

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 4TH DAY OF FEBRUARY, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/869/2020

MOTION NO. M/11205/2020

BETWEEN

**SENATOR AMEH EBUTE, CON
[Trading under the name and styled:
'AmehEbute& Associates']**



**CLAIMANT/
RESPONDENT**

AND

**ABUJA ELECTRICITY DISTRIBUTION
COMPANY [AEDC] PLC.**



**DEFENDANT/
OBJECTOR**

RULING

The claimant - a lawyer and a former Senate President of the Federal Republic of Nigeria - instituted this action on 20/1/2020 vide writ of summons. The case of the claimant is that he is the Principal Partner of AmehEbute& Associates, a Law Office which occupies Suites numbers B14-B20 at Boya Place Plaza, AmehEbute Street, Wuye District, Abuja since 2015. The defendant placed the office spaces on estimated electricity bills from 2015 until 28/8/2016 when his office spaces were given a prepaid metre with number 02150525083.

On 19/8/2019, the defendant, without any notice or permission, disconnected the electricity supply of the Plaza on the ground of non-payment of electricity bills by the Plaza without taking cognizance of the offices in the Plaza that have prepaid metres like his office. His office was without electricity supply from 19/8/2019 to 7/9/2019 when the electricity supply to the Plaza was reconnected. The defendant disconnected the electricity supply without complying with the Connection and Disconnection Procedures for Electricity Services, 2007. The defendant's conduct caused him a huge embarrassment and damage to his hard earned reputation in the eyes of his clients and the public. As a result of the acts of the defendant, he has suffered untold hardship which affected the several activities in his Law Office for 18 days.

The defendant came back on 5/11/2019 and disconnected electricity supply to the Plaza. He served a demand letter dated 5/11/2019 to the defendant to pay him the sum of N50 million as compensation or general damages for unlawful disconnection of his electricity supply. The defendant refused or neglected to comply or reply to the letter, hence this action. The claimant's reliefs are: [i] a declaration that the act of the defendant in disconnecting his electricity supply on 19/8/2019 and 5/11/2019 despite the fact that he has a functional prepaid metre is unlawful, illegal and contrary to the Connection and Disconnection Procedures for Electricity Services, 2007; [ii] the sum of N100 million as general damages; [iii] 10% interest on the judgment sum until final liquidation of same; and [iv] an order of perpetual injunction.

Upon being served with the originating processes, the defendant filed a notice of preliminary objection on 27/10/2020 praying the Court for an order dismissing the suit or in the alternative, an order striking out the suit. The grounds of the objection are:

1. This suit as constituted is premature and no reasonable cause of action exists in the claimant's favour to institute the suit.
2. This Honourable Court lacks the requisite jurisdiction and competence to entertain and/or determine the suit.
3. It is in the interest of justice to uphold this objection and grant the reliefs sought.

AbdulfataiRaji, a litigation officer in the law firm of The Essence Legal, filed a 4-paragraph affidavit in support of the preliminary objection along with the written address of Anietie U. J. UdohEsq. In opposition, the claimant filed a written address on 9/11/2020, which he titled: *Reply on Points of Law*. Anietie U. J. UdohEsq. filed a reply on points of law on 11/11/2020. At the hearing of the application on 12/11/2020, Mr. Udoh adopted the defendant's processes; while Joshua Elaigwu Moses Esq. adopted the claimant's processes.

In the affidavit in support of the preliminary objection, it is deposed that:

1. The Nigerian electricity supply industry is governed by the Electric Power Sector Reform Act, 2005 [hereinafter referred to as "*the Act*"] and other legislations made in that regard including the Nigerian Electricity

Regulatory Commission Customer Complaints Handling: Standards and Procedures, 2006 [hereinafter referred to as "*NERC Regulation*"].

2. The NERC Regulation prescribes the line of action as well as remedies available to customers who may have any grievance [like the claimant's grievance] against an electricity distribution company [like defendant].
3. The Act and NERC Regulation established among others the Forum for Customer Complaints [hereinafter called "*the Forum*"] which is a special tribunal or body empowered to entertain and resolve complaints by electricity customers against electricity distribution companies.
4. The Act and NERC Regulation require that an aggrieved customer must first have his complaint against an electricity distribution company determined by various bodies including the Forum before he can resort to litigation.
5. The claimant did not exhaust the line of action and remedies available to him under the NERC Regulation before instituting this suit.

In the objector's written address, Anietie U. J. Udoh Esq. formulated one issue for determination, which is whether the present suit is incompetent and consequently deprives this Honourable Court of the jurisdiction to entertain same.

