

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

11TH DAY OF MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/3579/2021

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

JUSTINA PAWA CLAIMANT

AND

ABUJA ELECTRICITY DISTRIBUTION
COMPANY (AEDC) DEFENDANT

JUDGMENT

The Claimant's Originating Summons is dated the 22nd day of December, 2021. It was served on the Defendant on the 3rd day of February, 2022. The Defendant was served with Hearing Notices severally but failed, refused and or neglected to enter an appearance or file a Defence to the action.

On the 14/02/2023, the Claimant moved her Originating Summons. The questions posed for determination are:

- (1) Having regard to the clear and lucid and unambiguous provisions of the Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedures for Electricity Services 2007, whether the Defendant is statutorily empowered to disconnect electricity supply from the Claimant's address or premises situate at No. 11, **Oke** Agbe Street, Garki, Abuja on the same day the Electricity Bill was delivered on the Claimant.
- (2) Whether the Defendant is statutorily empowered to disconnect electricity supply from the Claimant's address and or premises without notice.
- (3) Whether the Defendant is statutorily empowered to disconnect electricity supply from the Claimant's address and or premises without first giving the Claimant a written warning that the electricity

supply shall be disconnected if payment is not made by the payment date.

- (4) That if the answer to Question 1 is in the negative, whether the Defendant has any power, right or authority to withdraw, repudiate, hinder, hamper, impair, **affect**, tamper, whittle down or otherwise take any step or action calculated at disconnecting electricity supply from the address and or premises of the Claimant.
- (5) If the answer to Question 2 is negative, whether the act of the Defendant in disconnecting electricity supply from the Claimant's address and or premises is unlawful, illegal, condemnable and reprehensible.
- (6) If the answer to Question 3 is in the negative, whether the action or the decision of the Defendant in failing and or refusing to reconnect electricity supply back to the address and or premises of the Claimant despite letters of complaint and demand

dated 22/11/2021 and 25/11/2021 respectively written on behalf of the Claimant is not capricious, oppressive, insensitive, reprehensible, unjustifiable and ultra vires the powers of the Defendant.

The Claimant seeks the following reliefs:

- (1) A Declaration that by virtue of the provisions of the Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedure for Electricity Services 2007, the Defendant is not statutorily empowered and or enabled to disconnect electricity supply from the Claimant's address and or premises situate at No. 11, Oke Agbe Street, Garki 2, Abuja on the same day that the Electricity Bill was delivered at the premises.

- (2) A Declaration that the Defendant has no power, right or authority to withdraw, repudiate, hinder, hamper, impair, affect, tamper with or otherwise take any step or action calculated at disconnecting electricity

supply from the Claimant's address and or premises without notice.

(3) ₦875,379.80k as special damages against the Defendant.

(4) ₦30 Million as general damages against the Defendant.

(5) ₦15 Million as exemplary and or aggravated damages.

Learned Claimant's Counsel relies on the 25-paragraph Affidavit filed in support of the Originating Summons. In the said Affidavit deposed to by Theophilus Onojetah, Facility Manager of No. 11, Oke Agbe Street, Garki 2, Abuja belonging to the Claimant.

That the aforesaid property is fully metered as the three apartments have their respective prepaid meters. That officials of the Defendant visited the said premises for

the purpose of carrying out routine checks and maintenance in respect of the prepaid meters in the premises.

That Defendant through its officials during their routine checks and maintenance, have not for once raised concerns, observations and or objections as to the functionality of the said prepaid meters in the premises.

That Claimant had always purchased electricity units vide the various platforms provided by the Defendant. Copies of prepaid receipts are Exhibits A1 - A16.

That on 19/11/2021, some officials of the Defendant said to be from Gark 2 Regional Office came to the above named premises and **delivered** Off Service Orders and Electricity Bills attached thereto in respect of the premises and immediately proceeded to disconnect electricity from the premises. Exhibits B1 - B6 are copies of the said Service Orders and Electricity Bills.

That the Claimant has 10 working days from the date of the Electricity Bills were delivered, to make payment to avoid disconnection. That the period between the payment date and the date for disconnection is not less than 3 months.

