759 is unlawful.
4. A Declaration that the Defendant's action to wit; unilaterally adding a total sum of Two Hundred and Eleven Thousand, Nine Hundred and Fifty – Nine Naira (N211,959.00) only into the prepaid meter no: 14201454759 on the 18<sup>th</sup> December,

2018 as “old energy bills” leading to 50% deductions on the Claimant’s account which said bill the Defendant had admitted was a wrongful transfer is unlawful.

5. An Order setting aside the estimated bill No. 54130585265 for the sum of N8,955.77k and further Order restraining the Defendant from further issuing any bill in the name and residential address of the Claimant on the said pre-paid meter No. 54130585265.
6. Thirty Million Naira (30,000,000) compensation for the inconveniences and hardship suffered by the Claimant and her family, violation of Claimant’s right.
7. Two Million Naira (N2,000,000.00) cost of Litigation.
8. 10% interest on the Judgment sum.

The application is supported by a 62 paragraph affidavit deposed to by Eunice A. Omesili, the Claimant in this suit. It is the deposition of learned counsel, that she applied for a prepaid Meter in the name of her son Chika Michael Nnamdi at the Jiwa Service Centre of the Defendants on 12<sup>th</sup> January, 2016.

That it took over one year before the Defendant through its officers released the prepaid meter. The pre-paid meter No.

14201454759 was installed at her residence behind Fabulous International Nursery and Primary School, Suburi Dei-Dei, Abuja by the agents/officers of the Defendant at the Life Camp, AEDC Unit on Saturday, 9<sup>th</sup> May, 2017.

That upon the installation of the prepaid meter, she started paying for the electricity supply by purchase of prepaid credit which she load into the said Unit. She loads an average of N2,000 every 2 months.

That precisely on the 19<sup>th</sup> December, 2018, after she returned from the burial of her younger sister, she then discovered that her meter has an error reading on it. She immediately called the Defendant's Wuse Zone 4 Office on Phone No. 08150191919, they gave her the numbers of the Engineers covering her area, then she placed a call to the Engineer who told her he has been posted out and advised her to visit the Life Camp Distribution Unit and make a Complaint.

That on the 21<sup>st</sup> December, 2018 she visited the Life Camp Distribution Unit whereof the officers of the Defendant gave her a complaint form which she duly completed and submitted at the office. She was assured by the officers of the Defendant that the complaint will be attended to by the Defendant's engineers. She

said that she called the Defendant's officers severally but they failed to come.

While the Defendant's officers failed and/or neglected to resolve my complaint in spite of repeated calls, on the 29<sup>th</sup> January, 2019 upon the advice of her solicitor, she submitted a reminder letter to the Life Camp Distribution Unit of the Defendant. The acknowledgment copy of the reminder letter dated 28<sup>th</sup> January, 2019 is annexed herewith as Exhibit "EAO 1", and that Defendant failed and/or neglected to rectify the error on the prepaid meter.

On the 20<sup>th</sup> March, 2019, she returned from work to discover that some officers of the Defendant from Life Camp Unit and/or Jiwa outpost came to her residence while she was away and disconnected the power supply and took away the recleen wires. They also affixed an estimated bill no: 54130585265 for the sum of N8,955.77k at the burglary of her door. And that the said estimated bill number 54130585265 is different from her prepaid Meter No: 14201454759. Copy of the estimated bill number 54130585265 is annexed herewith as Exhibit "EAO 2".

That she promptly informed her solicitor who wrote a letter demanding that the Defendant reconnects the power supply. She delivered the said letter to the Life Camp Distribution office of the

Defendant and same was duly acknowledged by the Desk Officer. Copy of the said letter is annexed as Exhibit "EAO 3".

That she further inquired on when the reconnection will be made but the staff replied that it is the management decision and that they will reach out to her.

Further to paragraph 16 above, she had audience with one of the senior staff at Defendant's office who upon sighting the demand letter, went through the Defendant's computer and discovered that there are two prepaid meters in the name of "Chika Michael Nnamdi" with meter Nos: **14201454759** and **54130585265** both bearing my house address.

That she was shocked at the discovery as the only prepaid meter in her residence is meter no: **14201454759**, and also, the estimated bill which was affixed on her burglary by the officers of the Defendant on the 20<sup>th</sup> March, 2019 is with respect to pre-paid meter no. **54130585265**. She reasonably believed that the defendant illegally allocated a prepaid meter no **54130585265** with her son's name and residential address to another customer. That she recalled that her prepaid meter was not installed by the Defendant until 9<sup>th</sup> May, 2017 over one year inspite of her numerous visits to the Jiwa service center, and also, in one of

those numerous visits to Jiwa service center, the head of the service center one Madam Bridget, remarked that it was strange that the meter has not been installed as same was ready.

That the Defendant failed and/or neglected to reconnect the power supply to her residence. She suffered untold hardship due to the refusal of the Defendant to re-connect her residence. Most of the things she stocked in the fridge got damaged as there was no power.

That she commenced a civil suit against the Defendant with respect to this issue before the High Court of FCT in Suit No.CV/1462/19 on the 28<sup>th</sup> March, 2019. That while the case was pending in Court, the power supply to her house was reconnected and on the 19<sup>th</sup> May, 2019, she was alerted by her son who drew her attention and she saw that the prepaid meter has been automatically rectified, and that the balance of power unit that was on the prepaid meter prior to the error reading was also shown on the meter.

On the 7<sup>th</sup> June, 2019, she bought a Four thousand Naira (N4000) unit. She discovered from the payment tariff that was issued to her by the Defendant, that Two Thousand Naira (N2000) i.e. 50% was deducted as arrears, and that Defendant has since 7<sup>th</sup> June,

2019, been deducting 50% on every recharge that she made. That she applied and obtained the account statement on the prepaid meter no: 14201454759. The account statement was forwarded to her email by the Defendant through its officers at Wuse 2, Abuja on the 17<sup>th</sup> March, 2020.

