

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE E. D. SUBILIM

DATE: 9TH DECEMBER, 2025

SUIT NO: NICN/ABJ/250 /2023

BETWEEN:

FESTUS SANMI ONIFADE

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CLAIMANT/RESPONDENT

AND

- 1) NATIONAL UNION OF
ELECTRICITY EMPLOYEES
- 2) ABUJA ELECTRICITY
DISTRIBUTION COMPANY
- 3) TRANSMISSION COMPANY
OF NIGERIA
- 4) NIGERIA ELECTRICITY
REGULATORY COMMISSION

DEFENDANTS/APPLICANTS

REPRESENTATION:

F. S Onifade, Esq; for the Claimant

**Chukwuyen Atere, Esq; with Anthony O. Itehjere, Esq; for the 1st
Defendant**

**Victor Olaitan, Esq; with E. G Okafor, Esq; and Chibuike Ukah, Esq;
for the 2nd Defendant**

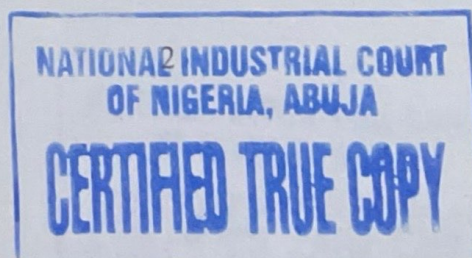
**J. N Chinemelu-Onyekwuluje, Esq with Blasson C. Oparaocha, Esq ;
for the 4th Defendant**

U. M. Abdulrahman, Esq; for the 3rd Defendant



RULING/JUDGMENT

1. The Claimant commenced this suit by way of Originating Summons dated and filed on 28th day of September 2023, subsequently amended on the 2nd day of February 2024. The Originating Summons is brought pursuant to Order 3 (1) (b) NICN (Civil Procedure) Rules, 2017; Section 6 (6) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and the inherent jurisdiction of this Court. The Originating Summons seeks for the determination of the following questions:
 1. Whether by virtue of Section of 31(6) of Trade Union Act, of 2005 as Amended and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the Defendants does not provide essential services thereby excluding them from embarking on industrial action?
 2. Whether by virtue of the Section 31(6) of Trade Union Act, of 2005 Amended, and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the Defendants are not prohibited, forbidden, restrained from embarking on any form of industrial action either by themselves or their agents or privies.
 3. Whether by the previous strike action of the Defendant and their threatened action does not amount to breach of the Claimant's Consumer Rights, therefore illegal, unlawful null and void.
2. It is upon the determination of the issues raised above that the Claimant urged the Court to grant the following reliefs;
 - a. **A DECLARATION** that, the two (2) days warning Strike embarked upon by the Defendants on the **5th and 6th September, 2023** as a result of the Nigeria Labour Congress strike is illegal, unconstitutional, unlawful, null and void.
 - b. **AN ORDER** of this Honourable Court restraining the Defendants whether by themselves, her privies, assigns by whatsoever name called from joining, participating or embarking on any industrial action either by themselves or as proposed by the Nigeria Labour Congress whatsoever.



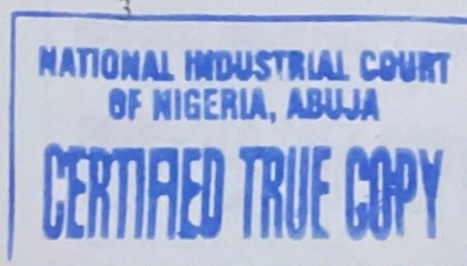
- c. **AN ORDER** of this Honourable Court mandating and compelling the Defendants to pay the Claimant jointly and severally the sum of **5,000,000.00 (five Million Naira)** only for breached of the Claimant's right to supply of electricity as a result of the industrial action of the Defendants on the 5th and 6th September, 2023.
- d. **AN ORDER** of this Honourable Court directing and mandating the Defendants jointly and or severally **N1,000,000.00 (One Million Naira)** only as Cost of this suit.
- e. Such further orders as this Honourable Court may deem fit to make in the circumstance.

CLAIMANT'S CASE

3. Claimant's case is that he is a Legal practitioner and a consumer of the essential services of the 2nd Defendants. That claimant and Defendants live within the jurisdiction of this Court. He averred that on 31st day of August, 2023, the Nigeria Labour Congress declared a two-day nation - wide strike action to be held between the 5th and 6th of September 2023 and that consequent upon the foregoing, the 1st Defendant directed its members, including those who work with the 2nd to 4th Defendants to proceed on the said proposed strike action. That the Nigerian Labour Congress on Tuesday, 26th day September, 2023 issued a notice for another strike action, scheduled to commence on 3rd day of October, 2023. However, this strike action was later shelved. It is equally the case of the Claimant that the Defendants are prohibited by the relevant laws from embarking on Strike actions because they provide essential services and that the disruption of electricity/power supply caused by the Strike action has caused him to suffer incalculable damages, affecting his mental health and means of livelihood. He therefore urged this Court to award him ₦5,000,000.00 as compensation and ₦1,000,000.00 as cost of prosecuting this suit. A claim which the Defendants denied and also challenged the standing of the Claimant to invoke the jurisdiction of this Court.

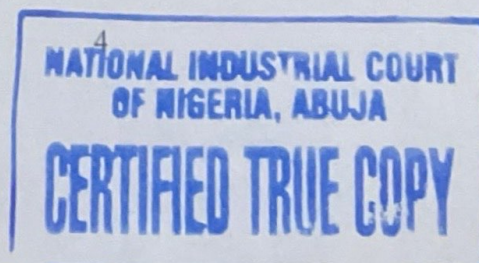
CLAIMANT'S WRITTEN SUBMISSION IN SUPPORT OF ORIGINATING SUMMONS.

4. Equally filed alongside the Originating Summons is a written address wherein Counsel on behalf of the Claimant adopted the



questions/reliefs already stated on the face of the Originating Summons and argued them jointly as the issues for determination in this suit.

5. Learned Counsel begin this argument by stating that there are statutory conditions stipulated under the law for there to be a valid and lawful industrial action in Nigeria. Even though the right to strike is an integral part of the right of workers which draw its strength from the Constitutional Right to associate with other persons to form or join trade unions for the advancement or protection of their interests. The statute has placed a ceiling to certain categories of workers from striking due to the nature of services rendered by these workers. He went on to cite Section 31(6) of the Trade Unions Act, Law of Federation, (2004) as amended and posited that the legal implication of the above provisions is that for a strike to be lawful, the important condition is that the worker or union must not be engaged in the provision of essential services 36(6)(a) (sic). Counsel also cited the First Schedule of the Trade Disputes Act, 2004 as amended wherein essential services is defined. Furthermore, the Freedom of Association Committee of the Governing Body of the International Labour Organization defines "essential services" in its strict sense as "services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. That the Committee further listed the following as essential services: the hospital sector; electricity services; water supply services; the telephone service; the police and armed forces; the fire-fighting services; the prison services; the provision of food for pupils of school age and the cleaning of schools; and the traffic control. Similarly, it is the withdrawal of these services on account of industrial dispute which is prohibited by law that gives the Claimant the right to approach the court for redress. Counsel equally contended it is also noteworthy that the concept of essential services connotes the idea that certain services are of fundamental importance to the common existence of the community and that the disruption of such services will have harmful effects to the society in general. The public interest in uninterrupted operation of these services, therefore, outweighs the consideration that workers should

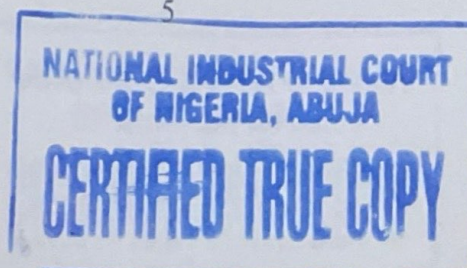


be free to withdraw their labour, and that special provisions should apply to them, thus preventing industrial action from being taken at all or imposing restrictions upon its conduct. That Section 2 (a) of First Schedule of the Trade Disputes Act, 2004, also bring the Defendants within the definition of workers who render essential services and therefore forbidden from embarking on strike.

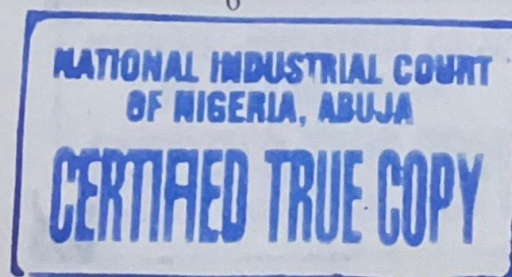
6. Counsel posited that it is the law that word of statutes will be ascribe their meaning. Particularly that the wordings are not ambiguous or have any other meanings which can be deciphered from the provision of the law. He placed reliance on the case of **Chief Obafemi Awolowo V. Alhaji Shehu Shagari & Ors [1979]6-9 S.C. 37** and stated that it is crystal clear from the wording of the above statute that its intention as regards the industrial action in respect of essential services which the Defendants engages in provision such services. He therefore submits that the Defendants by virtue of the above-mentioned laws engage in essentials services and therefore prohibited from embarking on industrial action in Nigeria and he urge this Court to so hold. On the whole, it is abundantly clear from the foregoing that the Defendants does provides essential services and are forbidden from embarking on industrial action. He further urge the Court to hold that the cannot join any affiliate or the Nigeria labour congress or any other group in embarking on industrial action.
7. 1st Defendant in response filed a twenty-three paragraph Counter affidavit deposed to by one Engr. Kolade Stephen, a Zonal Organizing Secretary (Liason) of the 1st Defendant.

1ST DEFENDANT'S WRITTEN SUBMISSION IN OPPOSITION TO THE CLAIMANT'S AMENDED ORIGINATING SUMMONS

8. Also, alongside the Counter Affidavit the 1st Defendant filed a written address and Counsel on its behalf formulated four issues for the Court's determination viz;
 1. Whether by virtue of section 31(6) of the Trade Union Act, of 2005 Amended, and Section 4, 18, 42 of the Trade Dispute Act, 2004 and first schedule of the Trade Dispute Act, the

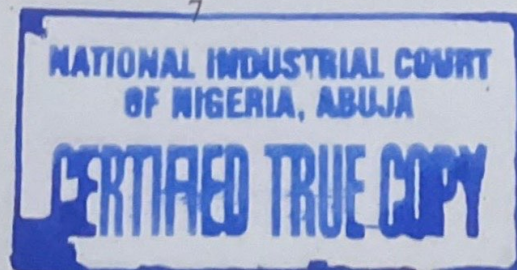


- Defendants does not provide essential services thereby excluding them from embarking on industrial action?
2. Whether by virtue of section 31(6) of the Trade Union Act, of 2005 Amended, and Section 4, 18, 42 of the Trade Dispute Act, 2004 and first schedule of the Trade Dispute Act, are not prohibited, forbidden, restrained from embarking on any form of industrial action either by themselves or their agents or privies.
 3. Whether by the previous strike action on the Defendant and their threatened action does not amount to breach of the Claimant's Consumer rights, therefore illegal, unlawful null and void.
 4. Whether the Claimant is entitled to the grant of the reliefs sought.
9. It is the position of Counsel that the three issues raised by the Claimant were argued together in the Claimant's Written Address as One issue. However, the 1st Defendant raises Issue 2 as to whether the Claimant is entitled to the reliefs sought. That the Claimant hinged his argument on Section 31(6) of the Trade Union Act. The Claimant has copiously donated the provisions of the Act in his Written Address. The plank of the Claimant's argument is that the 2nd Defendant being essential service provider, its staff cannot partake in a strike action. And thus, by the Claimant's allegation that the 1st Defendant mobilized its members to join the Nigeria Labour Congress strike of the 5th and 6th of September, 2023 causing the disruption of electricity supply in Abuja led to the Claimant's alleged suffering of mental health and inculcatory damage. Thus, the Claimant's reliefs including Five Million damages for breach of right to electricity supply and One Million as cost of filing this Suit. Counsel contended that after a perusal of the Claimant's affidavit and arguments as contained in his Written Address he submits that the Claimant's action is misplaced, self-seeking and a total waste of judicial time. More so, the Claimant by his affidavit is unable to prove facts of strike of the 5th and 6th of September, 2023 except for Newspaper Report Exhibits AEDC 2 and 4. It is settled law that Newspaper reports are not generally admissible as evidence of what



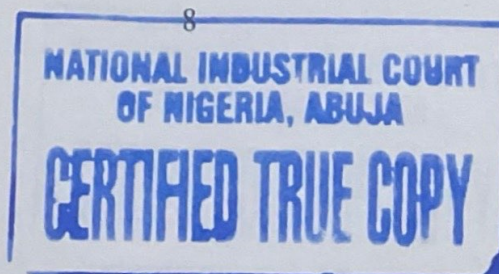
fact is contained therein. He placed reliance on the case of **Lawrence v. Olugbemi & Ors [2008] LPELR 45966(CA)**. Also, the Claimant's Exhibit AEDC 1 which is a payment receipt from Buypower.ng to AEDC has no reference to the Claimant or alleged Claimant's Meter NO. 04169525062. Thus, Counsel submitted that AEDC 1 was procured for the purpose of this Suit. Besides, the said receipt issued on the 4th day of September, 2023 was not bought in anticipation of light for all the days of the Month. Thus, it was highly impossible for the Claimant to have suffered incalcutory damage affecting his mental health and means of livelihood for the disruption of electricity supply in Abuja for the 5th and 6th September, 2023 as alleged by the Claimant.

10. Furthermore, Exhibit AEDC 3 is an alleged 1st Defendant's Mobilization for Indefinite Nationwide Strike dated the 13th day of November, 2023 in respect of an event of the 14th day of November, 2023. This Exhibit cannot obviously be for what was reported of the 5th day of September, 2023. It is our submission that the Claimant has no legally admissible documents in support of his claims. He urge this Court to so hold. Moreover, the 1st Defendant has deposed that the Claimant's Suit is self-seeking and an attempt to gag Labour rights. The Claimant's affidavit is bereft of any fact of certified medical report of the Claimant suffering mental health due to the disruption of electricity supply in Abuja of the 5th and 6th September, 2023. More so, the Claimant failed to present any letter of Complaint to the 2nd and 4th Defendants of incalcutory damage and mental health due to the disruption of electricity supply in Abuja of the 5th and 6th September, 2023. Most importantly, the Claimant failed woefully to join in this Suit staffs of the 2nd Defendant and members of the 1st Defendant that participated in the Nigeria Labour Congress strike of 5th day of September, 2023 that caused the disruption of electricity supply in Abuja leading to the Claimant's alleged incalcutory damage and mental health. However, under the Trade Dispute Act, the reliefs against a party for participating in a strike in contravention of Part A of the Trade Dispute Act is in the case of an individual, a fine of N100 (One Hundred Naira) or 6 Months imprisonment and in the case of a corporate body a fine of N1000 (One



Thousand Naira) pursuant to Section 18 (2) of the Trade Dispute Act. The reliefs sought by the Claimant are entirely different from what the Law provides for participating in a strike. Besides, the cause of action of the Claimant is in the realm of contract relationship with the 2nd Defendant and have no bearing with Labour rights to invoke the provisions of the Trade Unions Act or Trade Disputes Act for the purpose of interpretation. Thus, we submit that the claims are self-seeking and personal enrichment and urge this Court to dismiss the same with substantial cost.

11. On issue two, whether the Claimant is entitled to the grant of the reliefs sought: It is the submission of Counsel that a cursory examination of the claims of the Claimant as contained in the affidavit in support of his amended Originating has not disclosed any Labour, Trade Dispute relationship between the Parties, especially the 1st Defendant. It is not in doubt that the jurisdiction of this Court is a subject matter-based jurisdiction, in other words the substance of a Claimant's case must fall within the purview or contemplation of the Act creating the Court. A look at the Claims of the Claimant and the pleadings as contained in the Affidavit in support of the amended originating summons, it is clear and glaring that the case of the Claimant is that of a Customer/Consumer contractual relationship with the 2nd Defendant. The disruption of electricity supply for the 5th and 6th September, 2023 cannot be tied to the Industrial actions of the Nigeria Labour Congress as alleged by the Claimant, whom the Claimant failed to make a party herein. The question then, does it now mean that whenever there is disruption of electricity in Abuja it translates to the 1st Defendant mobilizing its members to join in the activities of the Nigeria Labour Congress? Unfortunately, the Claimant failed to join the Nigeria Labour Congress in this Suit. It is the submission of Counsel that the Claimant's cause of action is misplaced. He equally submitted that the Claimant has no sustainable and legally admissible documents in support of his claims. The Claimant's Exhibit AEDC 1 is a payment receipt from Buypower.ng to AEDC. It has no reference to the Claimant or Claimant's Meter NO. 04169525062. Besides, the said receipt issued on the 4th day of September, 2023 was not bought in anticipation of light for all the



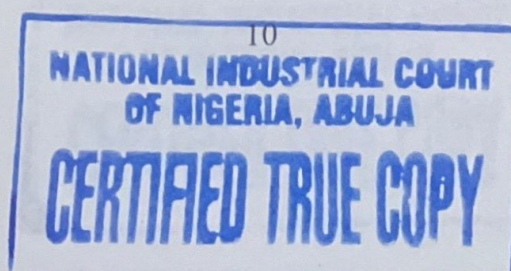
days of the Month including the 5th and 6th September, 2023. Thus, it was highly impossible for the Claimant to have suffered incalculatory damage affecting his mental health and means of livelihood for the disruption of electricity supply for the 5th and 6th September, 2023 as alleged. More so, Exhibit AEDC 2 and 4 are Newspaper Reports. The exhibits being public documents did not meet the admissibility test under the Evidence Act. He relied on Section 104(1) and (2) of the Evidence Act and stated that the said documents have no bearing of emanating from a proper custody as required by 104 (1) and (2) of the Evidence Act. In that there is no endorsement that the documents emanated from a proper custody, no proof that the alleged documents were paid for and acknowledged by the issuer, no certification of the document, the Issuer is unknown; know title, official capacity, or the date the documents were allegedly issued as required by the provisions of the Evidence Act , the documents have no Seal as required under the Evidence Act and the receipt (unnamed exhibit in the Claimant's affidavit) allegedly issued from National Library of Nigeria does cure the apparent defect on the face of the Public documents itself. Counsel reiterated that the Claimant relied on Newspaper reports purportedly stating that the 1st Defendant gave Notice of mobilization of strike it members. It is settled law that Newspaper reports are not generally admissible as evidence of what fact is contained therein. He made reference to the case of ***Lawrence v. Olugbemi & Ors [2008] LPELR 45966(CA)***.