That Defendant did not give the Claimant any written warning that the electricity shall be disconnected if payment is not made. That he was shocked to receive Off Service Orders and Electricity bills in respect of a premises that is fully metered with functional meters and electricity units purchased in respect of same.

The Claimant complained and demanded immediate reconnection written on her behalf by her solicitors dated 22/11/2021. The Defendant failed to react and on 25/11/2021, the Claimant's Solicitors wrote a Final Demand Notice.

The Claimant was not supplied electricity for eight (8) days as a result of the disconnection. That Claimant

resorted to using generating set as an alternative source of power from 19/11/2021 to 26/11/2021 when the Defendant came to reconnect.

That the Claimant incurred ₦875,379.80k being money expended on running the generators throughout the said 8 days. Exhibits D1 - D6 is an Invoice of the cost of running generators.

The disconnection was done without compliance with the relevant provisions of the Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedures for Electricity Services 2007. That the disconnection foisted on the Claimant a situation of hardship and complete helplessness.

That after repeated complaints and demands vide letters, telephone conversations and meetings, the Defendant on 26/11/2021 sent officials to the Claimant's premises where they opened and checked all the prepaid meters in the premises after which they reconnected

electricity supply back to the Claimant's premises after 8 days of total blackout without any explanations whatsoever and or apologies to the Claimant.

The Claimant engaged the services of Elixir Attorneys for the purpose of filing this action. The Invoice dated 20/12/2021 was issued to Claimant.

The Claimant's Counsel adopted his Written Address filed in support of the Originating Summons.

Learned Counsel argued the questions posed for determination seriatim. Learned Counsel relies on Regulation 5 (1) (a) - (f) of the Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedures for Electricity Services 2007 submitting that it guides and or regulates disconnection of electricity supply by distribution companies.

That Defendant failed, refused and or neglected to follow the statutorily laid down procedures for

disconnection of electricity supply as its officials proceeded to disconnect supply from the Claimant's premises on the same day the bills were served on the premises. The Defendant did not allow for days grace written on the bill before proceeding immediately to disconnect.

That Defendant acted *malafide* when it disconnected Claimant's supply in the aforesaid premises without any prior notice or warning. That the failure or refusal to reconnect supply in the light of Exhibit C1 is oppressive, unfair, insensitive and a flagrant disregard of the statutory provisions of the Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedures for Electricity Services 2007.

That all steps or actions taken or purportedly taken by the Defendant particularly on the 19th of November 2021 wherein its officials disconnected electricity supply from the address and or premises of the Claimant is manifestly

unlawful, unconscionable, despicable, insensitive, ineffective, null and void and of no effect whatsoever.

Learned Counsel urges the Court to grant all the reliefs claimed.

The issue for determination in my view is: **Whether the disconnection of electricity in the Claimant's premises at No. 11, Oke Agbe Street, Garki 2, Abuja was done in accordance with the extant rules and regulations.**

The Claimant filed and relied on a 25-paragraph Affidavit. The Defendant was served but neglected, failed and or refused to file a Counter Affidavit.

It is trite law that an Affidavit not controverted is deemed admitted. The Claimant's Affidavit evidence is deemed correct.

The Defendant also failed to file and enter its defence despite repeated Hearing Notices. The Defendant by

deciding not to call evidence put nothing on his own side of the balance in spite of the evidence called by the Claimant.

The law is trite that whenever on an issue, evidence comes from one side and is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance... So when evidence goes one way, the onus of proof is discharged on a minimal proof.

The law relied upon by the Claimant is Section 5 (1) of the Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedures for Electricity Services 2007. It states:

“A distribution company may only disconnect supply to a customer's address when the customer has not paid the amount correctly billed for that supply address by the relevant payment date provided the
(a) payment date is clearly shown on the bill,

- (b) payment date is at least 10 working days from the date of delivery of the bill to the supply address provided by the customer, which is acceptable to the distribution company,*
- (c) payment date has not been superceded by a subsequent payment date issued to the same customer for the same supply address,*
- (d) period between the payment date and the date of disconnection is not less than 3 months,*
- (e) distribution company has verified from its records that the bill has not been paid, and*
- (f) distribution company has given the customer a written warning that the electricity supply shall be disconnected if payment is not made by the payment date and the warning contains*
 - (i) the date of its delivery to the supply address or any other address provided by the customer, and*
 - (ii) a telephone number and or address acceptable to the distribution company*

where the customer can request assistance for paying the outstanding bill.”