The learned claimant also posed one issue for determination in his written address, to wit: whether the Nigerian Electricity Regulatory Commission

[NERC's] Customer Complaints Handling: Standards and Procedures, 2006 creates a condition precedent that a customer must fulfil before he can institute an action in court.

The above issues are similar. To my mind, the issue for resolution is:

Whether the Court has jurisdiction to entertain this suit as presently constituted in view of the claimant's failure to exhaust the internal dispute resolution mechanisms stipulated in the provisions of the NERC Regulation.

It is not in dispute that section 96[1] of the Act, i.e. Electric Power Sector Reform Act, 2005 empowers the Nigerian Electricity Regulatory Commission [NERC] to *"make regulations prescribing all matters, which by this Act are required or permitted to be prescribed or which, in the opinion of the Commission, are necessary or convenient to be prescribed for carrying out or giving effect to this Act."* Section 96[2] thereof provides that regulations made in terms of subsection [1] of this section may provide for any or all of the following - *"[j]customer related matters, such as complaint handling procedures, practices concerning customers with difficulties paying bills, connection, and disconnection procedures"*.

Pursuant to the above provisions of section 96[1] & [2][j] of the Act, NERC made the NERC Regulation for the handling of complaints by customers of electricity distribution companies otherwise called Distribution Licensees. By virtue of section 3 subsection [5] of the NERC Regulation, all complaints by a

customer “*must be lodged firstly, in writing, with the Customer Complaints Unit of the Distribution Licensee.*” Section 3 subsection [9] thereof provides that: “*Any customer dissatisfied with the outcome of the handling of his complaint[s] by the Customer Complaints Unit or encounters delay/failure in the handling of such complaint[s] may refer his complaint[s] to the Forum.*” The Forum is established under section 4 of the NERC Regulation. For clarity, section 4[1] of the NERC Regulation provides that:

“The Commission shall establish a Forum for hearing and resolving customer complaints in the operational area of every Distribution Licensee at a date set out in the Order of the Commission.”

The NERC Regulation further provides in section 12 for right of appeal from the decision of the Forum. Section 12[1] reads:

“Any person or organization aggrieved by a decision made by a Forum may seek an appeal against such a decision to the Commission within a period of ten working days from the date of the decision, in such form and manner as may be directed by the Commission.”

In the light of these provisions, learned counsel for the defendant argued that it is only after the decision of the Commission [i.e. NERC] that an aggrieved customer can proceed to court or employ any other procedure which the NERC Regulation recognizes. He posited that the position of the law is 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. Where a statute prescribes a remedy, an aggrieved party must first exhaust that remedy before recourse to court; and where he fails to exhaust the remedies statutorily available to him, his action is premature and does not give rise to a cognizable cause of action.

Mr. Anietie U. J. Udoh referred to several cases in support of his submission including Owoseni v. Faloye [2005] All NLR 398 and Abia State Transport Corporation & Ors. v. Quorum Consortium Ltd. [2004] 1 NWLR [Pt. 855] 601.

He further contended that the courts have held that the failure of the claimant to exhaust the statutory remedy or line of action in the NERC Regulation is fatal and renders the suit filed in default incompetent. Learned defence counsel called my attention to the following unreported decisions, certified copies of which were sent to the Court:

- i. The decision of my learned Brother, My Lord, H. B. Yusuf in *Suit No. FCT/HC/CV/1590/2017: Kenneth Nsur & Anor. v. Abuja Electricity Distribution Company* delivered on 18/10/2019.
- ii. The decision of my learned Brother, My Lord, Peter O. Affen in *Suit No. FCT/HC/CV/2276/2018: Mr. Yusuf Shuaibu Ahmed v. Abuja Electricity Distribution Company Plc.* delivered on 2/7/2019.
- iii. The decision of my learned Brother, My Lord, A. O. Ebong in *Suit No. FCT/HC/CV/1216/2015: Max Ogar v. Abuja Electricity Distribution Company* delivered on 22/10/2015.

- iv. The decision of my learned Brother, My Lord, Phoebe M. Ayuaof the Federal High Court in *Suit No. FHC/LKJ/CS/3/2015: Gabriel Oloruniyi Modeyin v. Abuja Electricity Distribution Company Plc.* delivered on 13/4/2016.

Learned counsel for the objector concluded that the claimant's suit is premature as he has not fulfilled the conditions precedent to the institution of the suit.