12. Furthermore, Exhibit AEDC 3 an alleged Mobilization for Indefinite Nationwide Strike dated the 13th day of November, 2023 in respect of an event of the 14th day of November, 2023 cannot obviously be what was reported of the 5th day of September, 2023. It is Counsel's submission that the Claimant has no legally admissible documents in support of his claims. He urge the Court to so hold. That more so, an Industrial action is a fall out of Trade Dispute. He relied on Section 48 of the Trade Dispute Act, Cap. T8. Laws of the Federation of Nigeria, 2004. It is equally the submission Counsel that the Claimant or his relationship with the Defendants does not fit into the definition or category of a Trade Dispute. What then is the legal status of the



Claimant upon which the jurisdiction of this Court being is invoked? The 1st Defendant is an affiliate of the Nigeria Labour Congress. The Nigeria Labour Congress is not made a party to this Suit. The Nigeria Labour Congress is a Congress of Trade Unions an umbrella body for the Nigeria workers to come together to exercise their Labour rights. Can the Claimant invoke the interpretative jurisdiction of this Court to determine contractual rights of the Claimant and 2nd Defendant which has nothing to do with labour, employment and matters connected thereto and basically of no relationship with the 1st Defendant? While an individual have rights to approach the Court for the adjudication of his grievances, howbeit, the grievances, cause of action and or subject matter must intrinsically be tied to the jurisdiction of the Court to entertain the same. This Court cannot be cowed into a contractual relationship for the purpose of its interpretative jurisdiction. The Claimant's Suit as presently constituted is quite frivolous and self-seeking to gag the Defendants from exercising both their constitutional and labour rights to assemble and protest against unfavourable Government policies. He placed reliance on the case of ***FGN v. Adams Oshiomole & Anor [2004] (NLLR) (Pt. 2) @ 326 pp. 337-338*** and urge this Court to adopt the decisions in the above referred case as the Claimant has not been able to show why the rights of the Nigeria worker should be curtailed. He also relied on the case of ***FGN v. Adams Oshiomole & Anor (Supra)***.

13. Learned continued and submits that the cause of action of the Claimant is entirely a consumer/customer service provider relationship with the 2nd Defendant borne out of implied contract and clearly distinguished from any trade dispute and/or dispute of rights. He submitted that the party's relationship is not borne out of trade dispute, and thus the Claimants claims under the Trade Dispute Act must fail. In ***The Registered Trustees of motorcycle Transport Union of Nigeria v. COP, Bayelsa (Unreported Ruling in Suit No. NIC/EN/36/2011)***, this Court held that persons not registered as trade unions by the Registrar of Trade Unions cannot approach this Court for adjudication over disputes not related to employment issues. The import of the referred authority in the present case is to the effect



that the Claimant cannot validly sue before this Court in claims unrelated to employment issues. However, the Claimant has luxuriously and copiously made it clear howsoever that he is a consumer of electricity supply with the 2nd Defendant. Unfortunately, there is no Trade Dispute relationship between the Parties. Howbeit, from the pleadings of the Claimant, his grouse is that the 2nd Defendant workers who are members of the 1st Defendant were mobilized to participate in a strike action led by the Nigeria Labour Congress thereby he suffered incalculatory damages, mental health and means of livelihood. Counsel submits that this is not a trade dispute. The 1st Defendant has deposed to facts that the Claimant has not placed before this Court any medical report in prove of mental health suffered as a result of the Nigeria Labour Congress activities of the 5th and 6th September, 2023. It is also not before this Court any Letter or Petition to the 2nd and 4th Defendant by the Claimant complaining of electricity disruption leading to suffering mental health and incalculatory damage. Again, the Claimant is unknown to the 1st Defendant. The relationship between the Claimant and the 2nd Defendant is purely contractual. There is basically no labour, industrial or employment relationship between parties. What then is the Trade relationship between the Parties the Claimant is seeking this Court to determine the culpability if any therein. He referred the Court to Section 20 (1) and 21 (1) of the Trade Dispute Act and stated that from the above statutory provisions, it is obvious that the Claimant's claims are misplaced before this Court. The Claimant in bringing this suit before this Court is an attempt to mislead this Court. The Claimant's Suit is contractual with the 2nd Defendant and unknown to the 1st Defendant. The Claim for Five Million Naira for breach of contract is at large as against the 1st Defendant. The 1st Defendant does not have any contractual relationship with the Claimant. The law is trite that claim for counsels' fees which does not form part of the Claimant's cause of action is not one that can be granted. More so, it is unethical for a litigant to pass the burden of his legal fees to his opponent. He placed reliance on the case of *Ibe v. Bonum (Nig) Ltd 2019 LPELR (46452)* and *Guinness Nigeria Plc v. Nwoke [2000]*



15 NWLR (Pt. 689) 135. He urge the Court to refuse the Claimant's claims/application and dismiss same substantial cost.

1ST DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION

14. The 1st Defendant/Applicant also filed a Notice of Preliminary Objection brought pursuant to Section 20 (1) and 21 (1) of the Trade Dispute Act Cap T8 Laws of the Federation of Nigeria and under the inherent jurisdiction of the Court challenging the competence of this suit before this Court praying for the following order:

1. AN ORDER striking out the Claimant's Suit in its entirety for wants of jurisdiction.
2. AND for such further or other orders as this Honorable Court may deem fit to make in the circumstances.

The grounds for the objection are as follows:

- a. The Claims of the Claimant as donated on the face of the Amended Originating Summons are not a Trade dispute or a Trade Union dispute as it relates to the 1st Defendant/Applicant.
- b. The Parties to the Suit as disclosed in the amended Originating Summons are neither workers nor members of a trade Union.
- c. The relationship between the parties is purely Customer/consumer relationship in contractual terms and not trade dispute related.
- d. The Honourable Court lacks the Jurisdiction to entertain the Suit having regards to the Trade Disputes Act.
- e. An amended Originating Summons purportedly emanating from F. S. Onifade & Associates with Four Counsel in Chambers has no seal and stamp of any counsel or even proof of payment for the year.

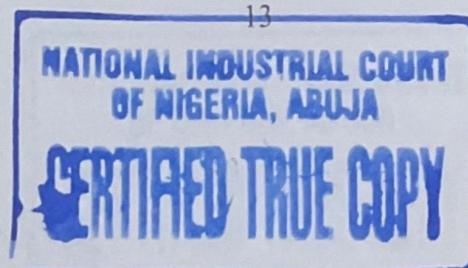
1ST DEFENDANT/APPLICANT'S WRITTEN SUBMISSION IN SUPPORT OF ITS PRELIMINARY OBJECTION

15. The 1st Defendant equally filed along a written address in support of the Preliminary Objection and Counsel on its behalf raised sole issue for the Court determination thus;



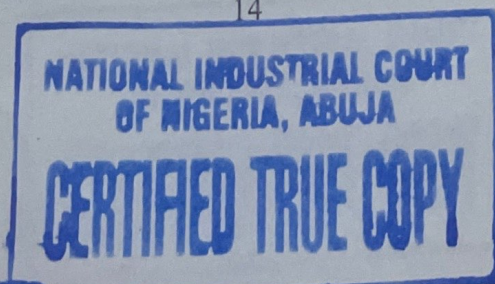
Whether this Honourable Court having regards to the Subject matter of this Suit have the requisite jurisdiction to determine the same between the Parties as presently constituted.

16. Learned Counsel posited that generally, Jurisdiction is defined as the limits imposed on the power of a validly constituted Court to hear and determine issue between the persons seeking to avail themselves of its process by reference to the subject matter of the issue or to the person between whom the issues are joined or to the kind of relief sought. He relied on the case of **A.G, Lagos State v. Dosumu [1989] (Pt. 111) 552 S.C.** Going on Counsel stated that the question of jurisdiction of a Court is a radical and crucial question of competence because if a Court has no jurisdiction to hear and determine a case, the proceeding are and remain a nullity ab initio no matter how well conducted and brilliantly decided they might be because a defect in competence is not intrinsic but extrinsic to the entire process of adjudication, the blood gives life to human being. He placed reliance on the case of **Daplanlong v. Dariye [2007] N.W.L.R (PT. 1036) 332 S.C.** That the question of jurisdiction is very fundamental that is should be determined first by the Court before starting any proceeding, if the Court proceeds without jurisdiction, all proceedings however well conducted amount to a nullity. Again, the Supreme Court has inflexibly laid down the law that in determining whether or not a Court has jurisdiction to entertain a matter or adjudicate over the subject matter of a suit, all that the Court needs to examine or look at are the processes filed by the Claimant. He cited in support of his assertion the case of **A.G.F v. Guardian Newspapers Ltd [1999] 9 NWLR (Pt. 618) 187 @ 233.**
17. It is equally Counsel's submission that a cursory examination of the claims of the Claimant/Respondent as contained in the affidavit in support of his amended Originating Summons has not disclose any Labour, Trade Dispute relationship between the Parties, especially the 1st Defendant/Applicant herein. That it is not in doubt that the jurisdiction of this Court is a subject matter-based jurisdiction, in other



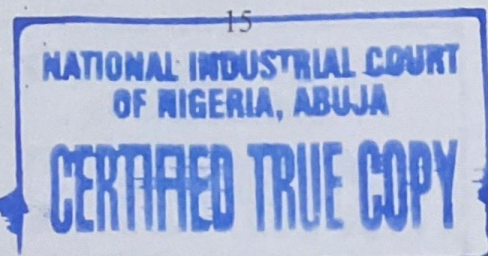
words the substance of a Claimant's case must fall within the purview or contemplation of the Act creating the Court. Furthermore, a look at the Claims of the Claimants and the pleadings as contained in the Affidavit in support of the amended summons, it is clear and glaring that the case of the Claimant is that of Customer/Consumer contractual relationship. The disruption of electricity supply for the 5th and 6th September, 2023 cannot be tied to the Industrial actions of the Nigeria Labour Congress as alleged by the Claimant. Does it now mean that whenever there is disruption of electricity in Abuja it translates to the activities of the Nigeria Labour Congress? Who is not even made a party to this Suit. It is our submission that the Claimant's cause of action is misplaced. He reiterated that an Industrial action is a fall out of Trade Dispute. Trade Dispute is defined in Section 48 of the Trade Dispute Act, Cap. T8. Laws of the Federation of Nigeria, 2004 and that the Claimant or his relationship with the Defendants does not fit into the definition of Trade Dispute. Then what is the legal status of the Claimant upon which the jurisdiction of this Court is invoked. The 1st Defendant/Applicant is an affiliate of the Nigeria Labour Congress. The Nigeria Labour Congress is a Congress of Trade Unions an umbrella body for the Nigeria workers to come together to exercise their Labour rights. Can the Claimant invoke the interpretative jurisdiction of this Court and thereby urge the Court to gag the Defendants from exercising both their constitutional and labour rights to assemble and protest against unfavourable Government policies? The answer is No. He made reference to the case of ***FGN v. Adams Oshiomole & Anor [2004] (NLLR) (Pt. 2) at 326 pp. 337-338*** and urge this Court to adopt the decisions in the above referred case as the Claimants have not been able to show why the rights of the Nigeria worker should be curtailed.

18. It is also the submission of Counsel that the cause of action of the Claimant is entirely a consumer/customer service provider relationship with the 2nd Defendant borne out of implied contract and clearly distinguished from any trade dispute and/or dispute of rights. We



submit that the party's relationship is not borne out trade dispute, and thus the Claimants claims under the Trade Dispute Act must fail. He relied on the case of *The Registered Trustees of Motorcycle Transport Union of Nigeria v. COP, Bayelsa (Unreported Ruling in Suit No. NIC/EN/36/2011)* where this Court held that persons not registered as trade unions by the Registrar of Trade Unions cannot approach this Court for adjudication over disputes not related to employment issues. That the import of the referred authority in the present case is to the effect that the Claimant cannot validly sue before this Court in claims unrelated to employment issues. However, the Claimant has luxuriously and copiously made it clear howsoever that he is a consumer of electricity supply with the 2nd Defendant. Unfortunately, there is no Trade Dispute relationship between the Parties. Howbeit, from the pleadings of the Claimant, his grouse is that the 2nd Defendant workers who are members of the 1st Defendant/Applicant were mobilized to participate in a strike action led by the Nigeria Labour Congress thereby suffered uncalcutory damages, mental health and means of livelihood. We submit with the greatest respect that this is not a trade dispute of any sort deserving the attention of this Court.

19. Continuing, Counsel stated that the Claimant is unknown to the 1st Defendant/Applicant. The relationship between the Claimant and the 2nd Defendant is purely contractual. This is basically no labour, industrial or employment relationship between parties for the attention of this Court. What then is the Trade relationship between the Parties the Claimant is seeking this Court to determine the culpability if any therein. None, Counsel submits. He referred the Court to Section 20 (1) of the Trade Dispute Act and contended that from the above statutory provisions, it is obvious that the case of the Claimant does not fall within the expected jurisdiction of this Court to ably determine the case of the Claimant. He also relied on Section 7 (1) (a) (i) (ii) of the National Industrial Court Act, 2006 and Section 11 (1) of the National Industrial Court Act, 2006 and stated that the provisions of Sections 7 and Section



11 (1) of the National Industrial Act, 2006 are clear and unambiguous. These issues are unrelated to the Claimant's claims or relationship between the Claimant and the Defendants. This Court does not have the jurisdiction over the substance of the Claimant's suit as presently constituted before this Court. He made reference to Section 254 (C) (1) (A) – (M) of the 1999 Constitution of Nigeria as amended. Similarly, from the cumulative reading of Section 7 of the National Industrial Court Act, 2006, Section 254 (C) (1) (a) – (m) and the pleadings of the Claimant as contained in his affidavit in support there is no doubt the case of the Claimant has put the issue of jurisdiction beyond doubt that this Court has no jurisdiction to entertain this case. Consequently, the Claimant in bringing this suit before this Court is an attempt to mislead this Court on the real issues between the parties and cloth this Court with jurisdiction it does not have as this suit is fundamentally based on issues not tied to labour and or work conditions. Counsel submitted that the case of the Claimant as a consumer of electricity and customer to the 2nd Defendant is not within the jurisdiction of this Court to determine. He reiterated that from the affidavit in support of the amended summons it can be gleaned that the substance of the subject matter of the Claimant's case is unrelated to labour matters, industrial dispute and or employment. He therefore submits that the subject matter of the case being consumers – supplier relationship is not a matter for the adjudication of this Court and urge the Court to hold the same and strike out this suit in its entirety with substantial cost against the Claimant as the suit is frivolous, vexatious, diversionary, and lacking in merit. He relied on the case *of Madukolu v. Nkemdilim [1962] 2 SCNLR 341* and *AGF v Guardian Ltd, (supra)* and submitted that the subject matter of the action is not within the jurisdiction of this Court and urge the Court to hold the same.

20. It is the position of Counsel that in furtherance to the above the subject matter of case of the Claimant being in a wrong venue is fundamentally defective and incurable as jurisdiction is the fulcrum of any adjudication before the Court. Thus, the Claimant's case must fail, as it cannot put



something upon nothing and expect it to stand; it must surely fall and crumble. He made reference to the case of **Macfoy v. U.A.C Ltd [1962] A.C 152** and urge the Court to strike out the suit of the Claimants as that cannot be heard or determined between parties by this Court. He relied on the case of **Okolo v. Union Bank of Nigeria Plc [2004] All FWLR (Pt. 197) 981 Ratio 2**. Also, that the Amended Originating Summons was improperly filed without singular seal and stamp or even receipt of proof of payment for the year of four counsels in chambers for the Claimant who is incidental a Legal Practitioner. This Suit should be accordingly struck out for being improperly filed. He urge the Court to dismiss the Claimant's Suit with substantial cost.

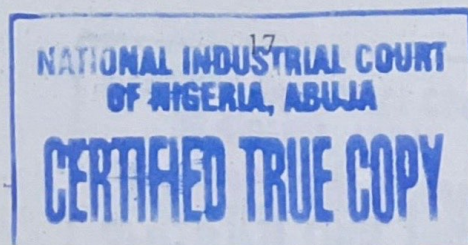
21. On the 7th day of May 2024 the 4th Defendant in response to the Claimant's Originating Summons filed a six paragraph Counter affidavit deposed to by one Ahmadu Zubairu, a General Manager, legal Licensing and compliance of the 4th Defendant.

