

**IN THE HIGH COURT OF THE FEDERAL CAPITAL  
TERRITORY  
HOLDEN AT ABUJA  
ON MONDAY 7TH FEBRUARY 2022  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI  
SITTING AT COURT NO. 8, MAITAMA, ABUJA**

SUIT NO:

FCT/HC/CV/2704/2019

MOTION NO:

M/10184/2020

**BETWEEN:**

**BARR. S. O. ACHUGAMUONYE ... .. CLAIMANT**

**AND**

**ABUJA ELECTRICITY DISTRIBUTION } COMPANY ... ..  
DEFENDANT }**

**(AEDC)**

**RULING**

The Claimant, a law practitioner of fifteen (15) years post-call at the material time, is a customer of the Defendant, residing in an apartment situate in Kubwa District, Abuja. His grievance with the Defendant is not unusual. He alleges that he was being slammed with arbitrary and outrageous bills for electricity he has not

consumed in the premises he occupies as a tenant. In order to seek judicial remedy for the alleged unlawful charges being imposed on him by the Defendant, he instituted the instant action, vide **Writ of Summons and Statement of Claim** filed on **21/08/2019**, whereby he claimed declaratory and other reliefs against the Defendant.

The Defendant has however sought to terminate the Claimant's suit in limine, on the contention that the same is premature. As such, she filed the instant motion on notice, on **28/09/2020**, whereby she sought an order of this Court dismissing or striking out the suit for failure to disclose any reasonable cause of action and for want of jurisdiction of this Court to entertain the same.

I had proceeded to consider the instant application, together with the totality of the processes filed to support and oppose the same. I had also carefully considered and taken due benefits of the totality of the arguments canvassed by learned counsel on both sides in the written submissions filed to support and oppose the application.

It is considered pertinent to restate upfront, the trite position of the law that in determining an application challenging the competence of a suit and the Court's jurisdiction to entertain the same, on grounds of lack of reasonable cause of action; the Court is entitled to recourse only to the Statement of Claim filed by the Claimant, which, at this stage of the proceedings, is deemed admitted by the Defendant. This trite point is reinforced by the Supreme Court in People's Democratic Party Vs. Timipre Sylva [2012] 13 NWLR (Pt. 1316) 85 @ 121, where it was held, per **Rhodes-Vivour, JSC**, as follows:

**"Jurisdiction to entertain a Suit is resolved by scrupulous examination of the writ of summons, the Statement of Claim and the reliefs claimed. No other document should be examined. Where the originating process is an originating summons which serves as the Plaintiff's pleadings (Statement of Claim); jurisdiction would be resolved by examining**

**only the originating summons, the reliefs contained therein and the affidavit filed in support."**

See also The Attorney General of the Federation Vs. The Attorney General of Lagos State [2017] 8 NWLR (Pt. 1566) 20 @ 46.

This being the case, the Court has advised itself, in determining the instant application, not to be swayed by; and indeed is disentitled from considering facts as deposed in the affidavits filed by the two sides to support and oppose the same.

I now proceed straight to the substance of the Defendant's grievances against the instant suit. Learned counsel for the Defendant had contended that the instant suit is premature for the simple reason that the Claimant failed to fulfill certain conditions precedent to activating the suit. Learned counsel hinged his contention on the **Nigeria Electricity Regulation Commission (NERC) Customer Complaints Handling: Standards and**

**Procedures, 2006 (the Complaints Procedure)**, made pursuant to the provision of s. **96(1) and (2)** of the **Electricity Power Sector Reform Act, 2005**; that articles 3(5), (9) and (10) thereof require a customer who has any complaint must at first lodge the same with the Customer Complaints Unit of the Distribution company; and where the customer is dissatisfied with the handling of his complaint by the Unit, shall refer the complaint to the Forum established under the Regulation as a specialized tribunal to consider and determine his complaint. If further dissatisfied with the decision of the Forum, the consumer is to further appeal to the NERC and await its decision on the matter before he can proceed to Court or employ any other procedure.

Learned Defendant's counsel further submitted that in the present case, the Claimant failed to exhaust the Consumer Complaints Procedures before approaching this Court for redress.

Learned Defendant's counsel submitted 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, relying on the Supreme Court authority of Owoseni Vs. Faloye [2005] All NLR 398; Abia State Transport Corporation & 2 Ors. Vs. Quorum Consortium Ltd. [2004] 1 NWLR (Pt. 855) 631 (CA).

Now, in the case at hand, I had examined the Claimant's Statement of Claim. As I had summarized earlier on, his case centres round allegations and complaints of outrageous and arbitrary electricity bills and hidden charges imposed on the rented apartment in which he lives. It is pleaded in paragraph 25 of the Statement of Claim that the Claimant wrote to the Defendant complaining of outrageous billing and hidden charges. According to him, the letter of complaint dated 5th June, 2019 was submitted to the Defendant on 7th June, 2019. It is further pleaded in paragraph 35 of the Statement of

Claim that whilst the Claimant was awaiting a resolution of his complaint, the Defendant slammed him with another outrageous bill of over N56,000.00 in July, 2019.

However, rather than see through the process of resolving the complaint he lodged at first, the Claimant proceeded to file the instant action on 21/08/2019, with the believe, according to paragraph 59 of his Statement of Claim, that **"it is only this Court that can assuage and ameliorate the sufferings of the Claimant by ordering the Defendant to pay the Claimant some damages."**

So, from the state of the Claimant's pleadings on record, it is apparent that he did not undertake the procedure outlined in articles 3(5), (9) and (10) of the **NERC Complaints' Procedure**, before filing the instant action.