I have earlier reproduced/summarised the Affidavit evidence of the Claimant. The said evidence is sacrosanct. It is impeccable and uncontroverted.

The Claimant **was** not served Notice or Warning. The Claimant was disconnected from electricity the very day the bill was served. That the disconnection was done without compliance with the relevant provisions of extant laws. That Claimant was disconnected from electricity from 19/11/2021 to 26/11/2021.

It is clear that the Defendant did not follow due procedure in disconnecting electricity from the premises in question.

Claimant claims ~~₦~~875,379.80k for special damages. For a claim in the nature of special damages to succeed, it

must be proved strictly. The Court is not entitled to make its own estimate on such claims.

It denotes those pecuniary losses which have crystallised in terms of cash and value before the trial. The requirement of the law is that special damages must be specifically pleaded and particularised in a manner clear enough to enable Defendant know the origin or nature of the special damages being claimed against him.

Special damages must not only be specifically pleaded with relevant particulars but must be strictly proved with credible evidence, without such proof no special damages, though pleaded can be awarded.

See **GRI vs. SEIRAFINA NIG. LTD (2008) 2 NWLR (PT. 1070) p.1.**
OSUJI vs. ISIOCHA (1989) 3 NWLR (PT. 111) p. 623.

The Claimant failed to specifically plead and particularise the said special damages sought in the pleadings. The Claimant also failed to strictly prove

same. The claim for special damages (Claim 3) accordingly fails.

The Claimant also claims exemplary and or aggravated damages, Claim 5. Exemplary damages may be awarded only in 3 classes of cases:

- (a) Where servant of the government behaves in an oppressive, arbitrary or unconstitutional way.
- (b) Where the conduct of the Defendant was calculated to profit from the tort in the sense that any compensation payable would be less than any profit which might be made by the Defendant.
- (c) Where status expressly permitted same.

See **UKACHUKWU vs. UZODINMA (2007) 9 NWLR (PT. 1038) 167.**

In the circumstance of this case, compensatory damages is adequate. The Claimant has not proved same. Merely asserting oppression is not enough. The Claimant must prove that Defendant actually oppressed her.

Aggravated damages on the other hand may be awarded if the Court wishes to express disapproval of the Defendant's behaviour as a result of which the Claimant has suffered more than would normally be expected. In such situation, such damages may be awarded when a defendant persists in denying liability despite clear evidence to the contrary and warnings by the Judge.

See **NWANKWO vs. AJAEGBU (1978) 8 LRN 230.**

Exemplary damages convey a punitive element. The facts of this case do not fall into such category. Claim 5 also fails.

Cost of action is not akin to claim for legal fees. They are guided by different rules. Cost of action as in this case is **guided** by the Rules of Court.

In totality, Claims 1, 2, 4 and 6 succeed. Judgment is entered in favour of the Claimant against the Defendant as follows:

1. It is declared that by virtue of the provisions of the Nigerian Electricity Regulatory Commission's

Connection and Disconnection Procedures for Electricity Services 2007, the Defendant is not statutorily empowered and or enabled to disconnect electricity supply from the Claimant's address and or premises situate at No. 11, Oke Agbe Street, Garki 2, Abuja on the same day that electricity bill was delivered at the premises.

2. It is further declared that the Defendant has no power, right or authority to withdraw, repudiate, hinder, hamper, impair, affect, tamper with or otherwise take any step or action calculated at disconnecting electricity supply from Claimant's address and or premises without Notice.
3. ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) only as general damages.
4. The cost of action is assessed at ₦50,000.00 (Fifty Thousand Naira) only.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
11/05/2023

Parties absent.

G. E. Ejemai, Esq. for the Claimant.

T. O. Ogini, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
11/05/2023