4TH DEFENDANT'S WRITTEN SUBMISSION IN OPPOSITION TO ORIGINATING SUMMONS

22. Learned Counsel on behalf of the 4th Defendant distilled two (2) issues for the determination of this Court viz;

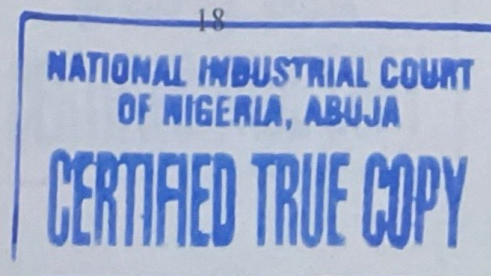
1. **WHETHER**, the claimant possesses the requisite **Locus Standi** to institute this suit against the defendants?
2. **WHETHER**, looking at the facts of this case as well as the entirety of materials the claimant has placed before this Court, this suit discloses any Reasonable Cause of Action against the 4th Defendant.

23. On issue one It is our Counsel submitted that the Claimant in this suit do not possess the requisite Locus Standi to institute this action against the defendants because the term "locus standi" connotes the right of a party to institute an action in a Court of Law or to seek judicial enforcement of a Duty or Right. This concept was aptly restated recently by the Supreme Court in the case of **U.B.A. Plc. v. Mabogunje [2022] 14 NWLR Pt.1849, Pg.99 at 116-117 Para.**

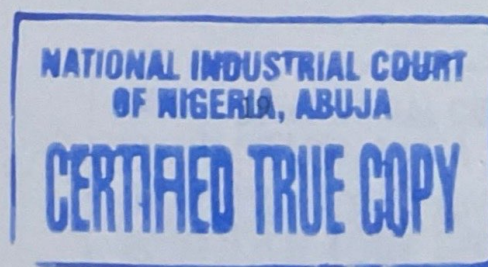


H-A. That in order to be adjudged to have a Locus standi in this Suit, the claimant's Affidavit in support of the suit must clearly show that his civil rights and Obligations have been or are in danger of being infringed on and that that he has sufficient legal interest in seeking redress in a Court of Law. These facts must be precisely and succinctly stated on the face of the pleading (in this Case, the Affidavit) and it is not a matter of conjecture nor should it be left for the Court to speculate on the presence or absence of same. He referred this Court to the case of ***Shibkau v. A.G. Zamfara State [2010] 10 NWLR Pt. 1202 Pg. 312 at 341 Para. B-C.*** Counsel equally posited that to determine whether or not a given Claimant herein, actually possesses Locus Standi in relation to a Suit, The Court only has to look at the Originating Processes which the claimant has put before it and nothing more. For this position of the Law. He placed reliance on the case of ***Global Trans Oceanico S.A. v. Free Ent. (Nig). Ltd. [2001] 5 NWLR pt.706, Pg. 426 at 433, para. A-F; Agunsoye v. Arojojoye [2023] 12 NWLR Pt 1897 Pg. 137 at 167 Para A-B*** and ***Ekwuogor Invest.(Nig) Vs. Asco Invest. Ltd. [2011] 13 NWLR Pt. 1265 Pg. 565 at 590 Para. F-G.***

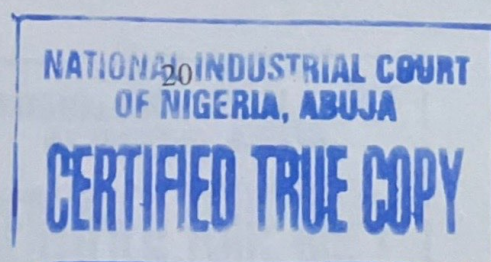
24. It is also the submission of Counsel that, looking at the depositions as well as the Exhibits the claimant placed before this Court, he has failed woefully the establish the basic and primary requirement necessary to be clothed with the standing to sue, which is, to show that he has a legal right and personal interest in the subject matter of his claim, which is electric power supply. He referred the Court to paragraph 3 of Claimant's affidavit and contended that in an attempt to establish the above deposition, the Claimant attached a document marked as Exhibit AEDC 1. A look at the said exhibit shows that it is bare and has no bearing or nexus to the Claimant in any way. Thus, there is absolutely nothing before this Court that links the Claimant to the strike action nor electric power supply and hence, he submits that he has not shown that he has a legal interest capable of being adjudicated on or protected by this Court. He urge this Court to so hold.



25. Counsel further argued that assuming without conceding that the Claimant in this suit was able to establish that he has any interest/legal right in the subject matter of this suit. He submits that, it is, at best, a vague interest, intangible, supposed or speculative, an interest which he shares with the general public and not an interest that is personal/special to him. He placed reliance on the case of **Agunsoye v. Arojojoye (Supra)**. That Exhibits AEDC2, AEDC3 and AEDC4, attached to the Affidavit does not help the Claimant's lack of locus standi at all. If anything, those exhibits goes to buttress Counsel's submissions that the Claimant does not possess any special interest but, if any, only same as those that is accruable to the general public. He urge the Court to so hold.
26. It is the position of Counsel that indeed, the issue of locus standi is so fundamental to any given suit that the Supreme Court recently in the case of **AP.C. v. INEC [2023] 8 NWLR Pt. 1887 Pg. 563 at 588 Para. E** and that in line with the above decision, and even though, it is quite unfortunate that the Nigeria Labour Congress was constrained to shut down the whole country, including the Electricity power supply, and that citizens were thrown into darkness and therefore greatly inconvenienced and even suffered economic and personal loss, the state of our laws right now is that, it is only a person who was able to establish his locus standi that can bring a competent action to be adjudicated by our Courts. The claimant in this case unfortunately, is not that person and he urge this Court to so hold. On the whole Counsel submitted that the Claimant in this case, is in the eyes of the law, a stranger to subject matter of this suit and, therefore, Meddlesome Interlopers. Indeed, he has been unable to establish his Locus Standi to ignite this Court's Jurisdiction to hear this suit. He urge the Court to so hold and resolve this all important and crucial issue in favour of the Defendants and against the Claimant.



27. Respecting issue two Counsel posited that the Term Reasonable Cause of Action has been adequately defined through several judicial decisions. He placed reliance on the case of ***Rinco construction Co. Ltd v. Veepee Ind. Ltd [2005] 3-4 S.C. Pg. 1 at Para. 20 Ibrahim v. Osim (1985) 3 NWLR Pt.82 pg.257 @ 267.*** Learned Counsel continued and stated that having seen the meaning of Cause of Action, the next hurdle to cross is how to determine whether or not a particular suit discloses any reasonable cause of action. This question has been answered in a plethora of decided cases and it is now trite that in order to determine whether a suit discloses any reasonable cause of action against a defendant, it is only the Statement of Claim (The Affidavit, in this Case), that will be taken into consideration and nothing more. He relied on the case of ***7up Bottling Company Ltd Vs. Abiola & Sons Bottling Co. Ltd [2001] 13 NWLR Pt. 730, Pg. 469 @ 495*** and ***Union Bank Plc. Vs. Umeoduagu [2004] 6-7 S.C Pg. 146 @ 150 Para. 40.*** Counsel reiterate that the features which must be present in a given Statement of Claim for it to be said to disclose Reasonable Cause of Action was also listed out in the case of ***Ibrahim Vs. Osim (supra).*** That taking a cue from the legal authority quoted above, it follows that for the claimant's suit in the instant case to be said to disclose any Reasonable Cause of Action against the 4th defendant, the facts contained in the Affidavit herein, must possess all the element listed out above, as follows; The legal Right of the claimant, The obligation of the 4th Defendant, Facts to show the infraction of the Claimant's legal right by failure of the 4th defendants to fulfil their obligation and the facts as contained in the Affidavit must be able to stand and succeed on their own in the absence of any defence which the Claimant in the present have failed to so disclose. He urge this Court to resolve this issue in favour of the 4th Defendant and against the Claimant and hold that the Claimant's case does not disclose any Reasonable Cause of Action against the 4th Defendant. In conclusion, Counsel urge the Court to dismiss this suit for non-



disclosure of any reasonable Cause of Action against the 4th Defendant and for the Claimant's lack of Locus Standi.

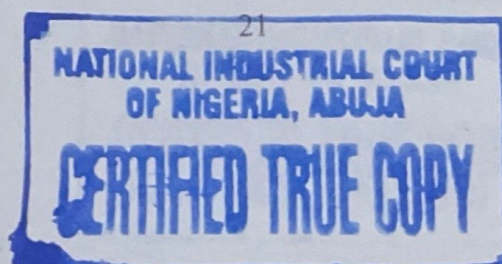
28. The 3rd Defendant in opposition to the Claimant's amended Originating filed a six paragraphs Counter affidavit on the 10th day of June 2024, deposed to by one Umar Saleh, Counsel in the law firm of U.M. Abdulrahman & Co.

3rd DEFENDANT'S WRITTEN SUBMISSION IN OPPOSITION TO ORIGINATING SUMMONS

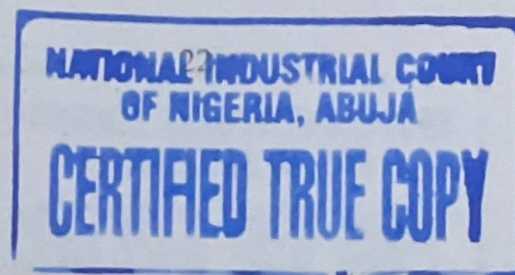
29. Counsel on behalf of the 3rd Defendant filed his written submission in support of the Counter affidavit and the following issues are raised for the Court's determination:

1. Whether the claimant's case as presently constituted, discloses any reasonable cause of action against the 3rd Defendant?
2. Whether by virtue of Sections 31 (6) of the Trade Unions Act, as amended, 2005 and sections 4, 18 and 42 of the Trade Disputes Act, 2004 and the first schedule of the Trade Disputes Act, the 3rd Defendant provide essential services thereby excluding them from embarking on industrial action?
3. Whether by virtue of Sections 31 (6) of Trade Unions Act, as amended, 2005 and section 4, 18 and 42 of the Trade Disputes Act, 2004 and first schedule of the Trade Dispute Act, the 3rd Defendant is prohibited, forbidden and restrained from embarking on any form of industrial action either by themselves or their agents or privies?
4. Whether the previous strike action (if any) of the 3rd Defendant and them threaten action (if any) amounts to breach of the claimant's consumer rights?

30. Regarding issue Counsel stated that in support of his argument is a 16th Paragraph Affidavit and he rely on all the averment therein in urging the Court to dismiss the claims of the Claimant against the 3rd Defendant with cost for non-disclosure of any reasonable cause of action. He also posited that it is kindergarten, that in determining whether a suit discloses any reasonable cause of action the Court is

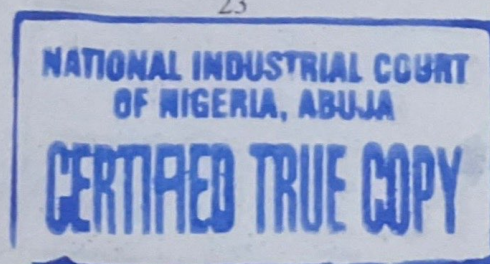


confined to the Claimant statement of claim (in this case the affidavit in support of the Originating summons). He placed reliance on the case of *Amusan v. Obideyi [2001] NWLR pt. 710 p. 337 @ 656 Para D*. That a cursory look at the claimant statements of facts (affidavit) will reveal that no reasonable cause of action is disclosed against the 3rd Defendant as the only place the Claimant mentioned the 3rd Defendant is in his Paragraph 3 of the supporting Affidavit, however, the claimant fails to show anything to the court in buttressing his assertion other than his electricity payment bill (exhibit AEDC 1) to which the 3rd Defendant herein is neither a party, beneficiary or privy to. Also, the said Exhibit 'AEDC 1' attached to the Claimant Affidavit has no name of the 3rd Defendant. by and large, the 3rd Defendant only transmit electricity but does not distribute or supply same as that is the function of the Discos. Counsel submit further that the 3rd Defendant is a duly incorporated Public limited liability Company and is an employer but not a trade or labour union to engage in strike. That his position is fortified by the Claimant's deposition in Paragraphs 4 and 9 of the supporting affidavit, where he specifically state that it is the 1st Defendant (being a labour union and an affiliate of the Nigerian Labour Congress) that joined the Industrial Action and all supporting exhibit in this regard did not show where either actively or tacitly the 3rd Defendant as a corporate entity declared or joined an industrial action. As a matter of fact, the 3rd Defendant cannot declare or join an industrial action being a responsible corporate entity wholly owned by the Government. Similarly, it is elementary to state that the staff of the 3rd Defendant have fundamental right to join any trade union or association for the protection of their interest. He referred the Court to Section 40 (1) of Constitution of the Federal Republic of Nigeria, 1999 and submitted that the 3rd Defendant has no power or control over this association or trade/labour union to which their staff, by right, belongs. My lord, should we then say that; the 3rd Defendant should take the blunt of any act or inaction of this trade/labour union or association to which their staff belong? In all honesty 'NO'. The Trade Union Act also



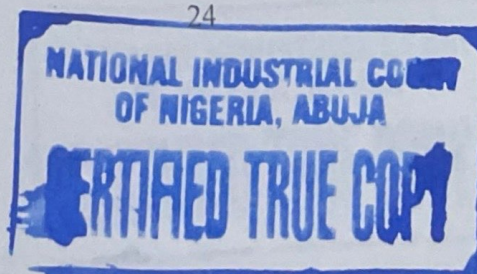
make copious provision in respect freedom of employees to join or not to join a trade union or to even partake in an industrial action. He cited in support of his assertion Section 12 (4) of the Trade Unions Act, (as amended, 2005) and submits that the case of the claimant as presently constituted does not disclose any reasonable cause of action against the 3rd Defendant and we urge my lord to so hold and dismiss the claimant's claims against the 3rd defendant with a cost of ₦2, 500, 000.00 (Two Million Five Hundred Thousand Naira only) for bringing the 3rd Defendant to court without any reasonable cause of action. Assuming without conceding that the case of the Claimant as presently constituted, discloses any reasonable cause of action against the 3rd Defendant, then Counsel respond to the Claimant's issues raised as follows.

31. Taking issues two and three together because they are interwoven. It is the position of Counsel that the contention herein is the provisions of these sections and we feel so deeply that the first point of reference is the provision to these sections and he went on to reproduce the Sections 31 (6) of the Trade Unions Act as amended 2005, Section 4,18 , 42 and First Schedule (Section 48) of the Trade Disputes Act 2004 and stated that the first and perhaps the only thing to determine here is whether by the above provisions of the law, the 3rd Defendant is providing essential services. He submitted that from the relevant provision of the law above, the 3rd Defendant does not provide essential services as defined by item 2 (a) to the first Schedule of the Trade Disputes Act. He contended that the said provision is quite clear and admits no ambiguity by saying for, or in connection with, the supply of electricity, power or water, or of fuel of any kind and the 3rd Defendant has nothing to do with the supply of electricity, their only mandate is transmission of electricity which is quite different with supply. He noted that the electricity industry has many players with each focusing on its or her core mandate; in the industry we have Generation Companies (Gencos); Transmission Company (with the 3rd Defendant being the

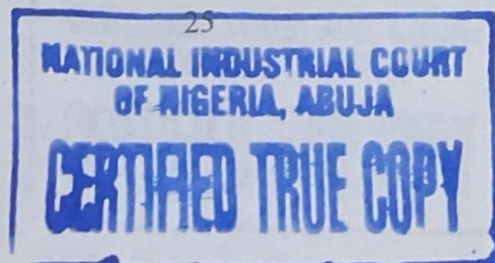


only player in this subsector); the Distribution Companies (Discos) and the Supplying/Marketing Companies (which are not currently existing/functioning in Nigeria, thereby leaving their core mandate of Electricity Supply to final consumers to the Discos). Therefore, item 2 (a) of the 1st Schedule only mention supply and not transmission of electricity, therefore, the 3rd Defendant is literally excluded from those providing essential service to warrant them being prohibited from embarking on a strike, and he urge the Court to so hold.