That the account statement showed that on the 18<sup>th</sup> December, 2018, a total sum of Two Hundred and Eleven Thousand, Nine Hundred and Fifty Nine (N211,959.00) was unilaterally entered into her prepaid account as "old energy bill" by the Defendant. Account Statement is annexed herewith as Exhibit "EAO 3A". And that she did not consume the said "old energy bill", she reasonably believed that it was the action of the Defendant in unilaterally tampering with the prepaid meter to enter arrears in the prepaid account on the 18<sup>th</sup> December, 2018 that led to the error reading on the prepaid meter which occurred same date.

That her prepaid meter was installed on the 9<sup>th</sup> May, 2017 and there was no outstanding debit at the time the prepaid meter was installed, and that she have always recharged the prepaid meter until 19<sup>th</sup> December, 2018 when she discovered error reading on the meter. That her prepaid account had credit unit as at the time the prepaid meter entered error reading on or about 19<sup>th</sup>

December, 2019, and that the error reading was automatically rectified on or about 19<sup>th</sup> May, 2019 after the commencement of this suit.

That the credit balance as at the time before the unilateral interruption of the prepaid meter, was restored at the time it was rectified. That the 50% deduction on every recharge, commenced on the 7<sup>th</sup> June, 2019 after the prepaid meter was rectified by the Defendant, and that the 50% deduction continued inspite of her lawyer's letters requesting that the Defendant cease the deductions given that the matter was pending in Court. Copies of the letters served on the Defendant on this issue which are respectively dated; 19<sup>th</sup> March, 2020, 7<sup>th</sup> October, 2020 and 10<sup>th</sup> August, 2021 are annexed herewith as Exhibit "EAO 4", "4A"& "4B".

That this 50% deduction placed her on a very precarious state as she have been recharging beyond her budget and often times she run out of fund to recharge. This has also caused a serious rift between her and her tenant. That she consistently pursued her case in Suit No.CV/1462/19 before Justice A.O Ebong then sitting in Zuba and subsequently at Gwagwalada. There were about 11 different sittings of which she attended about 6 with her lawyer

who was present in all the sittings and she paid for the appearances, and that the case was consequently struck out upon the application of the defendant on the 25<sup>th</sup> April, 2022. The copy of the ruling is annexed herewith as Exhibit "EAO 5".

That the Defendant continued the 50% deductions on her recharge. Her solicitor wrote the Defendant to stop to no avail. Copy of the acknowledgment of her solicitors letters dated 27<sup>th</sup> February, 2023 is annexed herewith as Exhibit "EAO 6".

That owing to continued deduction on her account, she instructed her solicitor to commence the domestic remedies as ordered by the Court.

That on the 27<sup>th</sup> March, 2023, her lawyer filed a complaint on her behalf at Customer Complaint Unit of the Defendant. The acknowledged copy of the letter dated 24<sup>th</sup> March, 2023 is annexed herewith as Exhibit "EAO 7".

That the Defendant again failed and/or neglected to address any of the issues on the complaint. On the 9<sup>th</sup> June, 2023, she filed another complaint at the Forum Office. The complaint was entered as AFO/2023/06/C84. Copy of the complaint and the acknowledgment are annexed herewith as Exhibits "EAO 8" & "8A" respectively.

That on the 4<sup>th</sup> July, 2023, Abuja Forum Office wrote to her lawyer to notify him that the Defendant had admitted that the said old energy bill of N211,959.00 was a wrong debt transfer from account 99-4216-7383-01 with SPN 201164261. Copy of the letter is annexed herewith as Exhibit "EAO 9".

That was the first time the Defendant agreed the debt was a wrong transfer since December, 2018 when same was logged into my account. That on the 13<sup>th</sup> July, 2023, her lawyer while briefing her on the outcome of the Forum hearing notified her of the following facts which she verily believed him as there is nothing to suggest otherwise to her:

- a. That the Forum's office sat to hear her complaint on the 12<sup>th</sup> July, 2023;
- b. That the Defendant were ably represented at the hearing;
- c. That there were over 15 other complaints scheduled for hearing on the said date;
- d. That about 5 of those complaints who are customers that breached and/flouted the regulations against the Defendant were severally asked to pay heavy fines as penalties in favour of the Defendant;

- e. That the panel declined to award damages in favour of the claimant inspite of the defendant's admission;
- f. That her counsel notified the panel of her intention to appeal the refusal to award damages;
- g. The panel notified her lawyer that she can exercise her right of appeal within 10 working days of her receipt of the written ruling of the panel which will be ready within 5 days of the hearing.

That the extract of the ruling of NERC Forum office was issued to her through her lawyer on the 17<sup>th</sup> July, 2023. Copy of the said ruling is annexed herewith as Exhibit "EAO 10".

That being aggrieved of the NERC Forum's refusal to award monetary compensation, she instructed her lawyer to further appeal to the Commission. That on the 24<sup>th</sup> July, 2023, her appeal was filed at Commission's headquarters. Copy of the acknowledgment is annexed herewith as Exhibit "EAO 11".

That on the 11<sup>th</sup> September, 2023, her lawyer called to notify her that NERC through one of its staff Mercy whose phone number is 08138717480 requested for proofs of the disconnection to enable them attend to her appeal, and that she forwarded the copies of

the soft copies of the photographs which she took on the 21<sup>st</sup> March, 2019 showing the disconnection of the power supply to her house. Copies of the said pictures showing the part of the recleen wires dangling on the pole and other part cut off are annexed herewith as Exhibits "EAO 12A" – "12E".

That her lawyer forwarded same to the said mercy with a short note via whatsapp and she promised to revert to her lawyer. That on the 18<sup>th</sup> October, 2023, her lawyer forwarded her the whatsapp communication between him and the said staff of the Commission whereof he requested for the position of the NERC to be able to advise her accordingly. Copies of the said whatsapp communication annexed herewith as Exhibits "EAO 13A" – "13B".

That she verily believed the information given to her by her solicitor in paragraphs 52-55 above are true as the whatsapp communications were sent to her and also there is nothing to suggest otherwise to her, and that she printed Exhibits "EAO 12A" – "12E" and Exhibits "EAO 13A" - "13B" from her mobile phone 08035346427 with HP Printer using the internet provided by MTN via her mobile MTN nos. 08035346427. That she have used the said phone a long period preceding the time of printing the

documents and the phone and the printer have been working properly.