On the other hand, the learned claimant argued that the NERC Regulation did not expressly or impliedly create a condition precedent that must be followed before a person can invoke the jurisdiction of the court. It is not expressly written that a customer shall not apply to the court unless he has first exhausted all the remedies provided under it. According to the claimant, to say otherwise will amount to importing into the provision what is not written in it. The procedures laid down in the NERC Regulation are merely optional and not mandatory; they are alternative remedies and not conditions precedent. He further argued that the fact that the procedures in the NERC Regulation are not mandatory can be seen from section 13 thereof, which provides:

"Nothing contained in these Regulations shall affect the rights and privileges of the customer under any other law for the time being in force, including those under the Consumer Protection Council Act No. 66 of 1992."

Based on this provision, the claimant argued that sections 6[6][b] and 257 of the 1999 Constitution [as amended] is a law for the time being in force and they confer rights and privileges on every Nigerian to seek redress in a court of competent jurisdiction. Therefore, nothing in the NERC Regulation should affect the customer's right to invoke the jurisdiction of the court to determine his rights and obligations.

Ameh Ebute Esq. reasoned that the case would have been different if there is a provision in the NERC Regulation that expressly bars a customer from approaching the court until and unless he has exhausted the remedy provided therein. An example of such provision is in section 88[3] of the Nigerian Communication Act which reads: "*A person shall not apply to the court for Judicial Review unless that person has first exhausted all other remedies provided under the Act.*" He submitted that it is where this type of provision exists in a law that it will be right to say that the law has created a condition precedent that an aggrieved person must first exhaust all the remedies before embarking on litigation.

The claimant further submitted that the decisions of Their Lordships of this Court and of the Federal High Court relied upon by the objector's counsel are not good precedents for the instant case because those decisions did not consider section 13 of the NERC Regulation. He therefore urged me not to be persuaded by the decisions because if Their Lordships had considered the said section 13 of the NERC Regulation, their decisions would have been

different. He also posited that the case of Owoseni v. Faloye and the others relied upon by the defence counsel were cited out of context and therefore inapplicable as they border on ouster of jurisdiction of courts and not on condition precedent to be fulfilled before invoking the court's jurisdiction.

Now, the first argument of the claimant is that the NERC Regulation did not create a condition precedent as it is not expressly written that a customer shall not apply to the court unless he has first exhausted all the remedies provided for under the Regulation. The case of Sunday Eguamwense v. James I. Amaghiezemwen [1993] 9 NWLR [Pt. 315] 1, cited by the learned counsel for the objector, aptly stated the position of the law on the need for an aggrieved person to exhaust all domestic [or internal] statutory remedies or procedures before he can invoke the jurisdiction of the court by resorting to litigation. In that case, the dispute was in respect of the traditional title of Amaghiezemwen of Benin. The plaintiff/respondent obtained judgment at the High Court, which was affirmed by the Court of Appeal.

At the Supreme Court, the defendant/appellant raised for the first time the issue of the jurisdiction of the High Court to entertain the respondent's claims. Appellant argued that since a statute, that is the Traditional Rulers and Chiefs Edict No. 16 of 1979 of Bendel State provided for the enforcement of the respondent's rights, he ought to have exhausted the remedy provided under the statute and that the court had no jurisdiction to hear the case except by way of review. Mr. Osifo, the learned counsel for the respondent -like the

claimant in the instant case - relied on the jurisdiction of the High Court and the judicial powers of the Courts respectively in sections 236 and 6[6][b] of the 1979 Constitution, which are similar to sections 257 and 6[6][b] of the 1999 Constitution [as amended].

I pause to remark that as rightly pointed out by Anietie U. J. Udoh Esq. in his reply on points of law, no provision of the said Traditional Rulers and Chiefs Edict of Bendel State expressly stated that an aggrieved party cannot approach the court unless he exhausts the procedure in the legislation.

The Supreme Court allowed the appeal. *His Lordship, Belgore, JSC [as he then was]* stated the position at *page 25, D-F* as follows:

“Where a statute prescribes a legal line of action for the determination of an issue be that issue an administrative matter, chieftaincy matter or a matter of taxation, the aggrieved party must exhaust all the remedies in that law before going to Court. The provisions of ... Traditional Rulers and Chiefs Edict [No. 16] 1979 [Bendel State] are clear as to steps to take. The plaintiff seemed to have jumped the stile as he avoided all avenues that availed him and went to the High Court. I am of the view that he did the wrong thing indeed ...