32. Counsel stated that it is an age long established principle of interpretation that; where the provision of a statute is clear, direct and unambiguous the literal rule applies. He cited in support of his assertion the case of ***DG NIA v. Dauda [2024] NWLR (Pt. 1936) p. 1 @ 49-52 Paras G-A.*** Counsel further stated that Section 11 of the Trade Unions Act clearly spelt out the establishments or agencies whose staff are by law prohibited from forming, joining or partaking in any industrial action. He also stated that the above stand of the 3rd Defendant is further fortified by the fact that item 10 of the third Schedule (Part A and B) of the Trade Unions Act, recognized the 1st Defendant as a trade/labour union and went ahead to make the staff of the 3rd Defendant their members subject to their approval. He noted that had it been the staffs of the 3rd Defendant are not allowed to form or join trade union or partake in an industrial action, the act would have made it clear and could not have include them in list of trade/labour unions. On the whole Counsel submitted that the 3rd Defendant does not provide essential services to stop their staff from forming/joining a trade/labour union or partaking in industrial action. He urge to so hold.
33. On issue four Counsel submitted that looking at the Claimant's argument in support of his Originating Summons, there is no scintilla of legal argument backing this issue, his joint argument on all the issues notwithstanding, on that it is the submission of Counsel that the issue is deemed abandoned by the Claimant and this Court is urge to so hold and strike out same. He placed reliance on the case of ***Ayeku v. Ayeku***



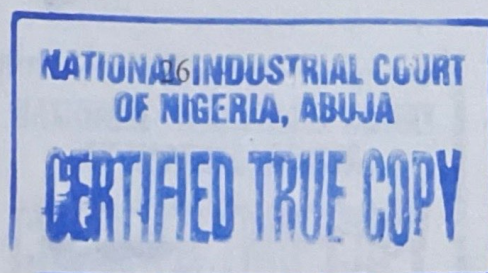
[2024] NWLR Pt. 1934 P. 369 @ 400 Paras F-H and stated that the above case deals with ground of appeal but same can be liken to issues raised in an Originating summons. Assuming without conceding that the said issue is not abandoned by the Claimant Counsel submitted that the Claimant is not a consumer of the services of the 3rd Defendant to warrant his consumer rights to be breached by the 3rd Defendant. That as a matter of fact the 3rd Defendant cannot be logically said to provide services to the Claimant and there is nothing placed before the Court showing that the Claimant is a consumer of the 3rd Defendant's services. Even Exhibit 'AEDC 1' annexed to the Claimant's Affidavit has no bearing with the 3rd Defendant as the only thing gleanable from that exhibit is the amount paid in the name of AEDC. That Consumers Rights are provided by Part IV, of the Federal Competition and Consumer Protection Act, 2018 spanning from Sections 114-133. My lord the Claimant could not, in the entire of his address identify which of his Consumer right (if any) was breached by the Defendants and my lord, the Claimant cannot leave the Court to conjecture as to which of his right if any was breached and by who. The only option is to either strike out the issue or resolve it against the Claimant. In conclusion, the argument of Counsel is that the case of the Claimant does not disclose any reasonable cause of action against them and that the 3rd Defendant has no nexus, bearing or privity with the Claimant as the Claimant cannot be said to be their customer or consumer of their services. the 3rd Defendant do not provide essential services as envisaged by the Trade Unions Act and Trade Dispute Act to warrant their staff being prohibited from forming or joining Trade/Labour Union or partaking in any trade dispute. As a matter of facts, the staff of the 3rd Defendant were identified to form part of the members of the 1st Defendant by virtue of item 2 (a) of part A, And Item 10 of part B, 2nd schedule of the Trade Union Act, thereby, making it lawful for the staff of the Defendant to join industrial dispute in pursuit of their common goal. Furthermore, Counsel contended that the Claimant has abandoned his issue of consumer right as same was not argued by him. He therefore,



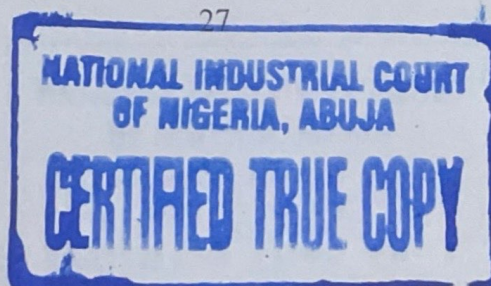
invite the Court to so hold and dismiss the Claims of the Claimant against the 3rd Defendant with a cost of ₦ 2, 500, 000.00 for bringing the 3rd Defendant to the Court without reasonable cause of action against them.

CLAIMANT'S WRITTEN SUBMISSION IN OPPOSITION TO 1ST DEFENDANT'S PRELIMINARY OBJECTION DATED 3RD MAY & FILED 6TH OF MAY, 2024.

34. In opposition to the 1st Defendant's Notice of Preliminary Objection Counsel on behalf of the Claimant formulated two issues for the determination of this Court viz;
1. Whether having regards to the subject matter of this suit, this Honourable Court has jurisdiction to entertain the Claimant's suit.
 2. Whether the alleged absence of a counsel's seal or bar practicing fee receipt on a court process renders the process incompetent.
35. With respect to issue one it is the law that in other to gauge the absence or presence of jurisdiction, it is the originating process used to initiate the suit that the Court will look at and not the Defendant process. This position of law has long been affirmed by the Court. He cited in support of his position the case of ***Inter Ocean Oil Development Company Nig v. Dr. Fadeyi SC [2024] 14 NWLR 209-384 Pt. 1958 Pg 229***. That in-addition to the above, there are three factors to examine when considering whether or not a court has jurisdiction are; It is properly constituted as regards number and qualification of members of the bench, and no member is disqualified for one reason or another, the subject matter of the case is within its jurisdiction, and there is no feature in the case which pervert the court from exercising its jurisdiction, the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to exercise of jurisdiction. He relied on the case of ***Madukolu v. Nkemdilim [2006] 2 LC 208 (1961) NSCC (Vol.2) 374 @ 397. Oni v. Cadbury Nig. Plc [2016] 9 NWLR (1517) 193; Okpe v.***



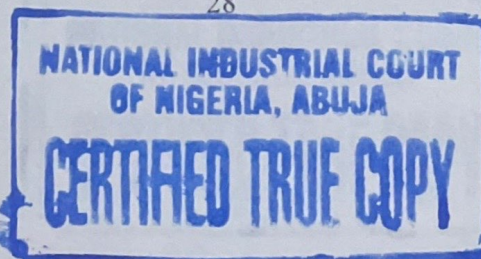
Fan Milk Plc. [2017] 2 NWLR. Counsel submitted that the Claimant's case is whether having regards to the provisions of Section 31 (6) of Trade Union Act, 2004 and Section 2 (a) of the Trade Dispute Act, 2005 whether the Defendant are not legally permitted to embark on strike and whether the strike action embarked upon by the Defendants on the 5th and 6th September, 2023 on the directives of the 1st Defendant is unlawful, illegal and null and void. That Claimant claims is anchored simply on Section 31 (6) of the Trade Unions Act, and Trade Dispute Act 2005 (Amended) and the First scheduled of the Trade Dispute Act, 2004. He unequivocally states that the above provisions of the laws clearly prohibit any strike action by the Defendants or any of its affiliates. The question then is, can the Claimant as a public-spirited individual bring this kind of action? Or who can rightfully challenge the unlawful acts of the Defendants? It is Counsel's firm submission that by the provision of 1999 Constitution, the Claimant or any other individual is constitutional empowered and has unfettered, unrestricted access to approached the Court to ventilate his or her grouse especially on the instant subject matter. He relied on the provision of the Section 245C (1) (a-c) and Section 6 (6) (b) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). He posited that the combine provisions 254C (1) (a-c) and section 6 (6) b of Constitution of Federal Republic of Nigeria 1999 (As Amended) gives the Claimant an unfettered access to the Court in the determination the issue presented before the Court. He cited in support of his assertion the case of **Prince Femi Agunsoyev. Prince Joseph Babalola Arojojoye [2023] 12 NLWR 1-204 Pg 163** and stated that the above Constitutional provision validates the Claimant's right to approach the Court and the jurisdiction of the Court to inquire into the Claimant's case. That the attempt by the 1st Defendant to circumscribe the Claimant's case to customer/consumer relationship should be resisted by the Court. As seen above, the Claimant is not in any way constitutionally restricted or prohibited either expressly or impliedly from ventilating his grievance before this Court on the subject matter. He therefore submitted that



this Court has jurisdiction to hear and determine this matter and urge the Court to so hold.

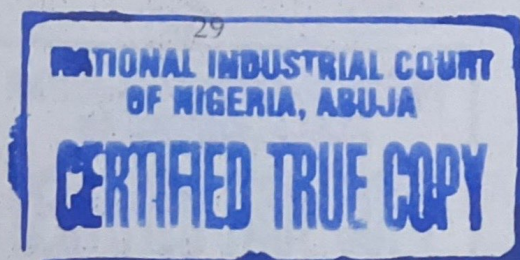
36. Furthermore, the Supreme Court as in plethora of decisions upheld the supremacy of the constitution over any other subsidiary law or any other law. In ***A G Lagos State v. A G Federation [2003] 15 NLWLR (P. 842)***. The Court stated any Court decision or law inconsistent with the constitution is null and void. Similarly, It is the firm opinion of Counsel that, in-fact, it is this Court that is exclusively donated with jurisdiction to hear and determine matter of this nature. The Constitution states that any dispute arising from the interpretation or any question of law relating to the following Act, Factories Act, Trade Disputed Act, Trade Union Act, Labour Act, Employees Compensation Act or any other Act and subject matter of lock out, strike are within the exclusive preserve of this Court. That the 1st Defendant cannot by its conjecture or misconception of the Claimant's case create an artificial, non-existing barriers to the Court where the constitution has expressly guaranteed such right. The 1st Defendant deliberately misunderstood the Claimant's case to this Court and it cannot be bar or oust the jurisdiction of the Court. The subject matter of the suit clearly is within the jurisdiction of the Court. He therefore posit that the Claimant has right to approached this Court has unfettered. And the matter heard and determine on merit by the Court. He urge this Court to so hold. Counsel equally argued that the notice of preliminary objection is misconstrued and misconceived, it is lacking in merit and should be struck out. He further urge the Court to assume jurisdiction and hear the matter on merit.

37. On issue two learned Counsel stated that the crux of the matter at hand is whether the omission to affix NBA-approved seal or bar practicing fee receipt on the originating court processes should nullify the documents filed. The absence or otherwise of a counsel's seal or bar practicing fee receipt attached to any Court process and in this suit on the amended originating summons is a mere irregularity that does not affect the competence of the suit. He placed reliance on the case



of ***Senator Yaki v Senator Bugudu & 2 Ors [2015] 18 NWLR [Pt.1491] 288***. Therefore, in light of the foregoing, it is now settled that legal documents or processes signed by legal practitioners without affixing the NBA seals or attachment of the Bar practicing receipt are not fundamentally defective or incompetent but generally subject to ratification. He made reference to the case of ***Hon. Segun Adewale & Another v. Hon. Solomon Olamilekan Adeola & Ors. [2015] LPELR -25972 [CA]*** and ***Today's Cars Limited v. Lasaco Assurance Plc & Another [2016] LPELR-41260 [CA]***.

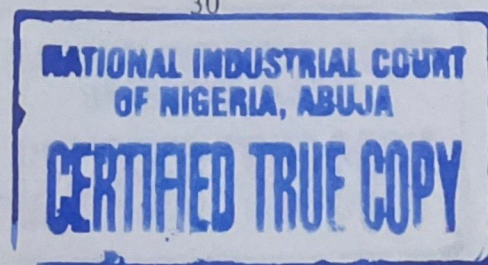
38. Furthermore, the principle of substantial compliance is paramount. My Lord, it is well established that the Courts are more inclined to dispense justice on the merits of a case rather than on mere technicalities. The omission of the seal, in this case, does not go to the root of the matter, and as such, should not nullify the proceedings. The requirement for the seal or bar practicing fee receipt is primarily to curb unauthorized practice and ensure that only qualified legal practitioners engage in legal practice. In conclusion, the omission was not done in bad faith and can be rectified. The Courts have the discretion to allow for the correction of such omissions to prevent injustice. This aligns with the principle of doing substantial justice and avoiding decisions based on mere procedural flaw. In conclusion, Counsel submitted that the 1st Defendant's Preliminary Objection is entirely misconceived, as it fails to address the substantive issues before this Court. To wit; whether the 1st Defendant offer essential service and if they do whether they can lawfully embark on industrial action. This Court, by virtue of Section 254 C (1) of the 1999 Constitution (as amended), has the requisite jurisdiction to adjudicate on the matter and that the alleged irregularity of absence of Counsel's seal and bar practicing fee receipt, are curable defects that do not go to the root of the case. He enjoined the Court to prioritize substantial justice and fair, just resolution of disputes submitted to it over technicalities this Counsel have affirmed by numerous judicial authorities. He urge this Court to dismiss the 1st



Defendant's Preliminary Objection in its entirety and proceed to hear the substantive matter on its merits, in the interest of justice.

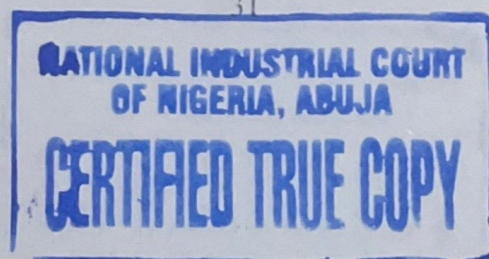
CLAIMANT'S REPLY ON POINTS OF LAW TO THE 1ST DEFENDANT'S COUNTER AFFIDAVIT

39. Learned Counsel submitted that the 1st Defendant affidavit contained incorrect and mis-leading facts. Paragraph 6, 7, 8, 9 of the affidavits. In specific response to paragraph 12, 16, and 17 of the 1st Defendant's contradictory affidavit. It is the position of Counsel that 1st Defendant counter-affidavit is self-contradictory. He argued that while, in paragraph 12 of the affidavit the 1st Defendant is trying to debunk the Claimant's position that indeed there was no strike on the 5th and 6th September, 2023, in paragraph 16 and 17, on the other hand, the 1st Defendant by its assertions admitted that the strike took place and was justifiably called by Nigeria Labour Congress in view of defiance position of Federal Government on Nigeria Labour Congress's Demands. In other words, in paragraph 5 of its affidavit, the 1st Defendant admitted that they are affiliate of the Nigeria Labour Congress and also justified the strike actions in paragraph 16 and 17 of the its affidavit, thereafter somersaulted in paragraph 9, 10, 13, 14 and 15 by attempting to discredit the Claimant claim and the exhibit as a proof that the strike took take place. Similarly, in the circumstances, the self-contradictory nature of the 1st Defendant's affidavit having destroyed whatever facts the affidavit tended to establish, the facts in the Claimant's affidavit remained unchallenged and the Court should be persuaded to act on the Claimant's affidavit. He placed reliance on the following cases: ***Atoshi v. Agbu [2018] LPELR (44477) 1 @ 24; Ejeforv. Okeke [2000] 7 NWLR (Pt. 665)363 and Nasirv. Civil Service Commission, Kano State (Supra) (Pp.44-48,Paras.E-F)***. It is the contention of Counsel that this contradictory position in the affidavit renders the 1st Defendant affidavit unreliable and liable to be struck out. The 1st Defendant having admitted in paragraph 5 that they are affiliate of Nigeria Labour Congress and justification of the industrial



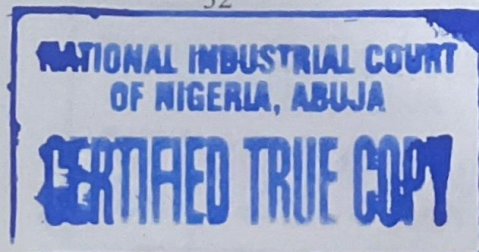
action is a technical admittance to the Claimant's case. The law is trite that where an affidavit is self-contradictory or contained contradictory information such affidavit need not be challenge. This is because whatever facts the affidavit intends to establish would have been destroyed by the self-contradictions. He relied on the following cases ***Ejefor v. Okeke [2000] 7 NWLR (PT.665) P.363; Ekekeugbo v. Fiberesima [1994] 3 NWLR (Pt.335) P.707 and Balogun v. Shonibare [1997] 3 NWLR (Pt.493) P.317 (P. 24, Paras. B-E)*** and in view of the above submitted that the Claimant has made it case against the 1st Defendant, the umbrella union of the Defendants are copiously prohibited from embarking on industrial action because they render essential service by virtue of the provisions of Trade Union Act 2005 (Amended) and Trade Dispute Act, 2004.

40. Counsel submitted that in both cases, the 1st Defendant's assertions on Exhibit AEDC 1 and 2 are misleading. The Claimant does not have to be the owner of Electricity Meter of the premises he is occupying as a tenant to be a valid customer of the 2nd Defendant. The receipt of payment is evidence of the fact that the Claimant is a valid customer and consumer of the electricity supply by the 2nd Defendant. He relied on the case of ***Gbenobav. Legal Practitioners Disciplinary Committee [2021] 6 NWLR.*** He argued that the fact that Meter is not bearing the Claimant's name does not in any way invalidate the suit. The receipt of purchase of electricity units bears the claimant's name, the claimant had stated that he is a Tenant and not the owner (landlord) of the property. The ownership of the Meter or otherwise do not invalidate the Claimant's case or effect the probative value attached to the evidence. Now, the question that should agitate our mind is should we fold our hands and allow this unlawfully acts of the Defendants to continue to perpetuate itself. We hastily answer this in the negative. In-addition is that the 1st Defendant did not submit contrary evidence. Therefore, Counsel submits that the Exhibit 1 is a proof of Claimant's relationship with the 2nd Defendant. Similarly, in respect of Exhibit AEDC 2 we submit that, it is the law that Newspapers

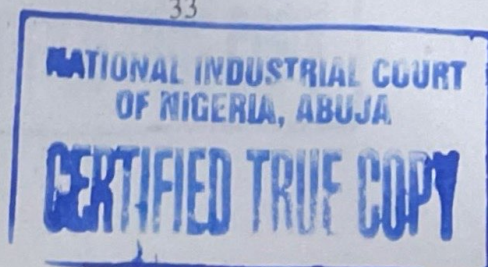


are proof of event that took place and are reported and nothing more. He cited in support of his assertion the case of *Olly v. Tunji & Ors [2012] LPELR-7911 (CA) (Pp 42-42 Paras E-F)* and *Ezev. Gov. of Abia State [2014] 14 NWLR (Pt. 1426) 192*.