That the documents were printed in the ordinary course of using the phone and the printer. That the Nigerian Electricity Regulatory Commission by its letter dated 5<sup>th</sup> December, 2023 issued a resolution on her appeal. That the NERC turned down her appeal for compensation and stated that "kindly note that the powers to award compensation such as demanded in your appeal reside with the Courts." Copy of the NERC's letter is annexed herewith as Exhibit "EAO 14".

That she incurred a lot of legal expenses in pursuing her complaints against the Defendant at the High Court sitting in Zuba and Gwagwalada, various complaints filed at the Defendant's offices at Zone 4 and Wuse 2, filing of complaints at Forum Office and conducting the hearing and petition to NERC. The bill of charges issued and receipt of part-payment issued by her lawyer is annexed herewith as Exhibits "EAO 15" –"15A".

In line with law and procedure, Claimant filed their written address, wherein two (2) issues were formulated for determination to-wit;

- 1. Whether pursuant to the provisions of the Electricity Power Sector Reform Act, 2005 now repealed but saved by Electricity Act, 2023 and Regulations thereto, the Claimant herein is not entitled to compensations for the wrongful acts of the Defendant to wit: wrongful disconnection of power supply to her house, failure and neglect to address the complaints of the Claimant for over 4 years leading to avoidable expenses, trauma and hardship;***
- 2. Whether the principle "ubi jus ibi remediem" (where there is a wrong there is a remedy) is applicable in the extant case in view of the circumstances of this case as to entitle the Claimant to damages.***

It is the submission of learned counsel, that the power sector industry of which the Defendant is an active player is a highly regulated Sector. This is understandable given the pivotal role that the Sector plays in National Security and Economic Development. All the distribution companies including the defendant are licensees of the energy sector and by the terms of their license are mandated to operate within the ambit of the law. Section 119 of the Electricity Act, 2023 (previously Section 80 of

Electric Power Sector Reform Act, 2005). specifically mandates the regulatory agency to make regulations to ensure consumer protection standards. Any breach of these regulations by a distribution company is viewed as a great infraction as same impacts on the integrity of the industry.

Learned counsel submits, that the disconnection of power supply to the Claimant's residence aforesaid is in flagrant breach of the regulation that guides the operations of the Defendant: The claimant herein has copiously pleaded facts and circumstances leading to the disconnection of power supply to her residence. As at 2019 when this infraction occurred, the extant regulation that stipulates the procedure for the disconnection of power supply to a customer by any distribution company including the Defendant was Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedures for Electricity Services 2007. **Section 5(1)** was cited.

Learned counsel further submits, that the claimant is a metered customer. There was no outstanding debit on the prepaid meter Nos. 14201454759 which was installed in 9<sup>th</sup> May, 2017. Infact, the said meter has credit unit as at the date of disconnection.

Learned counsel contends, that the Defendant never issue a disconnection notice on the Claimant prior to her disconnection on the 19<sup>th</sup> March, 2019 as required by Section 5(1) f of the Regulation. There is no way the Defendant could have issued notice in the first place given that the bill was not consumed by the Defendant.

Learned counsel further submits, that the unlawful disconnection of a customer is a very serious issue hence the Regulation criminalizes same. Section 11 of the Regulation provides that any distribution company that disconnects a customer in violation of the regulation commits an offence and penalizes same with fine of N1,000 per day of the disconnection.

Learned counsel also submits, that it took the Defendant over 2years to address the issue of 50% deductions on the Claimant's recharge which admittedly by the errors of the Defendant. What is even worrisome is that this was inspite of over 5 different complaint letters severally served on the defendants within the period.

Counsel contends, that the conduct of the Defendant is highly reprehensible and indicates the apparent lack of responsibility by the Defendant in critically addressing the grievances of its

customer. Such contemptuous treatment of the Claimant thus making her suffer for conducts which are absolutely orchestrated by the neglect or mismanagement of the Defendant is truly deserving the sanction of this Honourable Court and Counsel graciously urge this Court to so hold.

It is the submission of learned counsel, that the Defendant's conduct is excessively arbitrary. The shabby treatment meted out against the Claimant by Defendant as well particularized in the affidavit in support of this case was very traumatizing. What is even worrisome is that inspite of the suit commenced against the Defendant and the avalanche of letters and complaints filed at the Defendant's offices by the Claimant's solicitor, yet the Defendant treated all these with great contempt. One wonders what the Defendant's attitude would be to ordinary Nigerians who are bereft of means to pursue redress.

The case of ***NIGERIAN BOTTLING CO. LIMITED VS. NGONADI (1985) 1 NWLR (Pt.4) at 739*** was cited.

Learned counsel refer this Honourable Court to the following Letter of Complaints annexed herein as Exhibits in support of the Claimant's case. They are:

- a. Letter of complaint dated 29<sup>th</sup> January, 2019 (Exhibit EAO1);

- b. Letter of complaint dated 21<sup>st</sup> March, 2019 (Exhibit EAO3);
- c. Letter of complaint of 19<sup>th</sup> March, 2020, (Exhibit EAO4);
- d. Letter of complaint of 7<sup>th</sup> October, 2020 (Exhibit EAO4A);
- e. Letter of complaint of 10th August, 2021 (Exhibit EAO4B);
- f. Letter of complaint of 27th February, 2023 (Exhibit EAO6);
- g. Letter of complaint of 23rd March, 2023 (Exhibit EAOT).

Counsel graciously urge this Court to take judicial notice of the facts as contained in these Exhibits which were duly received by the Defendant and the material facts as contained were never denied. The Defendant's response and handling of the Claimant's myriads and consistent complaints is highly contemptuous and smacks of reckless disposition to the travails of its customers. This is contrary to the letters and the spirit of the law and regulations that governs the operations of the electricity industry. It is further submitted, that this has a general economic implication and Counsel strongly urge this court to strongly sanction same.