For his contention that the instant suit was filed prematurely, learned Defendant's counsel had cited a number of decisions of my learned brothers of this Court and of the Federal High Court, which I consider to be

applicable to the facts and circumstances of this case. I am profoundly persuaded that these decisions have settled the position of the law on the issue at hand. I find particularly fascinating and compelling; and as such apply to the instant case, the decision of **Affen, J** (now **JCA**), in Mr. Yusuf Shuaibu Ahmed Vs. Abuja Electricity Distribution Co. Plc. - (Unreported Suit No. FCT/HC/CV/227/2019, delivered on 02/07/2019. In that case, His Lordship considered an objection on similar grounds as those in contention in the case at hand; and in his characteristic lucidity, held, inter alia, as follows:

**"We take our bearing from the provision of s. 96(1) and (2) (i) of the Electric Power Sector Reform Act No. 6 of 2005 ("EPSRA) which authorizes the Nigeria Electricity Regulatory Commission (NERC) to make regulations inter alia in respect of "customer-related matters, such as complaint handling procedures..., pursuant to which powers the Customer Complaint Handling: Standards and**



**Procedure of 2006 (hereinafter "NERC Regulations") were made "for the handling of customer complaints". Article 3 of the said NERC Regulations enjoins electricity distribution licensees (such as the Defendant herein) to establish Customer Complaints Unit to handle complaints from customers, as well as a Forum Office(s) in their operation area to resolve any complaints that could not be successfully handled at the Customer Complaints Unit. Article 3(10) clearly provides that a complaint may be referred to the Forum by a distribution licensee or the customer where they are unable to agree on a resolution...**

**The Claimant's contention that the dispute resolution process...is not a statutory condition precedent properly so-called but a mere advice is overly misconceived. The Customer Complaint Handling (Standards**

**and Procedure) Regulations...is undoubtedly subsidiary a legislation made pursuant to s. 69(2)(i) of the EPSRA which has the force of law, and this Court is enjoined to take judicial notice of it without further assurance. See s. 122(2) (a) of the Evidence Act 2011, Adene Vs. Dantunbu [1994] 2 NWLR (Pt. 328) 509 at 523D and Mayake Vs. Lagos City Council [1977]7 SC81 at 92.**

**It is well ingrained in our jurisprudence that an aggrieved party who institutes legal proceedings without first resorting to and/or exhausting local or administrative remedies available to him has not satisfied the preconditions for access to court. see Adesola Vs. Abidoye [1999] 14 NWLR (Pt. 637) 28 at 58, Owoseni Vs. Faloye [2005] All FWLR (Pt. 284) 220 at 234....**

**What appears in rather bold relief in the instant case is that the Claimant acted prematurely in instituting this action in court without complying with the administrative dispute resolution procedure for venting his grievance i. e. escalating his complaint to the Forum House ... Judging by the Customer Complaint Handling (Standards and Procedure) Regulations made pursuant to s. 96(2) (i) of the EPSRA ... the Court's jurisdiction can only be invoked after an aggrieved customer has availed himself of the prescribed complaint resolution procedure 'in the order indicated'. The Claimant has clearly jumped the gun and the conclusion is inescapable that this action as presently constituted is premature, preemptive and bad for being incompetent. See Okoro Vs. Executive Governor of Imo State [2001] 51 WRN 171 and Oladoye Vs. Administrator,**

**Osun State [1996] 10 NWLR (Pt. 476) 38 at 41.**

**The necessary corollary is that a feature which prevents the court from exercising jurisdiction has reared its ugly head in these proceedings [see Madukolu Vs. Nkemdilim supra]."**

I fully adopt my learned brother's reasoning in the decision reproduced in the foregoing and I hereby apply the same in toto in this suit. I make reference also to the unreported decisions of Max Ogar Vs. Abuja Electricity Distribution Company Suit No. FCT/HC/CV/1215, delivered on 22/10/2015, by A. O. Ebong, J. See also unreported Suit No. FHC/LKJ/CS/3/2015 - Gabriel Olorunyomi Modeyin Vs. Abuja Electricity Distribution Company, delivered by P. M. Ayua, J.

Again, the decision of my Learned Brother in Ahmed Vs. AEDC cited supra has clearly responded to the Claimant's learned counsel's contention that the **NERC Regulations** are mere procedural law which goes to the procedural jurisdiction of this Court and which could be waived. That line of argument is clearly misconceived and unsupportable.

On the basis of the foregoing analysis therefore, it becomes clear that this suit must terminate in limine, the same having been commenced in violation of one of the

pillars of jurisdiction of the Court to entertain the same, in that a condition precedent to the Court assuming jurisdiction to entertain the same was not fulfilled. See Ohakim Vs. Agbaso [2010] 19 NWLR (Pt. 1226) 172 at 243-244.

It is needless to proceed with the other grounds of the application. As such, and without any further ado, I must and I hereby strike out the suit.

**OLUKAYODE A. ADENIYI**  
**(Presiding Judge)**  
**07/02/2022**

**Legal representation:**

**Godswill D. Nwani Esq.** (holding brief for **Jude Echefu, Esq.**) for the Claimant/Respondent

**Marvin Omorogbe, Esq.** (with **Mary Warribo, Esq.**) (holding brief for **Aniete Udoh, Esq.**) for the Defendant/Applicant