41. Also, as the above instant, the 1st Defendant did not present any contrary evidence to controvert or rebut the Claimant's position that indeed the strike action took place on the 5th and 6th September, 2023. In fact the 1st Defendant had tacitly conceded that they participated in the said industrial actions. Thus, the attempt to destroy the uncontroverted evidence before the court is fruitless. Counsel is of the firm opinion that the Claimant's reliance on Exhibit AEDC 2 (Newspaper publication) is a proof that the strike took place, which was based on the directive of the 1st Defendant to the 2nd, 3rd and 4th Defendants in absence of contrary evidence. The 1st Defendant made a heavy whether about reference to the strike of 5th and 6th September, 2023 instead of the strike of 13th November, 2023 as per attached Exhibit AEDC 3. Counsel submits with respect that the claimant's claim before this Court is not about the date which the strike took place in particular, neither is the Claimant's claim about customer/consumer relationship as the 1st Defendant tend to suggest; but rather it is whether the Defendants are legally permitted to go on strike in the first place? In view of the copious provisions of the law. He submits that the law has set conditions in Nigeria for a strike to be a Lawful Strike. The conditions, which workers must fulfill before embarking on a lawful strike in Nigeria, are contained in Section 31(6) of the Trade Unions Act LFN 2004 as amended by the Trade Unions (Amendment) Act 2005 and Sections 4, 18 and 42 of the Trade Disputes. The law imposes four important conditions that workers in Nigeria must fulfill before they can embark on a lawful strike and the Trade Unions (Amendment) Act 2005 did not define essential services. However, Section 31(9)(b) simply provides that essential services shall be as defined in the First Schedule of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria, 2004. The provisions are clear and unambiguous. It is the law that where the provisions of

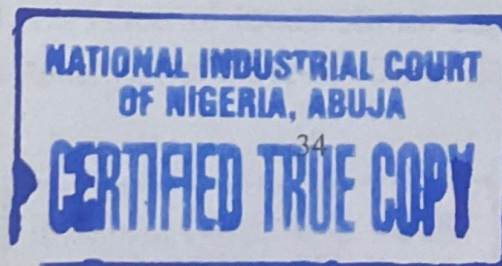


statutes are clear and without ambiguity. The Court will employ literal interpretation. He relied on the case of ***Attorney General Of Federation v. AG Abia State & 25 Others S.C (26/2001) (2002) NGSC 4 (4 APRIL 2002). National Assembly v. Tony Momoh [1983] 4 NCLR 269 @ 295 and Adesanyav. President Federal Republic Of Nigeria [1981] ALL NLR. 1.*** Counsel stated that the underlying philosophy behind these statutes is that certain services are of fundamental importance to the community that their disruption or withdrawal will have harmful consequences. The public interest in uninterrupted operation of these services, therefore, outweighs the consideration that workers should be free to withdraw their labour, and these special provisions should apply to them, in preventing industrial action and or imposing restrictions upon its conduct. International Labour Organization supports this statutory philosophy. That the effect of Section 31 (6) (a) of the Trade Unions Act, as amended, above, is that workers engaged in the provision of essential services are restrained from organizing or participating in strikes. Therefore, for a strike to be a lawful strike, the workers and their union must not be engaged in the provision of essential services. This is the law. He urge the Court to uphold the law and the rule of law, that the Defendants are prohibited, restrained and forbidden from engaging in strike. Counsel make bold to say that assuming without conceding that the Claimant did not present any exhibit as evidence of previous strike before the Court. This Court is permitted as a matter of law to enquire into the question of law submitted before it. And, this will be considered on merit. He urge the Court to hold the Claimant has made out his case that the Defendants are not permitted under the extant law to engage in strike and the previous strike of 5th and 6th September, 2023 is unlawful and illegal. In Conclusion, Counsel posited that the 1st Defendant counter affidavit is bereft of substance, it is lacking in merit and deserve no judiciary time of this Court and urge the Court to throw it out and give the above Constitutional and statutory provisions their ordinary meaning, preserve the rule of law for posterity's sake.



CLAIMANT'S REPLY ON POINTS OF LAW TO THE 3RD DEFENDANT'S COUNTER AFFIDAVIT

42. Counsel stated that the 3rd Defendant had in its affidavit and paragraph 4.27, 4.28 and 4.29 of its written address conceded the position of law on the fact that the Defendants are indeed prohibited from embarking on strike by virtue of the fact that they provide essential service. That the 3rd Defendant had erroneously submitted that they are not involved in generation, distribution and supply of electricity in Nigeria. Counsel submits that the 3rd Defendant is wrong on this and misconstrued the position of law. It is the argument of Counsel that the 3rd Defendant is responsible for evacuating electric power generated by electricity generating companies (GenCos) and wheeling it to distribution companies (DisCos) the 2nd Defendant. It provides the vital infrastructure between the generating Company and the 2nd Defendant's feeder sub-stations. The 3rd Defendant's primary responsibility is the transmitting bulk electricity generated power plant (Gen Cos) to the distribution Companies (Discos) across the country essentially acting as the link between electricity generation and distribution company. It is the contention of Counsel that the 3rd Defendant belongs to electricity industry therefore part of electricity sector workers who provide essential service hence this suit is not merely about disruption of electricity rather it is whether the Defendants are legally allowed or permitted to embark on industrial action. That an attempt by the 3rd Defendant to dissociate itself from being involved in the provisions of the law cannot be legally justified. It is also the position of Counsel that the 3rd Defendant being the company statutorily responsible for the evacuation of electricity supply to the consumers is within the contemplation of the Trade Union Act 2005 (amended) and thereby prohibited from embarking on strike. He urges this Court to so hold.



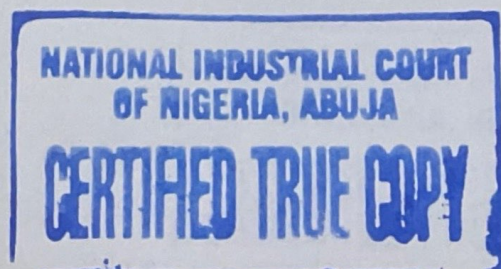
43. Counsel went on and submit that the 3rd Defendant misconstrued the provision of Section 2 (a) First Schedule to the Trade Disputes Act. That the supply of electricity is not one stop-shop product, it involved a complex chain of activities and several companies from generation to transmission and distribution. All these companies are all electricity workers. Learned Counsel posited that the inelegant argument of the 3rd Defendant that the word used in Act is supply and transmission sound legally illogical and undeliverable consequently, the word supply or transmit are mere nomenclature which had no bearing on the interpretation on the section. H submits that both words carry the same meaning within the context of the usage in the statute. That it is the law that where the provisions of statutes are clear and without ambiguity. He placed reliance on the case of ***Attorney General of Federation v. AG Abia State & 25 Ors SC (26/2001) [2002] NGSC 4 April [2002] National Asembly v. Tony Momoh [1983] 4 NCLR 269 at 295.*** It is the Counsel's further submission that the 3rd Defendant having conceded in it counter affidavit leaves the Court with no option than to hold that the 3rd Defendant like all the Defendants are involved in the provision of electricity as an essential service and by the provision of Trade Union Act and First schedule of Trade Union Act. He urge the Court to discountenance the 3rd Defendant's counter affidavit and equally hold that the 3rd Defendant is part of electricity worker which offers essential service and therefore prohibited from embarking on strike.

CLAIMANT'S REPLY ON POINT LAW TO THE 4TH DEFENDANT COUNTER-AFFIDAVIT.

44. Claimant's Counsel distilled sole issue for this Court's determination thus;

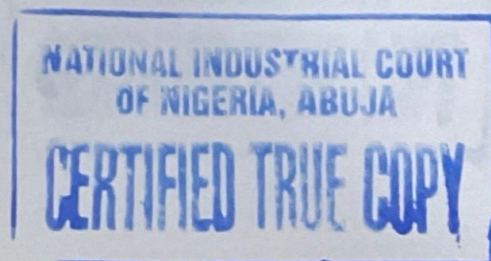
Whether the Claimant has requisite locus standi to institute this suit?

45. Counsel stated that the 4th Defendant, misconstrued and misunderstood the issue of locus standi especially as it relates to the instant suit. In its argument the 4th Defendant cited and relied heavily



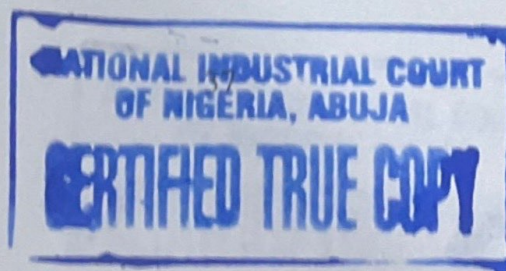
on two cases *Agunsoye v. Arojojoye* [2023] 12 NWLR Pt. 1897 Pg.137 a 167 Para A-B and the case of *APC v. INEC* [2023] 8 NWLR Pt. 1887 Pg. 563 @ 588 Para E. the both cases are different in context and circumstances. He went on to demonstrate viz; Whereas, the *Agunsoyev. Arojojoye (Supra)* is a chieftaincy tussle between the Appellants and the Respondents. The Appellants' being the Defendants at the trial Court had contended that the 1st to 4th Respondents are not juristic persons as they were suing in a representative capacity for and on behalf of the families they purport to represent and the reliefs sought by the representative must inure to the benefits of the ruling house, not personal benefits of the dominis litis. That the Defendants/Appellant's preliminary objection were dismissed at both the trial court and court of appeal. On further appeal to Supreme Court. The Supreme Court held that it is the statement of claim of the Plaintiff that will look to determine his locus. While, the case *APC v. INEC (supra)* is a pre-election matter in which Section 84 of the Electoral Act, 2022 was the subject of interpretation by the Court. Counsel posited that from the above, it is clear that in the cases cited and relied upon by the 4th Defendant are chieftaincy matter and pre-election which clearly distinguished from the instant matter which is a public interest suit. In the *Agunsoyev. Arojojoye'* case the 1st to 4th Respondents had sued in representative capacity on behalf of the ruling house contesting the stool, while in the later case of *APC v. INEC*, being an electoral matter, only an aggrieved party can bring an action and not any other. He submitted that the above two decision are different both in context and circumstances and do not apply in the present circumstance. Counsel urge this Court to discountenance the above cases as they do not apply here owing to the facts and circumstances of the present case.

46. Going on Counsel stated that in Public Interest litigation the position of law as regards locus standi is slightly different from what the 4th Defendant canvass above. The law has since move from the anachronistic position in the famous ADESANYA'S CASE, where the



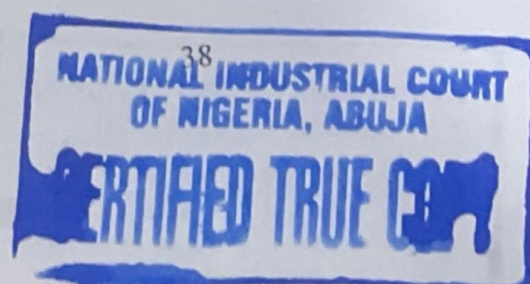
Plaintiff must necessarily prove his special interest in the matter. He placed reliance on the case of *Hon. George Timinimi & 9 Ors v. INEC [2023] 7 NWLR 206, PG 109; Centre For Oil Pollution Watch v. N.N.P.C. [2019] 5 NWLR (Pt. 1666) 518. Olumide Babalolav Attorney General of The Federation & Anor. CA/L/42/2016.*

47. Counsel argued that the instant case is public interest suit; the Claimant is seeking the interpretation of Trade Union Act, 2005, Amended and it is the Claimant's contention that the Defendants are prohibited, forbidden and restrained under the Trade Union Act from embarking on strike simpliciter. That Public interest litigation is essentially an action brought for the benefit of a group or class of persons who have suffered a general wrong or are about to suffer as a result of the activities of other persons, usually corporate institutions and governments, for political, religious or economic gains. A key feature of this type of litigation is that the victims are often groups of persons who would not ordinarily be in a position to approach the Court on their own due to impecuniosity or lack of awareness of their rights. Counsel reiterated that it is the contention of the Claimant that by virtue Section of 31(6) of Trade Union Act, of 2005 Amended, and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the Defendants provides essentials services and therefore excluded from embarking on industrial action. The pertinent question to ask is whether by the aforementioned laws' the Defendants have not committed an infraction of the law by embarking on industrial action on the 5th and 6th September 2023 or whether they do not belong to the category of workers contemplated in Section 2 (a) of the First Schedule of the Trade Dispute Act. The facts which the Defendants have not denied.
48. Continuing, Counsel stated that Freedom of Association Committee of the Governing Body of the International Labour Organization. defines "essential services" in its strict sense as "services the interruption of



which would endanger the life, personal safety or health of the whole or part of the population. The Committee further listed the following as essential services: the hospital sector; **electricity services**; water supply services; the telephone service; the police and armed forces; the fire-fighting services; the prison services; the provision of food for pupils of school age and the cleaning of schools; and the traffic control. That it is the withdrawal of these services on account of industrial dispute which is prohibited by law that gives the Claimant the right to approach the Court noting that the blackout can be excused where there is systemic collapse of grid or other natural occurrences however, the law frowns at deliberate disruption of supply of electricity on account of industrial action.

49. On whether the suit discloses cause of action Counsel cited the case of ***Savage & Orsv Uwechia*** [1972] which provides a foundational definition of a cause of action as the entire set of circumstances giving rise to an enforceable claim. While the case of ***Bellov Attorney-General of Oyo State*** [1986] and ***Emiatorv Nigerian Army*** [1999] which provides the following as the elements needed to prove a cause of action in a legal dispute. He posited that the above legal requirements to justify a cause of action are mutually exclusive. Once a Claimant can show that the Defendant is in breach of them, a cause of action has arisen. He submitted that the Claimant had averred in his affidavit in support of the originating summons that in spite of the copious provision of law prohibiting the Defendant from embarking on strike; the Defendant on the directives of the 1st Defendant embarked on two days warning strike on the 5th and 6th September 2023 contrary to the provision of Section 31(6) of the Trade Unions Act LFN 2004 as amended by the Trade Unions (Amendment) Act 2005 and sections 4, 18 and 42 of the Trade Disputes Act LFN 2004 as amended. It is this disobedience of the Defendant to the provisions of the law that has given rise to this cause of action. He urges the Court to so hold.



50. It is equally the submission of Counsel that the 3rd Defendant and other Defendants are subject to the law. They are not above the law. The deliberate infraction of the law with impunity by not adherence to the rule of law is the basis and cause of this suit. Again, the Claimant avers in affidavit in support that he is a legal Practitioner, a tax payer and a citizen of the Nigeria. It I on this basis that Counsel submits that the Claimant like any other Nigeria has duty to uphold the rule of law. In totality Counsel, urge the Court to hold that the Claimant is clothed with requisite locus standi to institute this action and has established that he has a cause of action in this case. And, fundamentally that the Defendants are legally prohibited, forbidden, restrained from embarking on strike by virtue of the services they render. He urge the Court to so hold.

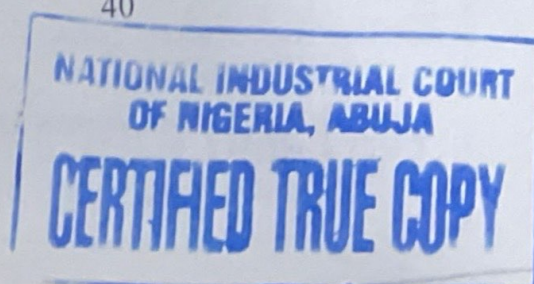
1ST DEFENDANT/APPLICANT'S REPLY ON POINTS OF LAW TO THE CLAIMANT'S COUNTER AFFIDAVIT AND WRITTEN ADDRESS IN OPPOSITION TO ITS PRELIMINARY OBJECTION

51. The 1st Defendant's Counsel stated that the Claimant/Respondent raised two issues for determination before this Court to wit;
- Whether having regard to the subject matter of this Suit, this Honourable Court has jurisdiction (sic) to entertain the Claimant's Suit. Whether the alleged absence of a counsel's seal or bar practicing fee receipt on a court process renders the process incompetent.
52. The position of Counsel is that thankfully with the greatest respect to the learned Counsel/Claimant, the issue for determination commences with having regard to the subject matter. Thus the subject matter in his opinion is the injury suffered by the Claimant on account of the Strike Action organized by the Nigerian Labour Congress which the 1st Defendant members allegedly participated as staff of the Defendants who are alleged essential service providers and thus cannot go on strike action. That the 1st Defendant/Applicant brought a preliminary objection challenging the competence of the Claimant's Suit being heard before this Court as a Court of first instance and thus it should



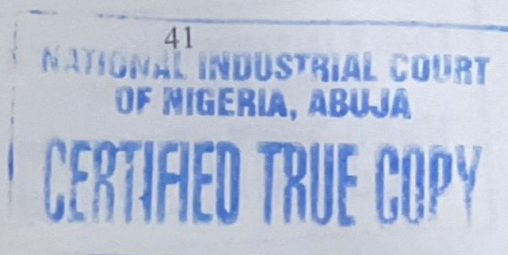
be struck out and or dismissed in its entirety which the Claimant disagrees with the preliminary objection on grounds that as a Nigerian he has a constitutional guaranteed right to approach the Court and ventilate his grievances.