Learned counsel further submits, that the Defendant's disconnection of the Claimant's power supply was unlawful. Also the "old energy bills" surreptitiously and unilaterally lumped into the Claimant's account leading to the 50% deductions on power purchase was admitted by the Defendant vide its letter to have been a wrongful transfer. Hence the Claimant was made to suffer

for the misconduct of the Defendant. This misconduct was not redressed for nearly 4years making the Claimant to incur legal expenses, discomfort and other inconveniences.

It is trite that wherever there is a wrong, there should be a concomitant remedy. The Claimant expended huge resources in pursuing her course to ensure she gets redress. She filed a suit in Court, paid legal fees, attended Court proceedings, and wrote over 6 complaints all due to the failure and/or neglect of the Defendant to address the complaints. Upon striking out of the case, she commenced and successfully exploited the three (3) stage domestic customer complaint resolution processes to wit: Costumer Complaints Unit (CCU), NERC FORUM and Appeal to NERC. The Claimant also deposed to facts of what transpired at the NERC FORUM's hearing, whereof the customers who defaulted against the Defendant were ordered to pay fines whereas the Defendant was shielded from paying compensation by the regulator.

Learned counsel aver, that it is the position of the Claimant that given that the Defendant is entitled to compensation when a customer is in breach, fairness demands that a customer should also be entitled to a corresponding compensation in the case of

gross negligence on the part of the distribution company as in this instance. The regulator only stated in its ruling that it lacked the power to award compensation against the Defendant. Counsel therefore respectfully submits, that given the peculiar circumstances of this case, the Claimant should be entitled to compensation and Counsel graciously urge this Court to so hold.

In conclusion, counsel most graciously urge this Honourable Court to resolve the sole question raised herein in favour of the Claimant and grant the reliefs sought herein.

Upon service of the Originating Summons on the Defendant, a counter affidavit of 3 paragraph/written address and a Notice of Preliminary Objection were both filed and consolidated.

In the said counter affidavit to the Originating Summons of the Claimant, Defendant denied paragraphs 5 – 15 of the affidavit in support therefore.

Defendant further contended that contrary to the Claimant's claims, her complaint to the Defendant included damages of 10 Million which is not a remedy available to a customer for a complaint arising from disconnection or other electricity distribution dispute.

That the Claimant's complaint to the Forum also included the claim for 10 Million as damages. That the Forum resolved all other complaints before it, but refused to accede to the claim for 10 Million as damages.

That the Claimant was informed that relief of damages is not available to a customer under the dispute resolution in the Nigeria Electricity supply Industry.

That the Claimant however appealed the decision of the Forum to the Nigeria Electricity Regulatory Commission (the Commission).

That the Commission upheld the decision of the Forum and remarked to the effect that the claim for compensation was not available.

That the Claimant's claim for damages or compensation in the nature of damages is a claim under the common law that is not available under the legislative framework for dispute resolution in the Nigeria electricity supply industry. That it is not the Defendant that asked the Claimant to commence her previous suit in breach of the law.

That upon receiving the Defendant's preliminary objection in the previous suit, the Claimant had the choice to withdraw the suit

and pursue the statutory internal dispute resolution mechanism, but she rather chose to follow the litigation through.

That the Claimant had simply followed the internal dispute resolution mechanism created by law for the resolution of his complaints in the initial suit, she would not have incurred any of the expenses for which she now claims damages against the Defendant.

That the Forum has granted the Claimant all the reliefs she is entitled to from her complaint in this suit and she is not entitled to any damages or compensation from the Defendant.

That the decision of the Forum which the Commission upheld in the Claimant's appeal to it already addressed reliefs 1-5 in the originating summons in this case. That the Claimant's only grievance against the Forum's decision is the Forum's refusal to award damages or compensation.

That the Claimant has now reworded her entire case (including matters the Forum resolved in his favour) against the Defendant; and presented same to this Honourable Court without allowing either the Forum or the NERC an opportunity to consider the exact case or reliefs she claims in this suit. That the Claimant did

not also approach the Commission for a review of its decision before filing this suit.

That it is in the interest of justice for this Honourable Court to dismiss this suit with costs against the Claimant.

In line with law and procedure, written address was filed wherein a sole issue was formulated for determination to wit;

**Whether having regards to the facts and circumstances of this case the Claimant has not disclosed his entitlement to the reliefs she seeks in this suit.**

It is the submission of learned counsel that, the Claimant relied for this suit on the Nigeria Electricity Regulatory Commission Connection and Disconnection Procedure for Electricity Services, 2007 to insist that she is entitled to damages in this suit. The Claimant has been unable to show which provision of the Regulation or any law that entitles her to damages.

Learned counsel submit that, the Claimant rightly stated, the power sector is a highly regulates sector. The sector is regulated by several enactments with the Electricity Act, 2023. The Act and the subsidiary legislations that regulate the sector provide for all matters in the sector including rights available thereunder. The

rights include the rights to seek redress and the remedies available as contained in the applicable regulations.

Counsel contended that the effect of the above is that the common law right that existed from the nature of the relationship between the Claimant and the Defendant has been enacted into statute. The law has been that where a common law right has been enacted into a statute, it is to the statutory provision so made and not the common law that a resort will be had for such right. In ***PATKUN IND. LTD. VS. NIGER SHOES LTD. (1988) 5 NWLR (Pt. 93) 138, 152-153 Paragraphs H-A*** the Supreme Court per Karibi-Whyte, JSC held:

***"It is well settled law that where a common law right has been enacted into statutory provision, it is to the statutory provision so made that resort must be had for such rights and not in the common law.***

***In IML/AIR CHARTERING NIG. LTD. VS. IMNL INTERNATIONAL MESSENGERS LTD. (1979)5 FRCLR. 113 the same argument as in this case was put forward successfully by the Defendant at the same state of the proceedings."***

***CAMEROON AIRLINES VS. ABDUL KAREEM (2003) 11 NWLR (Pt. 830) page 1 was cited.***

Learned counsel also submits that, in the respectful submission of counsel, the maxim *ubi jus ibi remedium* is completely inapplicable in this case. The Forum has granted is the Claimant the remedies available to her under the law for her allegations against the Claimant under the **NERC Customer Protection Regulation 2023** that provides for the customers right in cases as this. The remedies include directing the Defendant to expunge certain bills and be investigate the meter the Claimant complained about. The Commission also affirmed the grant of these reliefs. See the decisions of the Forum and the Commission attached as Exhibits "EAO10" and "EAO14" to the affidavit in support of the originating summons.