The provision of S. 236 of 1979 Constitution is not an open gate for all High Courts to assume jurisdiction in all subjects. All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in Court.”

Also, in the case of Owoseni v. Faloye [supra]; [2005] 14 NWLR [Pt. 946] 719, the Supreme Court restated the principle that where a statute prescribes a legal line of action, the aggrieved party must exhaust all the remedies in that law before going to court.

In relation to the internal or domestic dispute resolution procedure or mechanism stipulated in the NERC Regulation, which is under focus in the instant suit, Their Lordships, *Hon. Justices H. B. Yusuf, P. O. Affen, A. O. Ebongand P. M. Ayua*, in the cases relied upon by objector's counsel, respectively held that claimant must first exhaust the internal mechanism for resolution of customer complaints provided in the NERC Regulation before he can approach the court with his complaint or grievance. The result of failure to first exhaust the internal mechanism for resolution of the complaint provided in the NERC Regulation is that the suit is premature and incompetent. The respective suits were struck out as the courts lacked the jurisdiction to entertain them.

The learned claimant urged me not to follow the decisions of my learned Brother on the ground that Their Lordships did not consider or take into account the provision of section 13 of the NERC Regulation, which I had earlier quoted. It was contended that nothing in the NERC Regulation should affect the customer's right under the Constitution to invoke the jurisdiction of the court to determine his rights and obligations.

In his reply on points of law, learned counsel for the defendant submitted that section 13 of the NERC Regulation only restated or enacted the general provision of the law that the determination of the dispute by the prescribed authority does not affect or take away the right of an aggrieved party to still approach the court. I agree with the view of the defence counsel. I need to add that the said section 13 cannot be construed to avoid the necessity of first having the dispute resolved by the relevant bodies as stipulated by the NERC Regulation, i.e. first, by the Customer Complaints Unit, followed by the Forum and then the Commission. I am not persuaded by learned claimant's submission that the procedure stated in the NERC Regulation for the resolution of complaints by aggrieved customers of Distribution Licensees or any dispute arising from their services is optional.

In my respectful opinion, the makers of the NERC Regulation will not in one hand provide for detailed internal or domestic resolution mechanism of complaints and disputes in sections 3-12 thereof and in section 13 on the other hand make provision to undermine or subvert the intention for the resolution mechanism. The effect of the interpretation suggested by the claimant will be that the makers of the NERC Regulation intended to undermine the domestic resolution mechanism by providing that an aggrieved party can go to court without the necessity of first utilizing the procedure provided for resolution of complaints or disputes. Such interpretation will be absurd and, as rightly posited by Mr. Udoh in his reply on points of law, the court ought not to construe a legislation to produce an inconsistent, absurd or incoherent result.

I am therefore persuaded that the decisions of Their Lordships represent the correct position of the law; notwithstanding that section 13 of the NERC Regulation was not expressly or specifically mentioned. I find no reason to depart from the said decisions of my learned Brothers.

Finally, the above decision finds support in the recent case of **Comag Steel and Const. Company Ltd. v. Enugu Electricity Distribution Company Plc. [unreported] Appeal No. CA/E/100/2020 delivered on 4/11/2020** cited by the defendant's counsel, a certified copy of which was forwarded to the Court. In that case, the Court of Appeal considered the NERC Regulation on the internal resolution mechanism provided for resolving the complaints of customers of Distribution Licensees. My Lord, *Hon. Justice Abubakar Sadiq Umar, JCA* [who delivered the Leading Judgment] stated the position of the law in these words:

“The Appellant has not shown that he addressed a letter to the Customer Complaints Unit of the Respondent or a further complaint to the forum in the event of its dissatisfaction with the handling/non-handling of his complaint by the Customer Complaints Unit. I am of the firm view that the series of letters written by the Appellant does not satisfy the clear and express provisions of Section 3[5] and [9] of the NERC Customer Complaints Handling Standards and Procedures. The law is trite that where a statute has stipulated a condition precedent, as in this case, it behoves the person involved, to follow the procedure prescribed and fulfil the condition precedent. ...”

CONCLUSION

The conclusion of the matter is that the preliminary objection has merit and is hereby sustained. I hold that the claimant's failure to first exhaust the internal mechanism provided in the NERC Regulation for resolution of his complaint before instituting this suit renders the action premature and incompetent. In consequence thereof, the Court lacks the jurisdiction to entertain this suit. Accordingly, this suit is struck out. The parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. Joshua Elaigwu Moses Esq. for the claimant/respondent.
2. A. U. J. Udoh Esq. for the defendant/applicant.