53. He stated further that the gravamen of the Claimant's case is the alleged participation of the 1st Defendant's members who are staff of legal entities regarded as essential service providers. He then submit that the Claimant miss the point on his approaching the Court to ventilate his grievances. Of course, the Claimant is at liberty to approach the Court any day any time to ventilate his civil or other otherwise rights. However, the 1st Defendant's take is that the Claimant's right to approach the Court in the adjudication of civil claims must be juxtaposed with the subject matter before the Court which he can participate without any legal challenge to his status. Jurisdiction is donated on the face of the Statement of Claim before the Court. Subject matter determines which of the Courts can hear the case and in what capacity. Strike Action and participation is fallout out of failed Trade Dispute negotiations and a process is initiated before a Strike Action is called. The question then is where lies the judicial authority of an individual or legal entity to challenge the actions of a Trade Union or its members to participate in a Strike Action? He referred the Court to the case of *Nestoil Plc v. NUPENG (NLLR) 82 90; Madukolu v. Nkemdilim [1962] 2 SCNLR 341* and *AGF v. Guardian Ltd, (supra)*. He submitted that the subject matter of the action is not within the jurisdiction of this Court and he urge the Court to hold the same. Also, the Claimant case being in a wrong venue is fundamentally defective and incurable as jurisdiction is the fulcrum of any adjudication before the Court. It is the argument of Counsel that the Claimant's case must fail as it cannot put something upon nothing and expect it to stand; it must surely fall and crumble. He referred the Court to the case of *Macfoy v. U.A.C Ltd [1962] A.C 152* and urge the Court to strike out the suit of the Claimant as that cannot be heard or determined between parties by this Court. He equally submitted that Parties cannot

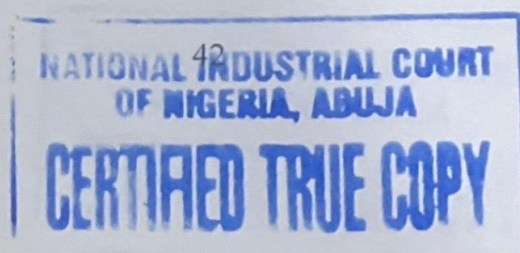


by connivance, acquiescence, and collision or by waiver donate jurisdiction to the Court as parties cannot vest jurisdiction in Court when there is none. He placed reliance on the case of ***Okolov. Union Bank Of Nig. Plc [2004] ALL FWLR (Pt. 197) 981 RATIO 2 – 4*** and posits that to drive home the point being made in this objection, that though this Court has the exclusive jurisdiction on issues of strike, that jurisdiction is by direct reference from the Minister. He cited in support of his position Section 17 of the Trade Dispute Act. He reiterated that the point being made here is that the Court cannot assume jurisdiction to determine the Declarations and the Orders sought by the Claimant as a Court of first instance without looking at the process or procedures followed by the parties before approaching this Court. If the process is faulty as in the present case, parties having failed to activate the dispute resolution process that lacuna cannot be cured by this Court assuming jurisdiction as a Court of first instance.

54. That while Section 7 (1) (a) of the NICA, 2006 made the point on the subject matter of this Court, this Section is not in conflict with the provisions of the Trade Dispute Act with reference to the jurisdiction of the Court to determine the Claimant's case. The contention here is that the reliefs sought by the Claimant cannot be determined by this Court as a Court of first instance without looking at the process leading to the Suit. And then thus, if the process is that of a trade dispute, then there must be an enquiry whether the parties complied with the process of resolving a trade dispute before approaching this Court. It is our submission that in the event of a trade dispute, the Claimant cannot by-pass the dispute resolution process in Part 1 of the Trade Disputes Act (CapT8) LFN, 2004. He relied on the case of ***NUHPSW v. NUFBTE [1978-2006] Digest of the Judgment of the National Industrial Court Page 482, [2004] 1 NLLR (Pt. 2) 286.***
55. Furthermore, the Constitution is the ground norm of the laws of the Land upon which all statutes created must trace it powers and coverage in it operations. However, an auxiliary to the question above vis-à-vis



the arguments of the Respondent is whether the provisions of Section 254(1) of the Constitution as altered repealed the provisions of Trade Dispute Act in pursuit of Trade Dispute Resolution mechanism. The Claimant copiously cited the provisions of the Constitution as enabling factor to approach the Court. The candid answer to the question as to whether there is inconsistency between the Trade Dispute Act, Section 7 of the NICA 2006 and Sections **6(6) and 254(1)** of the Constitution was settled by ***Per Obaseki-Osaghe J @ (Pages 324 – 325) in the case of Mr. George Uzoaru & Anor v. Dangote Cement Plc & Anor [2013] 31 NLLR (Pt. 89) 308.*** In the case of ***Mr. George Uzoaru & Anor v. Dangote Cement Plc & Anor (Supra) @ (P. 325, paras A-B*** The Court held further 'processes of Part 1 of the Trade Dispute Act which are mediation, conciliation, and arbitration are compulsory except otherwise stated before one can access the National Industrial Court. More so, in determining factors from judicial authorities that qualifies a matter as Trade Dispute which shall not come to this Court as a Court of first instance and other matters that parties can access this court in it original jurisdiction are; there must be a dispute, the dispute must involve a trade and the dispute must be connected with the employment or non-employment or the terms of employment and physical condition of workers of any person. Counsel submits that it is where none of the relationship as outline above exists that it can be held that a Claimant's case is not one of Trade Dispute to undergo the process of Part 1 of the Trade Dispute Act. Herein in the Claimant's case is the issue of terms of employment and physical conditions of workers of any person and under the Trade Union Act, the relief against a party for participating in strike in contravention of part A of the Trade Dispute Act is in the case of an individual, a fine of #100 (one hundred naira) or 6 months imprisonment and in the case of a corporate body a fine of #1000 (one thousand naira). Section 18 subsection 1 and 2 of the Trade Dispute Act. He urge the Court to dismiss the Claimant's Suit with substantial cost.



2ND DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION

56. The 2nd Defendant/Applicant equally filed a Notice of Preliminary Objection challenging the jurisdiction of this Court to hear and determine this suit against the objector praying for the following order:

AN ORDER striking out the name of the Objector from this suit for lack of jurisdiction.

AND for such further order (s) as this Honorable Court may deem fit to make in the circumstances.

The grounds for the objection are as follows:

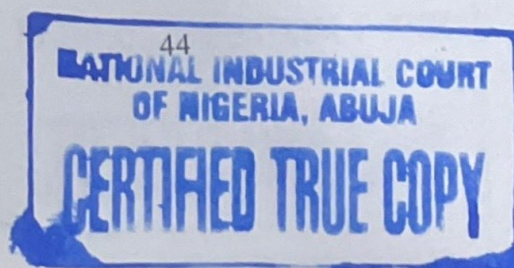
- a. By virtue of Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) every person, including the Objector's employees are entitled to assemble freely and associate with other persons and in particular form or belong to any trade union or any other association of their choice for the protection of their interests.
- b. Similarly, by the provisions of Section 9 (6) of the Labour Act 2004 no employment contract shall make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of trade union or cause the dismissal of or otherwise prejudice a worker by reason of trade union membership or because of trade union activities outside working hours or with the consent of the employer within working hours. Thus, the employer of the members of a trade union cannot control the activities of the trade union or its employers in the trade union.
- c. Also, by virtue of Section 5 (6) of the Trade Union (Amendment) Act 2005 (as amended), the Registrar of Trade Union on registering a Trade Union shall issue a certificate of registration which unless it is proved that the registration of the union has been cancelled shall be conclusive evidence that the requirements for the registration of the trade union has been met, that the trade union is authorized to be registered and is a trade union with legal personality capable of suing and being sued.
- d. Given the fact that all Nigerians have a right to freedom of association, the basis upon which the Trade Union (Amendment) Act 2005 provided for the formation and membership of trade unions, the Objector as an employer cannot be held liable for the



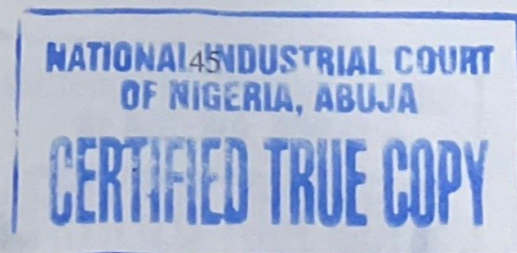
- activities of trade unions or for its failure to restrict its employees from participating in their trade union's activities.
- e. From the Claimant/Respondent's ("The Respondent") Affidavit in support of the Originating Summons particularly 4,8 and 9 thereof, the Respondent deposed that the 1st Defendant/Respondent's is registered trade union and that it was on the directive of Mr. Dominic Igwebike the Acting General Secretary of the 1st Defendant/Respondent that the 1st Defendant/Respondent's members inclusive of the Objector's staff joined the nationwide warning strike.
 - f. Consequently, the instant suit does not disclose any reasonable cause of action (i.e a set of facts sufficient to justify a right to sue or make a claim) against the Objector, who is neither a trade union and played no part in the said nationwide strike action that gave birth to the instant suit.s
 - g. On another note, the Objector is a non- juristic person capable of suing and being sued as there is no juristic person known as "Abuja Electricity Distribution Company"
 - h. The foregoing defect in the Respondent's suit as presently constituted has consequently robbed this Honourable Court of the jurisdiction to hear and determine this suit against the Objector

2ND DEFENDANT/APPLICANT'S WRITTEN SUBMISSION IN SUPPORT OF ITS NOTICE OF PRELIMINARY OBJECTION

57. The 2nd Defendant also filed along a written address in support of the Preliminary Objection and Counsel on its behalf raised two issues for the Court determination thus;
1. Whether from the Affidavit evidence, this action can be maintained against the Objector, who is a non-juristic?
 2. Whether from the Affidavit evidence, the Respondent failed to disclose a reasonable cause of action against the Objector, to warrant the grant of the instant objection?
58. On issue one learned Counsel respond in the negative and submitted that the law is that parties to any proceeding/suit must be persons (natural or artificial) recognized by law as qualified to sue and be sued, and that no action or proceeding can be brought by or against any party

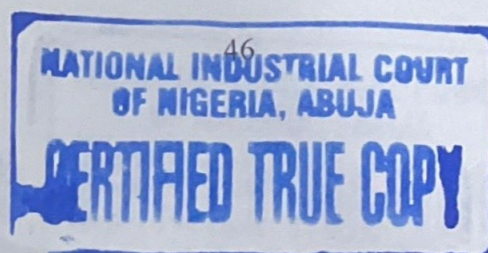


other than a juristic person. He further submit that the institution of this action against the Objector who is a non-juristic person robs this Court of the requisite jurisdiction to hear and determine this suit against the Objector, whose name, in the circumstance, ought to be struck out from this suit. Our submission is duly premised on the legal arguments canvassed hereunder. Continuing, Counsel stated that the importance of jurisdiction in the adjudicatory process cannot be over emphasized, as jurisdiction is the footing on which a court expresses and exercises judicial powers. The absence of jurisdiction renders any judicial proceeding, an exercise in futility, and the corresponding decision of the court, a nullity. He cited in support of his assertion the case of **Shelim v. Gobang [2009] 12 NWLR (Pt. 1156) 435 @ P. 452, Paras. A-B.** and **Nnalimuo v. Elodumo [2018] 8 NWLR (Pt. 1622) 549 @ 556-562, Paras. D-E and E-G.** Again, it is settled law that where the issue of jurisdiction is raised, the Court is duty bound to consider and resolve same, before delving into the substantive dispute, as the court is, in fact, naked to act on the substantive dispute without jurisdiction, and any decision reached by it, without the cloak of jurisdiction, is a nullity. He relied on the case of **Brittania-U (Nig) Ltd. v. Seplat Petroleum Development Co. Ltd & Ors [2016] LPELR-40007 (SC) Pp. 87-88, Paras. A-B.** Similarly, the law sets out certain requirements which ought to be present in a suit, for a court to be sufficiently clothed with jurisdiction to entertain such suit. He referred the Court to the case of **FRN v. Kanu [2024] 11 NWLR (Pt. 1949) 231 @ P. 320, Paras. C-E** and submitted that these pre-conditions are conjunctive and the non-fulfilment or absence of any of them, automatically robs the Court of the jurisdiction to hear and determine the suit. He placed reliance on the case of **Madukolu v. Nkemdilim [1962] 2 SCNLR 341; Savannah Bank (Nig.) Plc. v. Saba [2018] 14 NWLR (Pt. 1638) 56 @ 90-91, Paras. G-B** and **Abubakar v. Tanko [2019] 3 NWLR (Pt. 1658) 1 @ 18 – 19, Paras. A – B.**



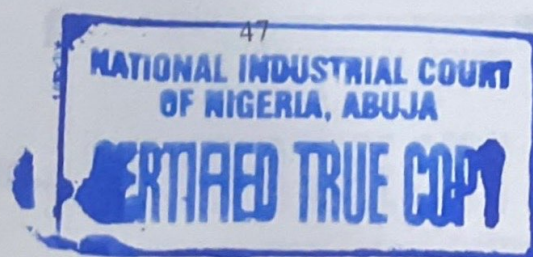
59. The position of learned Counsel is that for a court of law to assume jurisdiction over a suit, the parties thereto must be persons cognizable in law (juristic persons); and where it is shown that a party on record is a non-juristic person, put differently, does not exist in the eye of the law, the court is prevented from exercising jurisdiction over the said party in the suit. He relied on the case of **Nkporinwi vs. Ejire [2009] 9 NWLR (Pt. 1145) 131 @ 176 Paras. E-F Pp. 176-177 Paras. H-A; Anemene & Anor v. H.A. Obianyo & Ors [2006] LPELR-11635(CA) @ Pp. 5-6, Paras. A-D; Bagwai v. Goda [2011] 7 NWLR (Pt. 1245) 28, @ P. 57 Para. B-D and Registered Trustee of Iroyin Ayo Baptist Church v Mr. Gboyega Sanusi & Anor [2019] LPELR-47720(CA)**. He reiterated his position that all parties to an action must be legal or juristic persons who can either be a natural or artificial person. Whilst a natural person is a human being, an artificial person is a creation of law and of which the law has endowed with the right to sue and be sued. It is also the submission of Counsel that where a person or entity, not being a legal or juristic person commences or is made a party to a suit, the action is incompetent and liable to be struck out. He cited in support of his assertion the case of **Bank of Baroda v. Iyalabani Co. Ltd [2002] 13 NWLR (Pt. 785) 551 @ P. 589, paras. G-E**. Counsel submit further that a Claimant who commences an action against a Defendant must ensure that the Defendant is a juristic person over whom the Court can exercise jurisdiction. As such, the name or description ascribed to all parties on record must be known to law. He placed reliance on the case of **Agbonmagbe v. General Manager, G.B Olivant Ltd [1961] 1 ALL NLR 116** and **Anemene & Anor v. H.A. Obianyo & Ors [2006] LPELR-11635(CA)**.

60. Counsel argued that in the instant suit, the Objector herein described as Abuja Electricity Distribution Company on the Originating Summons and other supporting processes in the instant suit is not a legal or juristic person, and not known in law. He urge the Court to be guided by

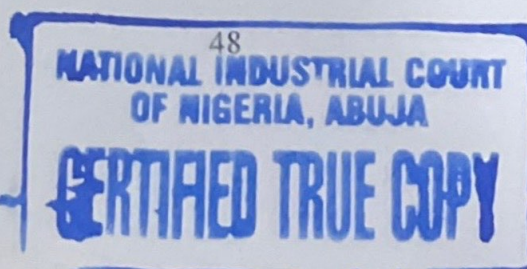


the decision of the Apex Court in the cases of **Agbonmagbe Bank Ltd. v. The General Manager, G.B. Ollivant Ltd. (supra); Maersk Line & Anor v. Addide Investments Ltd & Anor [2002] LPELR-1811(SC) and Admin. Exe. Estate, Abacha, v. Eke-Spiff [2009] 7NWLR (Pt. 1139) 97 @ P. 136 para. F.** That the consequence of suing a non-juristic person is that the Court is availed no other option than to strike out the name of that person, and in an event where the non-juristic person is the only Defendant, the Court is obligated to strike out the suit. He made reference to the case of **Fawehinmi v. N.B.A [1989] 2 NWLR (Pt. 105) 558 @ Pp 640-641 Para. F and Njemanze v. Shell B.P Port Harcourt [1966] 1 SCNLR and Idanre Local Govt. v. Gov. Ondo State [2010] 14 NWLR (Pt. 1214) 509 @ Pp. 525-526, Paras. H-A.** It is also the submission of Counsel that no amendment can be allowed to substitute the name of a non-juristic, such as the Objector with a juristic person. He placed reliance on the case of **Maersk Line & Anor v. Addide Investments Ltd & Anor [2002] LPELR-1811(SC) @ P. 31, Paras. A-B and Registered Trusteed of Iroyin Ayo Baptist Church v Mr. Gboyega Sanusi & Anor [2019] LPELR-47720(CA), @ P. 25-26, Paras. A-C.** He urge this Court to hold that the Objector herein is not a person known to law, lacks the capacity to sue and be sued and consequently liable to be struck out.