Learned counsel submit that, where the Claimant is left with no remedy but a case where the Claimant is insisting on remedies that are at best common law rights not available under the statute into which such rights have been enacted. The Claimant is bound to such rights as are available under the statute; she cannot resort to any other law, not even *ubi jus ibi remedium*, which will not apply to gift a Claimant a remedy to which he is

not entitled. In ***HARKA AIR SERV. NIG. LTD. VS. KEAZOR (2011) 13 NWLR (Pt. 1264) 320, 344-345 Paragraphs G – A***, the Supreme Court held per Adekeye, JSC thus:

***"The law is that where domestic/common law right has been enacted into a statutory provision, it is to the statutory provision that resort must be had for such right and not the domestic/common law, Hence an air passenger is not at liberty to choose as between the provisions of the convention and the domestic/common law for claims for damages against the carrier. Such claims have to be asserted only in accordance with and subject to the terms and conditions of the Convention and cannot be pursued under any other law."***

***DAMISA VS. U.B.A. PLC. (2005) 9 NWLR (Pt. 931) 526, 536 - 537 Paragraphs H-A***, the Court of Appeal per Alagoa, JCA clarified that ubi jus ibi remedium is not for the purpose of claiming a remedy which the case demonstrates to be unavailable to the Claimant.

It is the submission of counsel that, the relief for N2 Million as cost of litigation is untenable. The claim is effectively for recovering counsel's fee as manifest from the affidavit in support

of the Originating Summons, particularly Exhibits "EA015- 15A". Such a claim is nothing but outlandish. In ***GUINNESS NIGERIA PLC. VS. NWOKE (2000) 15 NWLR (Pt. 689) 135, 150 Paragraphs C- D the Court of Appeal Per IBIYEYE, JCA held thus:***

***"..It is also unethical and an affront to public policy to pass on the burden of Solicitor's fee to the other party..."***

***I am of the strong view that this type of Claim is outlandish to the operation of the principle of special damages and it should not be allowed. It is absolutely improper to allow the cross-appellant to pass his financial responsibility couched as "special damages to the cross-respondent."***

Learned counsel further submit that, it is noteworthy that the Claimant hinges her claim for damages or compensation on the fact that she spent money engaging counsel and the matter was struck forcing her to begin the process all over. She clearly had the opportunity of withdrawing the case after she was served the Defendant's preliminary objection but chose to continue on the wrong path until the case met its expected doom. Why will the

Claimant now insist that the Defendant pay her for her decision to file and pursue an incompetent suit? The Claimant did not act responsibly in the entire circumstances and cannot rely on her default in that regard to claim from the Defendant. In ***MAXIMUM INSURANCE COMPANY LIMITED VS. OWONIYI (1994) 3 NWLR (Pt. 331) 178, 195 Paragraph C was cited.***

Counsel contended that the Claimant's suit is premature in the entire circumstances. As already mentioned, the set of facts and relief that the Claimant has presented before this Court are broader than and so different from what she approached the CCU, the Forum and the Commission with. Thus, assuming a Claimant's referral of his complain to the CCU, the Forum and the Commission (without a further application to the Commission for the review of its initial decision) fulfills the administrative procedure for the resolution of an issue under the Nigeria Electricity Supply Industry, the present case has not met the condition.

Learned counsel also submit that, the Claim for N30Million compensation for instance was never before any of the above bodies. The declaratory and other reliefs sought were also never before those bodies. The effect is that this case was filed without

fulfilling mandatory conditions precedent and so discloses no cause of action. See ***NERC CUSTOMER PROTECTION REGULATION 2023, AND SECTIONS 113/51 of the Electrify Act, 2023.***

It is also the submission of counsel that, the Claimant's case herein is taken to be the same case she presented to the CCU, Forum and the NERC, then it must be that the case is an abuse of the process of court. This is so because all the declaratory and setting aside order that the Claimant seeks in reliefs 1-5 have been adequately taken care of in her favour by the decisions of the Forum and the Commission. It is therefore an abuse of court process for the Claimant to reopen those matters here again, particularly when his appeal to the Commission was only in respect of damages. See ***N.V. SCHEEP VS. M.V. "S. ARAZ" (2000) 15 NWLR (Pt. 691) 622 was cited.***

Counsel submit further that it has already been shown that the Claimant's case is not supported any iota of law. The pecuniary reliefs which he really filed this case to claim have been demonstrated to be devoid of any legal basis. This further makes even those reliefs an abuse of the process of court. See ***OJO & 3 ORS VS. ATTORNEY GENERAL OF OYO STATE & 3ORS***

***(2008) 15 NWLR (Pt. 1110) 309, 323 Paragraph G the Supreme Court per M. Mohammed, JSC.***

Counsel also submit that the Claimant's case is viewed, the case must fail. The failure to fulfill condition precedent makes the suit premature and thus disclosing no reasonable cause of action. Also, the entire reliefs constitute an abuse of the process of court. In ***AGWARANGBO VS. UNION BANK OF NIGERIA (2001) 4 NWLR (Pt. 702) 1, 16 – 17 Paragraphs H-A the Court of Appeal per Ekpe, JCA*** held that:

***"Failure of a Claimant to disclose his locus standi in an action is fatal to the case as failure to disclose any reasonable cause of action and the result is that the action stands to be dismissed by the court."***

***And in ARUBO & ORS. VS. AIYELERU & ORS. (1993) 3 NWLR (Pt. 280) 126, 142A-B, the Supreme Court per Nnaemeka - Agu, JSC held that:***

***"...Once a court is satisfied that any proceedings before it is an abuse of process, it has the power, indeed the duty to dismiss it".***

In conclusion, learned counsel submit that having regards to the facts and circumstances of this case the Claimant has not disclosed his entitlement to the reliefs he seeks in this suit. This Honourable Court is thus respectfully urged to resolve the sole issue in the affirmative and to dismiss this suit with substantial costs against the Claimant in the Defendant's favour.