61. Respecting issue two Counsel stated that in the most unlikely event that the Court is not persuaded by our foregoing argument. He submits that from the evidence deposed to in the Respondent's Affidavit in Support of the Originating Summons, no reasonable cause of action was disclosed against the Objector, thereby, robbing this Court of the requisite jurisdiction to hear and determine this suit against the Objector, whose name, in the circumstance, ought to be struck out from this suit. Our submission is duly premised on the legal arguments canvassed hereunder. Counsel equally submitted that the Respondents' claims do not disclose a reasonable cause of action against the Objector. A cause of action has been defined by the Supreme Court as

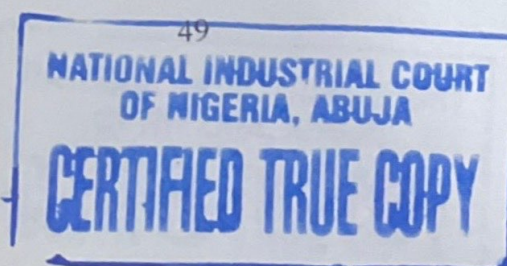


a combination of facts and circumstances, giving rise to the right to file a claim in court for a remedy. It includes all things, which are necessary to give a right of action and every material fact which has to be proved to entitle the claimant to succeed. He relied on the case of ***P.N. Udoh Trading Co. v. Abere*** [2001] 11 NWLR (Pt. 723) 114. That cause of action, as it applies to legal proceedings before a Court of law, refers to the subject matter or grievance, upon which an action is founded; the factual situation stated by a claimant which, if substantiated, entitles him to a remedy against the defendant. He referred the Court to the case of ***Chevron (Nig.) Ltd. v. Lonestar Drilling (Nig.) Ltd.*** [2007] 16 NWLR (Pt. 1059) 168 @ 176, Paras. F-H and ***Bello & Ors v A. G. Oyo State*** [1986] LPELR-764(SC). It is trite that the absence of a cause of action raises a jurisdictional issue, to the effect that where a cause of action is not present in a suit, the jurisdiction of the court before which the suit is filed is called into question. He relied on the case of ***C.S.S. & D.F. Ltd. v. Schlumberger (Nig.) Ltd.*** [2018] 15 NWLR (Pt. 1642) 238 at 261, Paras. A-C; ***F.R.I.N. v. Gold*** [2007] 11 NWLR (Pt. 1044) 1 @ 18-19, Paras. H-A; ***P.N. Udoh Trading Co. v. Abere*** (*supra*) and ***Nissan Nigeria Limited v. Yoganathan*** [2010] 4 NWLR (Pt. 1183) 135 @ 149 Para. D-E. Counsel posited that it follows therefore, that where a court cannot find in the originating summons and affidavit in support thereof, an allegation that a defendant named therein, committed a wrong against the Claimant, and the resultant damage stemming from the alleged wrong done by the said defendant, the originating summons and affidavit in support thereof, would be deemed to have disclosed no cause of action against that Defendant. He placed reliance on the case of ***Paulinus Chukwu v. Mathew Akpelu*** [2014] 13 NWLR (Pt. 1424) P. 359 and ***Chevron Nigeria Limited v. Lonestar Drilling Nig. Ltd.*** (*supra*) and submitted that applying the foregoing to the facts of the instant suit, the gravamen of the Respondents' claim, as can be gleaned from the Supporting Affidavit (particularly Paragraphs 8-11 thereof), is that in contravention of the provisions of the Trade



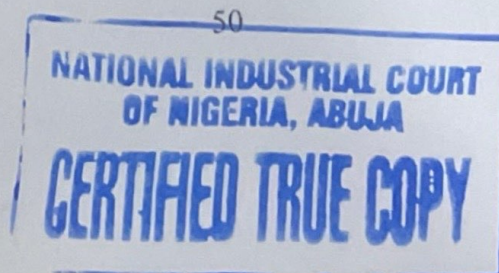
Union (Amendment) Act 2005, and the Trade Dispute Act 2004, the defendants embarked on a 2-days strike, which led to the disruption of electricity supply that invariably, made the Claimant suffer damage to his mental health and means of livelihood. Consequently, it is imperative to determine those Defendants, whose action(s) or inactions, led to damage suffered by the Claimant. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), Trade Union (Amendment) Act 2005, the Trade Dispute Act 2004, the Labour Act 2004 and International Labour Organisation (ILO) Conventions, come to the rescue, as they collectively describe the legal status of trade unions and the fact that their activities are independent of the employer. In this regard, Sections 5(6), 12(4) of the Trade Union (Amendment) Act 2005.

62. Also, the right of employees to join trade unions of their choice and carry out trade union activities, without any disturbance by the employer is further guaranteed by International Labour Organisation's convention such as the International Labour Organisation Freedom of Association and the Protection of the Rights to Organise Convention of 1948 (No. 87) and the International Labour Organisation Right to Organise and Collective Bargaining Convention of 1949 (No. 98), which appear to be the strongest pillars of support internationally, for the rights of trade unions to organize, independent of employers and public authorities. Particularly, Articles 2 and 3 of the ILO Freedom of Association and the Protection of the Rights to Organise Convention of 1948 (No. 87) and Articles 1 and 2 of the International Labour Organisation Right to Organise and Collective Bargaining Convention of 1949 (No. 98). He referred the Court to the case of ***Nigerian Nurses Association v. A.G. Federation [1981] LPELR-2027(SC) @ P. 24, Paras. D-E***. In furtherance to the above, the law is trite that a legal personality (corporation or trade union) can only function through the instrumentality of juristic persons, saddled with the responsibility to carry out the functions, duties and obligations of the corporation or trade union. In the above regard, the corporation or trade union will be

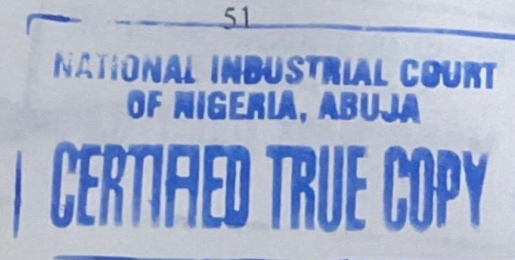


solely responsible for all actions of its members and staff, in the course of their regular union activities. He relied on the case of ***Aliyu v. Wakili [2015] LPELR-25910(CA) @ P. 22, paras. D-F*** and submitted that based on the provisions of law and judicial authorities cited above, an employer cannot be held liable for the activities of its employees' trade union, carried out by the employees, in fulfilment of the trade union's objectives and responsibilities. This is because, employees, who have the right to freely associate and participate in trade unions, devoid of any interference from their employers, performed the alleged actions, in furtherance of their membership of the trade union, and not as staff of their employer. Now, applying the foregoing to the facts of the instant suit, it is without doubt that the 1st Defendant/Respondent, which is the registered trade union representing the interest of employees within the electricity sector in Nigeria, directed its members, which include the employees of the Objector, to join the nationwide strike declared by the Nigeria Labour Congress (NLC) as part of its trade union activism. Thus, the trade union, through its members, joined the nationwide strike. A careful review of the Respondents' Supporting Affidavit will reveal that there is no allegation that the Objector is a registered trade union, or a member of the 1st Defendant/Respondent. Rather, the Respondent copiously deposed that the acting Chairman of the 1st Defendant/Respondent directed its members, who the Objector's staff are part of, to join the strike, and their compliance, disrupted the supply of electricity within its franchise area. He placed reliance to Paragraphs 4, 8 and 9 of the Respondents' Supporting Affidavit which exonerated the Objector.

63. Flowing from the above, it is Counsel's submission that the Respondent, by his depositions, has not only failed to disclose a reasonable cause of action against the Objector, but also exonerated the Objector. In essence, there is no case for the Objector to answer in this suit, or a factual situation upon which the Respondent can base their case against the Objector. This is in light of the fact that the Respondent has, by his affidavit evidence, shown that the Objector is



not a registered trade union and did it not play any role in the trade union activities of the 1st Defendant/Respondent. All the Respondent's claims and allegations with respect to the strike action, lie against the 1st Defendant/Respondent and the 1st Defendant/Respondent only. He referred the Court to the case of ***Okonkwo v. A. G of The Federation and Minister of Justice [2017] LPELR- 51365 (CA) Pp. 24-25, Paras. D-A.*** Thus, the Respondent, having identified the 1st Defendant/Respondent as the trade union representing the interest of workers in the electricity sector, which includes the Objector's employee, was wrong to have joined the Objector to this suit. The joinder of the Objector, who is not a trade union and played no part in the 1st Defendant/Respondent's trade union activism, as a party to this suit, has robbed this Court of the jurisdiction to hear this suit against the Objector. That it is trite that where a suit discloses no cause of action/reasonable cause of action, the court is divested of jurisdiction to hear and determine it. He placed reliance on the case of ***Ekeng v. Polaris Bank Ltd. [2021] 2 NWLR (Pt. 1761) 395 @ P. 419, Paras. D-E and Lawrence Azuh v. Union Bank of Nigeria PLC [2014] 11 NWLR (Pt. 1419) P 580*** and contended that where there are many defendants and there is non-disclosure of a cause of action/reasonable cause of action against one or more, as in this instance, the court is robbed of the jurisdiction to hear and determine the suit against those defendants, and the proper order would be to strike out the names of such defendants, against whom no cause of action has been made out. He cited in support of his position the case of ***S.P.D.C.N. Ltd. v. Egweaja [2016] 10 NWLR (Pt. 1519) 1 @ 16, Paras. C-D.*** Premised on the foregoing, Counsel urge the Court to strike out the name of the Objector from the instant suit, as the Respondent has failed, manifestly, to disclose any cause of action against the Objector. In conclusion, it is the position of learned Counsel that based on the foregoing statutory and judicial authorities referenced, as well as the legal submissions canvassed above, he submit that this Court has been divested of the requisite jurisdiction to



- hear and determine this suit against the Objector. He urge the Court to so hold and strike out the name of the Objector from the instant suit.
64. On the 7th day of March 2025 the 2nd Defendant in opposition to the Claimant's Originating Summons filed a 10 paragraphs Counter affidavit deposed to by one Ifeanyi Alonu, Assistant Manager Legal Services of the 2nd Defendant.

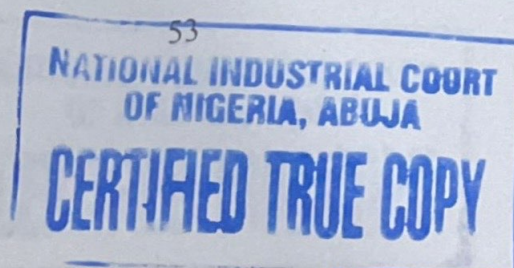
WRITTEN ADDRESS IN SUPPORT OF 2ND DDEFENDANT'S COUNTER AFFIDAVIT TO CLAIMANT'S AMENDED ORIGINATING SUMMONS

65. Learned Counsel on behalf of the 2nd Defendant formulated a sole issue for determination by this Honorable Court.
- Whether in the circumstances of this case, the Claimant is entitled to the reliefs sought against the 2nd Defendant?
66. Counsel started by responding to the sole issue for determination in the negative submitted that the Claimant has failed to prove his entitlement to the reliefs sought against the 2nd Defendant, and urge this Court to dismiss the Claimant's claims against the 2nd Defendant with substantial cost, in favour of the 2nd Defendant. He went on and stated that it is trite that for a Court to grant a relief in a suit commenced by way of originating summons, the supporting affidavit must contain sufficient material facts that establishes the reliefs sought. In other words, a Claimant is obligated in law, to lead evidence in proof of the Defendant's wrongdoing, occasioning harm, before the Claimant can be entitled to any relief(s) sought. He relied on the case of *Okala v. Udah [2019] 9 NWLR (Pt.1678) 562, @ P.581, Paras. C-D*. Additionally, it is trite that declaratory reliefs can only be granted, if and when proved by credible evidence. Thus, a Claimant bears the evidential burden of establishing his entitlement to his declaratory relief(s), to the satisfaction of the Court, even where the other party failed to file a defence or admitted such claims. He cited in support of his assertion the case of *Nwa-Anyajike v. INEC [2023] 12 NWLR (Pt. 1897) 1 @ P.38, Paras. A-E*. That the rationale for the



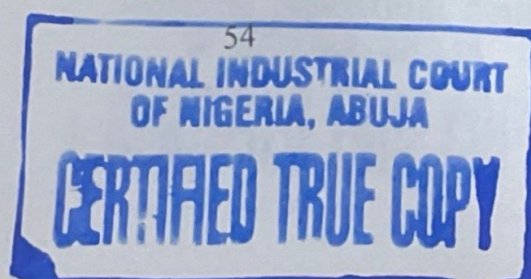
foregoing position of the law is that a claim for declaratory reliefs, calls for the exercise of the court's discretionary powers in favour of a claimant, which can only be activated by sufficient materials, placed by the claimant before the court. He placed reliance on the case of **Adesina v. Air France [2022] 8 NWLR (Pt. 1833) 523 Pp.555-556, Paras. H-B. Nduul v. Wayo [2018] 16 NWLR (Pt. 1646) 548 P.586, Paras. E- G; Amobi v. Ogidi Union Nigeria [2023] 1 NWLR (Pt.1864)153;Makinde v. Adekola [2022] 9 NWLR (Pt. 1834) 13.**

67. The above judicial pronouncements draw breath from the provisions of Sees 131, 132 and 133 (1) of the Evidence Act, 2011, which are instructive, as to which party bears the burden of proof. The purport of the said sections is that whoever desires any court to give judgment, as to any legal right or liability (dependent on the existence of facts, which he asserts), must prove that those facts exist since the burden of proof in a suit or proceeding lies on that person, who would fail if no evidence at all, is given on either side. He referred the Court to the cases of **Organ v. NLNG Ltd. [2013] 16 NWLR (Pt.1381)507 @ 538-539**, and **C.P.C. v. L.N.E.C. [2011] 18 NWLR (Pt. 1279) 493 @ 539-540**. Furthermore, it is indisputable that the crux of the Claimant's case, as can be gleaned from his Supporting Affidavit (particularly Paragraphs 8-11 thereof), is that in contravention of the provisions of the Trade Union (Amendment) Act 2005, and the Trade Dispute Act 2004, the 2nd Defendant embarked on a 2-days strike, which led to the disruption of electricity supply that invariably, made the Claimant suffer damage to his mental health and means of livelihood. Counsel submitted that the 2nd Defendant is merely an employer of labour, without power over the activities of the 1st Defendant, which is a trade union that the 2nd Defendant's employees belong to. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), Trade Union (Amendment) Act 2005, the Trade Dispute Act 2004, the Labour Act 2004 and International Labour Organisation (ILO) Conventions, collectively describe the legal status of trade unions and



the fact that their activities are independent of the employer. He relied on Sections 5(6), 12(4) of the Trade Union (Amendment) Act 2005 and section 9(6)(a) and (b) of the Labour Act, 2004.

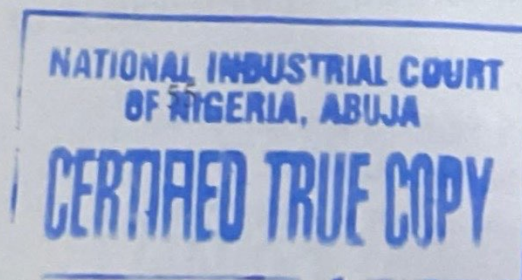
68. Also, the right of employees to join trade unions of their choice and carry out trade union activities, without any disturbance by the employer is further guaranteed by International Labour Organisation's convention, such as the International Labour Organisation Freedom of Association and the Protection of the Rights to Organise Convention of 1948 (No. 87) and the International Labour Organisation Right to Organise and Collective Bargaining Convention of 1949 (No. 98), which appear to be the strongest pillars of support, internationally, for the rights of trade unions to organize, independent of employers and public authorities. Particularly, Articles 2 and 3 of the ILO Freedom of Association and the Protection of the Rights to Organise Convention of 1948 (No. 87).
69. Counsel cited the case of *Aliyu v. Wakili [2015] LPELR-25910(CA) @ P.22 paras. D-F* and posited that aforementioned legal provisions and judicial precedents unequivocally settle the question of whether an employer can be held liable for the actions of its employees trade union, undertaken in pursuit of the union's objectives and responsibilities. This is because, the employees, exercising their right to freely associate and participate in trade unions without their employer's interference, performed the alleged actions in their capacity as union members, rather than as employees of their employer. It is an established principle that a registered trade union is a legal person that is liable for the actions of its members, particularly where such actions are taken in furtherance of the union's directives, policies, or actions expressly sanctioned by the union, as in this circumstance. That premised on the foregoing, it is clear that the 1st Defendant, a registered trade union, representing employees in Nigeria's electricity sector, directed its members, including employees of the 2nd Defendant, to participate in the nationwide strike called by the Nigeria Labour Congress (NLC), as



part of its trade union activities. Consequently, the trade union, through its members, joined the nationwide strike. For the avoidance of doubt and to drive home our point. He referred the Court to Paragraphs 4, 8, and 9 of the Claimant supporting affidavit and the case of Nigerian Nurses Association v. A.G. Federation (1981) LPELR-2027(SC) at P.24, paras. D-E at P. 25, paras. C-D.

70. Counsel submits that the Defendant, as a responsible corporate employer, simply respected and accommodated the rights and freedoms of its employees to freely join, assemble, and participate in the activities of trade union of their choice, as enshrined in the aforementioned statutes/laws. He referred the Court to Sub paragraph 6(b) of the 2nd Defendant's Counter Affidavit. He contended that the 2nd Defendant was also not responsible for the disruption in power supply, during the period of the strike action, that allegedly affected the Claimant and other customers. Thus, reiterating that the Claimant has failed to establish that the 2nd Defendant participated in the 2-day nationwide warning strike on September 5 and 6, 2023. Therefore, the Claimant's allegations of a breach of its Consumer Rights remain unsubstantiated. In conclusion and premised on the above principles of law and our legal submissions/ arguments, Counsel urge this Court to refuse the reliefs sought by the Claimant against the 2nd Defendant, and dismiss same with substantial cost in favour of the 2nd Defendant due to the fact that the Claimant failed to present any iota of evidence, in support of the reliefs against the 2nd Defendant, on the alleged claim that the 2nd Defendant, as a corporate personality, participated or directed its employees to participate in the 2-day nationwide warning strike on September 5-6, 2023 and the Claimant also failed to substantiate the allegation that the 2nd Defendant shutdown and disrupted power supply during the period of the strike action.