Above represents the respective cases of the parties and the legal arguments before the Court.

### **Preliminary Objection**

As hinted from the preceding part of this Judgment, a Preliminary Objection was filed by the Defendant/Applicant.

I would, therefore proceed to consider same before returning to the main suit in line with procedure.

Defendant/Objector in the said Preliminary Objection sought for the following Orders, as follow:-

1. An Order dismissing this suit, or in the alternative An Order striking out the suit.
2. Such Further or other Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the objection is predicated include the following:

This suit as constituted is premature and discloses no reasonable cause of action thus depriving this Honourable Court of the requisite jurisdiction and competence to entertain and/or determine the suit.

It is in the interest of justice to uphold this objection and grant the reliefs sought.

In support of the application is a 4 paragraph affidavit deposed to by Abdulfatai Raji, a litigation officer in the firm of counsel to the Defendant/Objector. It is the deposition of the Defendant/Objector, that the Nigeria electricity supply industry is a specially regulated industry governed by the Electricity Act, 2023 (the Act) and other legislations made in that regard including subsidiary legislations made by the Nigeria Electricity Regulation Commission (NERC).

That the Act and the NERC Regulations established among others the procedure for resolution of customers grievance against distribution licensee such as the Defendant/Objector which includes an appeal to the NERC for its decision and the steps that must follow after that.

That the Act in particular requires a person that is dissatisfied with the decision of the NERC to apply to the NERC for the review of the decision; and if dissatisfied with the NERC's decision on the review, to appeal to the Federal High Court.

That in its decision of 5<sup>th</sup> December, 2023 against the Claimant's complaint by way of appeal against the Forum's decision denying the Claimant compensation, the NERC upheld the decision of the Forum.

That the Claimant has instituted this suit because it is aggrieved by the NERC's decision turning down her request for compensation.

That the Claimant did not apply to the NERC for the review of its above decision of 5<sup>th</sup> December, 2023 as required and did not also appeal to the Federal High Court.

That the Claimant did not exhaust the line of action and remedies available to her under the regime of enactments including the above legislations regulating her right to redress, before instituting this suit.

That that this Honourable Court is bereft of jurisdiction to entertain a suit filed in violation of mandatory condition precedent.

That it is in the interest of justice to allow this Objection.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

***"Whether the present suit is incompetent and consequently deprives this Honourable Court of the jurisdiction to entertain same."***

It is the submission of learned counsel, that the Claimant's case is premature as she has not fulfilled conditions precedent to filing this suit. In recognition of the requirement of the law for the resolution of her grievance against the Defendant, the Claimant pursued her case through the stipulated procedure to the point of appealing against the decision of the NERC Customers forum to the NERC. The Claimant has instituted this suit because it is aggrieved with the NERC's decision turning down his request for compensation.

The Electricity Act 2023 (the Act) makes detailed provision for steps to be taken by a party dissatisfied with the decision of the

NERC. By Section 51 (1) (i) of the Act, any person who is aggrieved by any decision of the NERC is to apply to the Commission for review of the decision. Furthermore, by Section 51(2) and (3) any person dissatisfied with the decision of the NERC on the review is to appeal to the Federal High Court. In essence, the Act intends that a further step after the decision of the NERC is an application to the NERC for the review of its decision and not a resort to litigation.

The law is now settled that where a special procedure is prescribed for the enforcement of a particular right or remedy, non-compliance with or departure from such a procedure is fatal to the enforcement of the remedy. In ***OWOSENI V FALOYE (2005) ALL NLR 398***, the Supreme Court held that where a statute prescribes a line of action for the determination of an issue, the aggrieved party must exhaust all the remedies in that law before going to court. ***ABU & 4 ORS. V. ODUGBO & 3 ORS. (2001) 10 SCM*** was cited.

This Honourable Court is respectfully urged to find, as already indicated, that the High Court of the Federal Capital territory is not a right forum for the ventilation of this case arising from a complaint founded upon the Electricity Act.

The express mention of the Federal High Court as the Court to which resort should be had after a determination by the NERC clearly established this position.

In conclusion; learned counsel submits, that the foregoing arguments clearly establish that the Claimants' case is irredeemably defective. The conclusion to be arrived at, therefore, is that the present suit is incompetent and the Court lacks the jurisdiction to entertain same. Consequently, the Defendant/ Objector is entitled to have the suit dismissed in the circumstances, or have it struck out at least. This Honourable Court is thus respectfully urged to resolve the sole issue in the affirmative and to uphold this objection as prayed.

On their part, Claimant/Respondent filed a 15 paragraph Counter Affidavit deposed to by Eunice A. Omesili, the Claimant in this suit. It is the averment of the Claimant/Respondent, that she initially commenced a civil suit against the Defendant with respect to this issue before the High Court of FCT in Suit No.CV/1462/19 on the 28<sup>th</sup> March, 2019.

That the Defendant Counsel herein was the same counsel that appeared for the defendant and raised the same preliminary Objection as the one raised herein.

That owing to the said preliminary objection, the case was consequently struck out on the 25<sup>th</sup> April, 2022. The copy of the ruling is annexed to her Originating Summons as Exhibit "EAO 5".

That in view of the ruling of the Court and Defendant's continued aggression, on the 27<sup>th</sup> March, 2023, her lawyer filed a complaint on her behalf at Customer Complaint Unit of the Defendant.

That the acknowledged copy of the letter dated 24<sup>th</sup> March, 2023 is annexed to the Originating Summons as Exhibit "EAO 7".

That upon the Defendant's refusal to address any of the issues on the complaint, on the 9<sup>th</sup> June, 2023, she filed another complaint at the Forum Office. The complaint was entered as AFO/2023/06/C84. Copy of the complaint and the acknowledgment are annexed herewith as Exhibits "EAO 8" and "8A" respectively.

That on the 12<sup>th</sup> July, 2023, Abuja Forum Office heard her petition and notified her lawyer that she can exercise her right of appeal within 10 working days of her receipt of the written ruling of the panel which will be ready within 5 days of the hearing.

That the extract of the ruling of NERC Forum office was issued to her through her lawyer on the 17<sup>th</sup> July, 2023. Copy of the said ruling is annexed herewith as Exhibit "EAO 10".

That being aggrieved of the NERC Forum's refusal to award monetary compensation, she instructed her lawyer to further appeal to the Commission.

On the 24<sup>th</sup> July, 2023, her appeal was filed at Commission's headquarters. Copy of the acknowledgment is annexed herewith as Exhibit "EAO 11".

That the Nigerian Electricity Regulatory Commission by its letter dated 5<sup>th</sup> December, 2023 issued a resolution on my appeal.

The NERC turned down her appeal for compensation and stated that "kindly note that the powers to award compensation such as demanded in your appeal reside with the Courts. Copy of the NERC's letter is annexed herewith as Exhibit "EAO 14".

That Contrary to the Defendant's paragraph 3 of the Counter-Affidavit, Section 51 of the Electricity Act, 2023 is not applicable to her case. That it is Section 113 of the Electricity Act, 2023 that is applicable to her case.

That the Nigerian Electricity Regulatory Commission made the Customer Protection Regulations 2023 (Regulation No. NERC-R-001-2023). Copy of the Regulation is attached as Exhibit "EAO 16". Schedule 3 is the Customer Complaints Flowchart.

In line with procedure, written address was filed wherein sole issue was formulated for determination to wit;

***"Whether in view of the circumstances of this case, the Claimant has complied with the condition precedents as to vest jurisdiction on the Court to determine this case."***

It is the submission of learned counsel, that the Defendant's Preliminary Objection is caught up by the doctrine of issue estoppel. It is trite that once an issue is determined between parties, either of the parties is estopped in raising same issue which has been tested by the Court in a previous decision. In ***OKOUGO & ORS VS. NWOKEDI & ORS (1997) LPELR-6288***) Court of Appeal per Akintola Olufemi Ejiwunmi, J.C.A stated thus: *"Issue estoppel occurs where an issue has earlier on been adjudicated upon by a Court of competent Jurisdiction and same issue comes incidentally in question in any subsequent proceedings between the same parties or their privies. This is*

*based on the principle of law that a party is not allowed to (i.e precluded from contending the contrary or opposite of any specific point which having been once distinctly put in issue has been certainly and solemnly been determined against him.....”*

The contention of the Defendant is that the claimant herein did not comply with Section 51 of the Electricity Act, 2023. With greatest respect to the erudite learned counsel to the Defendant, it is submitted that this position stems from total misconception of the purport of the said section.

Cursory perusal of this provision and other provisions of the Act, particularly Section 113 of the Act and the NERC's Customer Protection Regulations 2023 (Regulation No. NERC-R-001-2023) will lead to only one conclusion that Section 51 relates to issues and disputes relating to License issuance, amendment, renewal, revocation and tariff thereto. The marginal note which reads "appeal and rehearing", bears much to this point. The Defendant seems to be under the misapprehension that the use of the phrase "any other decision of the commission" in Subsection 1(i), makes customer's dispute with the distribution company to fall under the ambit of the subsection. It is submitted respectfully, that this cannot be the position given the provisions of

Subsections 1(a)-(h). The canon of interpretation of ejus dem generis rule when applied to the specific mentioned items under the subsections, discloses the intention of the draft man. In ***FAWEHINMI VS. IGP & ORS (2002) LPELR-1258***, the Supreme Court stated thus: *"ejus dem generis rule, helps to confine a construction of general words with the genus of special word which they follow in a statutory provision or in a document."* It is therefore submitted that it will be too remote to ascribe to the Section 51, the interpretation herein canvassed by the Defendant.

The defendant's objection on the claimant's case clearly evinces its misunderstanding of the case of the Claimant. There cannot be a valid claim under Section 51 without the commission being a party to that suit as that case is purely an appeal against the decision of the Commission. A cursory perusal of the question for determination and the reliefs on the Claimant's Originating Summons clearly show that the Claimant's case is not an appeal against the decision of the Commission else the Commission would have been a necessary party. It is trite that it's the Claimant's case as set out in the writ that determines the jurisdiction of the Court.

In conclusion; it is the submission of learned counsel, that it is graciously urged on the Honourable Court to dismiss this preliminary objection with substantial cost on the grounds that:

a. The objection is caught up by issue estoppel;

**Alternatively:**

b. Section 51 of the Electricity Act, 2023 is inapplicable to the Claimant's case;

c. The Claimant has complied with the internal settlement mechanism as provided in **Section 113(4), (5) & (7) of the Electricity Act, 2023 and NERC's Customer Protection Regulations 2023 (Regulation No. NERC-R-001-2023).**

On their part, Defendant/Objector filed Reply on Points of Law to the Claimant's Reply filed on 11<sup>th</sup> June, 2024 in Response to the Claimant's Objection.

Claimant's argument in paragraph 1.0 and 2.1.1 of her written address is that section 51 of the Act is concerned with the issue of electricity licensee and that the section relates to certain "issues and disputes". The simple response to such contention is

that nothing can be farther from the truth. The contention is manifestly reading the said section upside down.

The section is definitely not about licensees. The section begins with the expression "any person aggrieved, not any licensee aggrieved. Also, the section clearly does not provide for the jurisdiction of the Commission and so the contention that it relates to certain "issues and disputes" is completely off the mark. The section, as stated in the marginal note, rather concerns "rehearing and appeal" which clearly means a rehearing of the decision of the Commission and an appeal against such rehearing.

The section further goes on to provide for the nature of the Commission's action that the rehearing and appeal relates to. The list include the different and unrelated nature of actions and decisions in section 51(1) (a) - (h); and concludes in 51(1) (i) with or "any other decision of the Commission". Clearly, "any other decision of the Commission" is an omnibus provision to accommodate any other decision of the Commission not contained in paragraphs (a) - (h). The expression is plain and unambiguous and should be given its plain and ordinary meaning. Excel Plastic ***IND. LTD. VS. FBN PLC. (2005) 11 NWLR (PT.***

**935) 59 (CA), and ORHIUNU V. F.R.N. (2005) 1 NWLR (PT. 906) 39** were cited.

The ejus dem generis rule does not apply in this case and Section 51 of the act applies fully to the case.

The ejusdem generis rule cannot therefore apply to limit the scope or meaning of the clear and ambiguous provision "any other decision of the Commission". Section 51(1) of the Act used the words "or" "any other decision" to relate paragraph (i) thereof to other paragraphs occurring before it. It is a complete misconception to think that paragraph (i) should be construed to imply similarity with any other item in Section 51(1) in the circumstances. **KABIRIKIM VS. EMEFOR (2009) 14 NWLR (PART 1162) 602, 623 - 624 C - C** per Onnoghen, JSC was cited.

It is clear that there is no conflict whatsoever between Section 51 and Section 113 of the Act. The draftsman clearly intends that any other decision of the Commission in Section 51(1)(i) means exactly what it says; and is not limited by any part of section 51. Such decision therefore includes any decision of the Commission whether made in the course of its resolution in Section 113 or any

other provision of the Act, or indeed any other law for that matter.

It is therefore idle to argue that because the Act does not state Section 113 to be subject to Section 51, the former section must be considered without reference to the latter. No law requires that a subsequent section of an enactment must be made subject to a previous section before both sections can be read together. If the legislature had intended for Section 113 to operate independent of Section 51, it would have clearly so stated with such expressions as "notwithstanding Section 51" or similar expressions in Section 113. This Honourable Court is therefore respectfully urged to discountenance the arguments at paragraphs 2.1.5 - 2.1.7 of the Claimant's reply on point of law as they are twisted and incorrect.

The foregoing arguments clearly establish that the Claimants' case is irredeemably defective. Accepting the Claimant's line of argument will not only mean that she will be allowed to avoid the final remedy in the Act for the resolution of her issue, but will also mean that she will be allowed boycott the Federal High Court that has been given exclusive jurisdiction to hear and determine cases arising from any decision of the Commission. This Honourable

Court is thus respectfully urged to resolve the sole issue in the affirmative and to uphold this objection as prayed.

**COURT:-**

I have read and assimilated the arguments of the Defendant/ Applicant as carefully captured in the Preliminary Objection and the reaction of the Claimant/ Respondent to the said objection on the issue of jurisdiction.

Indeed, Jurisdiction is the life wire of the court as a legal institution established for the determination of the rights of parties.

Whether a court has jurisdiction or not does not lie in the speculative or conjectural mind of the court or parties either.

The determination of jurisdiction is not a game of chess where there is always the chance element. Since it is not opened to guess, it is not one of the aspects of our law whether the court should use the objective or subjective test.

On the contrary, it is a matter of raw and hard law which is either donated by the constitution or by the enabling statute or both.

See ***AFISI VS. LAWAL (1992) 1 NWLR (pt. 217 at page 366, paragraphs D – H.***

A court is generally competent to adjudicate over a matter only when the conditions precedent for its having jurisdiction are fulfilled. A court will be competent when:-

- (i) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other;
- (ii) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction;
- (iii) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are nullity, however well conducted and decided. Above was stated in the cases of ***MINISTER OF WORKS & HOUSING VS SHITTA (2008) ALL FWLR (pt. 401) 847 at 863 – 864 paragraph G – C;***

***MADUKOLU VS. NKEMDILIM (1962) 1 A NLR 581 (SC)***

Learned counsel for the Defendant/Applicant who sought for an Order dismissing the instant suit, contended that the same counsel and Claimant instituted suit No. **FCT/HC/CV/1462/2019** and a similar Preliminary Objection was raised and determined, wherein the said suit was struck-out for the reason contained therein in the ruling dated the 25<sup>th</sup> April, 2022.

For the same reason, the instant Suit No. **FCT/HC/CV/723/2023** is being challenged.

I have already dealt with the factor determining jurisdiction.

Bearing in mind the existence of the ruling of my brother, Ebong, J., which ruling has not been challenged, this suit, falls within the purview of abuse of Court Process.

Abuse of Court Process, which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of ***N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A).***

***When then does abuse of court process arise?***

Supreme Court of Nigeria, ***per Ogbuagu JSC*** in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D - E*** stated thus;

***"There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to include the following;-***

***a. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.***

- b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.***
- c. Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent’s notice.***
- d. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.***
- e. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.***

It is clear that the said ruling delivered by my brother still subsists, same having not been appealed against.

The option opened to the Claimant/Respondent is to either appeal the ruling or comply with the ruling.

Having not complied and or appealed the said ruling, but decided to filed the instant suit which is being challenged on the same grounds, the said ruling delivered by my brother which is alive, constitute the "spanner" on the engine hence the "vice"

An abuse of process remains an abuse no matter how well clothed and costumed.. I refuse to be cajoled to see it for anything more than an exercise in futility.

I most importantly wish to restate the already established position of law, that for a court of law to assume jurisdiction over a matter, the said subject matter of the case shall be within jurisdiction, and there shall be no feature in the case which constitutes a vice and which prevents the court from exercising its jurisdiction. See ***MADUKOLU V NKEMDILIM & ORS (1962) 2 SC NLR 341.***

I disagree with the spirited effort made by learned counsel for the Claimant/Respondent to mislead this Court. Indeed the arguments of learned Claimant's counsel could not have passed the scrutiny of the legal lenses of this court, unnoticed.

Accordingly, I decline to assume jurisdiction to entertain the present Suit No. **FCT/HC/CV/723/2023**.

Consequently, same is hereby struck-out.

***Justice Y. Halilu  
Hon. Judge  
23<sup>rd</sup> January, 2025***

## **APPEARANCES**

D.T. Nwachukwu, Esq. – for the Claimant.

A.U.J. Udoh, Esq. – for the Defendant/Applicant.