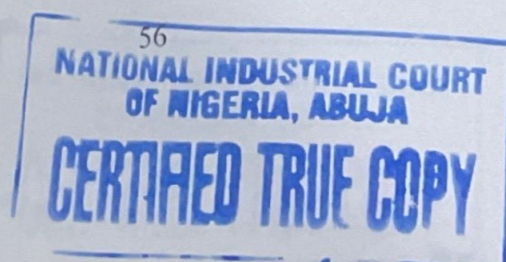
CLAIMANT ADDRESS IN OPPOSITION TO 2ND
DEFENDANT/OBJECTOR NOTICE OF PRELIMINARY
OBJECTION



71. In response to the 2nd Defendant's Notice of Preliminary Objection, Claimant filed a six paragraph Counter Affidavit deposed to by the Claimant himself. He also filed alongside a written address wherein Counsel on his behalf formulated a sole issue for the Court's determination thus;

Whether the 2nd Defendant/Objector's affidavit in support of the preliminary objection does not offend the provisions of Section 115(2) Evidence Act, 2015 therefore liable to be struck out?

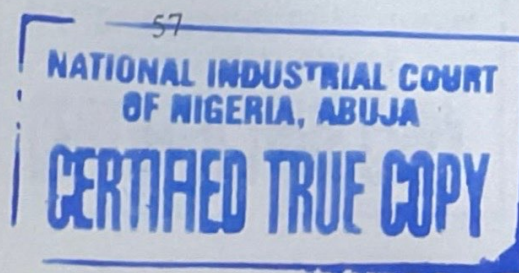
72. On the sole issue Counsel stated that it has been long established in both statutory and chains of judiciary authorities that an affidavit must not contain extraneous matters, legal arguments or opinion. He placed reliance on the case of **Ubaka & Sons Ltd v. Ezekwem & Co [2000] FWLR (PT. 1), 77 @ P. 86, Ratio 4** and Section 115 of the Evidence Act, 2011. It is equally the position of Counsel that an Affidavit is in the nature of facts within the personal knowledge of the deponent in documentary form. Affidavit evidence consists of facts which can be given by a witness in oral testimony in Court. He relied on the case of **Nwosu v. Imo State Environmental Sanitation Authority [1990] 2 NWLR (PT. 135) 688 at 715 paragraph B and 718 paragraphs C – D** and posited that an Affidavit shall contain only Statements of Facts and circumstances derived from the personal knowledge of the deponent or from information which he (deponent) believes to be true. Such deposition shall therefore not contain extraneous matters such as objections, prayers, or legal arguments or conclusions. He noted that Paragraph 3, 4. And 6 of the affidavits in support of the 2nd Defendant's Preliminary objection grossly violates the provisions of the Section 155 (2) of Evidence Act, 2015. He referred the Court to the case of **Bamaiyi v. State (2001) 8 NWLR (PT. 715) 270**. He also submitted that the statutory provisions of the requirements of an affidavit under the Evidence Act is that it is facts' that an affidavit should and or shall contain and not law'. He referred the Court to Section 258(1) Evidence Act. Therefore, it is the



law (which has not changed to date under the EA) that an affidavit 'shall' contain only facts and shall not contain legal arguments; and or legal opinions; and or point of law; and or conclusion, and or extraneous matters, contrary to Section 115(2) of the Evidence Act and the decision of the Supreme Court of Nigeria in the case of **Buhari v. INEC & Ors [2008] LPELR-814(SC)** and a host of other cases, else, such an affidavit or such paragraph of the affidavit which breaches the section 115(2) of the EA shall be incurably and fundamentally defective and incompetent warranting the Court to strike out and or dismiss same. He also placed reliance on the following cases **Josion Holdings Ltd. & 33 Ords. v. Lormamead Limited [1995] 26 LRCN 1 @ 11** and **Chief Francis B. Edu And 3 Others V Commissioners For Agriculture, Water Resources And Rural Development [2001] F.W.L.R. (Pt. 55) 433**. Furthermore, it is the submission Counsel that the use of the word 'shall' in Section 115(2) of the Evidence Act connotes that the requirement to 'facts' rather than law' in an affidavit is 'mandatory'. He cited in support of his assertion the case of **Dr. Arthur Agwuncha Nwankwo And Ors v. Alhaji Umaru Yar'adua And Ors. [2010] LPELR-2109(SC)** and submitted that the Court of law is left with no other option than to interpret the clear and unambiguous law (such as section 115(2) EA) as it is liberally and dismiss the entire affidavit gross breach of the Evidence Act. He urge the Court to so hold. In conclusion, Counsel submitted that the affidavit in support of this notice of preliminary objection has failed in its entirety to meet the test of an affidavit that is worth considering. It has failed legal test. He urge the Court to dismiss the 2nd Defendant's Preliminary Objection in its entirety and proceed to hear the substantive matter on its merits, in the interest of justice.

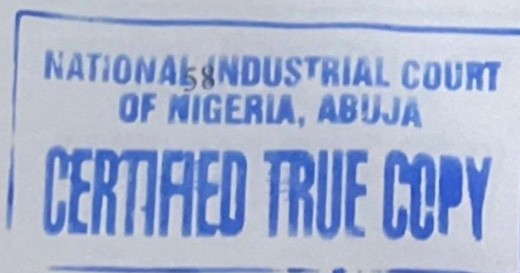
REPLY ON POINTS OF LAW TO THE 2nd DEFENDANT'S COUNTER-AFFIDAVIT DATED 27th MARCH 2025.

73. The Claimant initiated this claim via an amended Originating summons dated and filed on the 7th day of February, 2024. In response, the 2nd



Defendant filed a Counter Affidavit, Hence, the Claimant filed a further affidavit and a Reply on Point of law.

74. Learned Counsel stated that it is the law that when an affidavit contain conclusion, prayer or point of law such affidavit shall be dismiss or where affidavit contained contradictory averment such affidavit shall be dismissed. That Paragraph 4, 6 (a) (b) and (c) of the 2nd Defendant's counter affidavit contained legal arguments, conclusion and opinion of the deponent. He placed reliance on the case of **Ubaka & Sons Ltd Vs. Ezekwem & Co [2000] FWLR (Pt. 1), 77 at P. 86, Ratio 4. Sodipov. Lemminkainen OY [1992] 8 NWLR (Pt. 258) 229 at 244, Para. E. 2.36**; Section 115 of the Evidence Act, 2011 and **Bamaiyi v. State [2001] 8 NWLR (Pt. 715) 270**. Furthermore, it is the submission of Counsel that the statutory provisions of the requirements of an affidavit under the Evidence Act is that it is 'facts' that an affidavit should and or shall contain and not 'law'. He relied on Section 258(1) Evidence Act. Therefore, it is the law (which has not changed to date under the EA) that an affidavit 'shall' contain only facts and shall not contain: legal arguments; and or legal opinions; and or point of law; and or conclusion, and or extraneous matters, contrary to Section 115(2) of the Evidence Act and the decision of the Supreme Court of Nigeria in the case of BUHARI V. INEC & ORS (2008) LPELR-814(SC) and a host of other cases, else, such an affidavit or such paragraph of the affidavit which breaches the Section 115(2) of the Evidence Act shall be incurably and fundamentally defective and incompetent warranting the Court to strike out and or dismiss same.
75. Furthermore, the 2nd Defendant counter-affidavit is manifestly contradictory in that while in Paragraph 6 (a) of the Counter Affidavit it attempted to justify it participation in the strike, conversely in Paragraph 6 (b), it tries to exonerate itself from the consequence of the participation. Counsel argued that as admitted in 6 (a) that the 2nd Defendant in compliance with the 1st Defendant directives joined in the strike action of 5th and 6th September, 2023. The consequences of



which resulted in disruption of electricity supply to the claimant. The 2nd Defendant cannot feign they it is not aware of the consequence or probable of his action in complying with an illegal directive. That the 2nd Defendant is speaking from the both side of the mouth. It is blowing hot and cold at the same time. This contradictory nature of the 2nd Defendant's affidavit is self- destructive and need not be challenged. He placed reliance on ***Atoshi & Ors v. Agbu & Ors [2018] LPELR – 44477 (CA)***. In the overall, Counsel submits in line chains of established statutory and judiciary authorities that the 2nd Defendant's counter affidavit is manifestly contradictory contrary Section 123 of Evidence Act and also offends the provision of Section 155 (2) of the Evidence Act, therefore liable to be dismissed. He urge the Court to so hold.

76. Assuming the Court is not persuaded by the above, Counsel further posits the 2nd Defendant like the 4th Defendant, in Paragraph 4 of its counter affidavit admitted that they provide essential service and define by Section 31 (6) of the Trade Unions Act, Laws of Federation, (2004) and section 2 (a) of the First Schedule of the TRADE DISPUTES ACT, 2004. The above Sections of the law as extensively argued in our originating summons prohibits those rendering essential service from embarking on strike. Which is the fulcrum of the Claimant's case. It is the law that facts admitted needs no further proof. Section 123 of the Evidence Act, facts which are admitted require no further proof. He relied on ***Shittu Sanusi & 2 Ors. V. Buraimo Obafunwa & Another [2006] LPELR-11863[CA] @ Page 26*** and urge the Court to hold the 2nd Defendant is in the business of provision of essential service and are therefore prohibited from going on strike same fact having been admitted by 2nd Defendant.

77. Counsel in specific response to paragraph 3 of the 2nd Defendant's counter stated that the Claimant is a Tenant in the said resident No 12, Ihiala street off Wukari street Area 2, Abuja. No law imposes an obligation on him that he must be the owner of the meter where he

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meter No 04169525062, does not mean that he is not a consumer of electricity services and customer of the 2nd Defendant in the house he occupies as a Tenant. He noted that Claimant has shown evidence of his electricity consumption and payment history of the 2nd Defendant's vendor which is undisputed. That assuming without conceding that the Claimant does not even own a meter, the Claimant's grievance against the 2nd Defendant will still be very valid and competent, just being a citizen and tax payer of the federal Republic of Nigeria. He cited in support of his assertion the case of **Centre For Oil Pollution Watch v. N.N.P.C. [2019] 5 NWLR (PT. 1666) 518**, and **Olumide Babalola v Attorney General Of The Federation & Anor. CA/L/42/2016**.

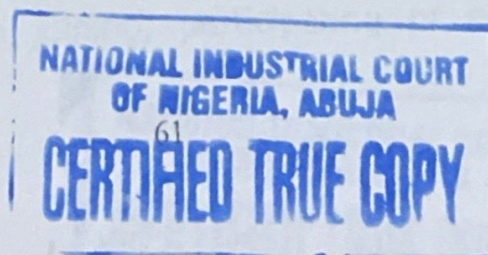
Also, Counsel argued that the 2nd Defendant had misconstrued and misunderstood the law to mean that the 2nd Defendant's right to freedom of association as guaranteed by the Constitution would be breached. It is Counsel's submission that the law in the instant case, the Section 31 (6) of the Trade Union Act, Law of Federation, (2004) and Section 2 (a) of the First Schedule of the Trade Disputes Act, 2004 did not prohibit the 2nd Defendant from association, rather the law is explicitly in prohibiting employees in the provision of essential services from embarking on strike. Suffice to say that unlike, employees in other sectors of the economy, like the Police, para-military and military who are prohibited from forming, joining or belonging to a union; those in these categories are only prohibited from embarking on strike. He made reference to the First Schedule of the Trade Disputes Act, 2004 as amended and contended that the reasoning behind this legislation is simply as their disruptions or withdrawal of these services will create more harm to the community than the interest of the workers. It is based on the above, he urges this Court to hold that the 2nd Defendant provides essential service and is thereby prohibited from embarking on industrial action. In conclusion, the 2nd Defendant having admitted they participated in the 5th and 6th September, 2023 strike action and that supply of electricity was disrupted to the Claimant. Counsel urges the



court to grant all the Claimant's reliefs as contained in face of the originating summons.

COURT'S DECISION

78. The Amended Originating Summons of the Claimant dated 5th February, 2024 and filed on the 7/02/2024 is brought pursuant to Order 3 (1) (b) of the Rules of this court; section 6 (6) of the CRFN 1999 as amended and the inherent jurisdiction of this Court. Before delving into the questions postulated by Claimant, the 1st and 2nd Defendants separately filed Notice of Preliminary Objections challenging the competence and jurisdiction of this court. I will, in this ruling, consider the Notice of Preliminary Objections seriatim.
79. The 1st Defendant in its Notice of Preliminary Objection is challenging the jurisdiction of this Court as constituted to hear and determine this suit. In giving context to this preliminary objection, it is a well settled principle of law, enunciated in very many decided cases of our Apex Court, that the word 'jurisdiction' means, the authority which a Court has to decide matters before it or to take cognizance of matters presented before it for its determination. The limit of the jurisdiction of any court is circumscribed by statute. The question of jurisdiction of a Court is so fundamental because a decision of the Court without jurisdiction confers no right. It creates no obligation because it is made without jurisdiction. However, whether the jurisdiction of the Court was curtailed or not, the Court must in whatever situation it finds itself be mindful whether it has the competence to exercise its jurisdiction: See *Madukolu v. Nkemdilim [1962] All NLR 587 and Ndaeyo v. Ogunaya (1977) 1 SC 11*.
80. On what determines the jurisdiction of a Court, the Court of Appeal held in *Nasarawa State Specialist Hospital Management Board & Ors v. Mohammed [2018] LPELR-44551 (CA)* per Ekanem, JCA thus:

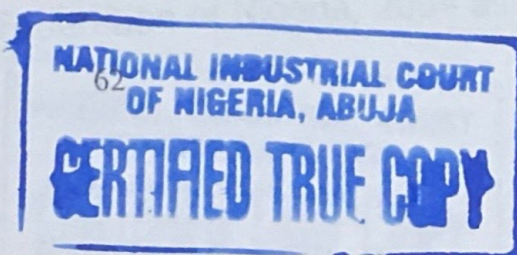


"It is well settled that in determining the jurisdiction of a Court, it is the claim of the claimant that is to be examined. The Court is to examine the facts of the case as well as the reliefs to see if they fall within the jurisdiction of the Court as donated by the enabling law. If they do, then the Court is to assume jurisdiction. If they do not fall within the jurisdiction of the Court, the Court is to decline jurisdiction. See Adeyemo v. Opeyori (1976) 9-10 SC 31, Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 and Oloruntoba-Oju v. Abdul-Raheem (2009) LPELR-2596 (SC)."

1. In the instant case for ease of reference let me reproduce the specific questions and reliefs claimant in the OS seeks this court to answer and grant in his favour are:
2. Whether by virtue of Section 31(6) of Trade Union Act, of 2005 as Amended and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the Defendants does not provide essential services thereby excluding them from embarking on industrial action?
3. Whether by virtue of the Section of 31(6) of Trade Union Act, of 2005 Amended, and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the Defendants are not prohibited, forbidden, restrained from embarking on any form of industrial action either by themselves or their agents or privies.
4. Whether by the previous strike action of the Defendant and their threatened action does not amount to breach of the Claimant's Consumer Rights, therefore illegal, unlawful null and void.

The reliefs are:

- a. **A DECLARATION** that, the two (2) days warning Strike embarked upon by the Defendants on the **5th and 6th September, 2023** as a result of the Nigeria Labour Congress strike is illegal, unconstitutional, unlawful, null and void.
- b. **AN ORDER** of this Honourable Court restraining the Defendants whether by themselves, her privies, assigns by whatsoever name called any from joining, participating or embarking on any



industrial action either by themselves or as proposed by the Nigeria Labour Congress whatsoever.

- c. **AN ORDER** of this Honourable court mandating and compelling the Defendants to pay the Claimant jointly and severally the sum of **5,000,000.00 (five Million Naira)** only for breached of the Claimant's right to supply of electricity as a result of the industrial action of the Defendants on the 5th and 6th September, 2023.
- d. **AN ORDER** of this Honourable Court directing and mandating the Defendants jointly and or severally **N1, 000,000.00 (One Million Naira)** only as Cost of this suit.
- e. Such further orders as this Honourable court may deem fit to make in the circumstance.

81. It is the case of the 1st Defendant/Applicant in this Notice of Preliminary Objection that the reliefs sought did not disclose any labour or trade dispute and therefore the Claimant lacks the jurisdiction to invoke the powers of this court. In fact, the applicant describes the claims as only a customer/consumer claim which exist between respondent and 2nd Defendant. The Applicant added that under the Trade Dispute Act the jurisdiction of this court is appellate and not original. On the other part the Respondent placed heavy reliance on section 31 (6) Trade Unions Act and Part 1 of the Trade Dispute Act to ask the question whether trade unions rendering essential services should be allowed to go on strike and thereby deny a public-spirited individual the *locus standi* to invoke the jurisdiction of this court to seek redress. Respondent draw the attention of this Court to Section 6 (6) of the constitution and his fundamental right of access to Court. I can see from the affidavits evidence before this court that it is not in dispute that on 31/08/2023 the NLC by way of an industrial action declared a two days nationwide strike which was carried out on the 5th and 6th September, 2023. Sequel to the declaration, the 1st defendant directed its members in the employment of 2nd – 4th Defendants to join the strike which was carried out on the 5th and 6th September, 2023. This disrupted electricity supply nationwide and claimant being a consumer of this essential service is now claiming that he suffered incalculable damage as a result. For the avoidance of doubt an industrial action is usually a fall out of a trade dispute. Trade Dispute is defined in Section 48 of the Trade Dispute Act, Cap. T8. Laws of the Federation of Nigeria, 2004 as follow:



"Trade Dispute means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person."

82. From this definition, it follows therefor that trade dispute under the Trade Dispute Act, has the following component: there must be a dispute; the dispute must involve a trade; the dispute must be between; i) employers and workers; or ii) workers and workers; regarding the employment or non-employment; or terms of employment; or physical conditions of work of any person. See ***Oshiomole v. FGN [2007] 8 NWLR (Pt. 1035) 58***. The dispute in order to come within the Trade Dispute Act must involve trade as distinct from a political dispute. Therefore, for the provisions of the Trade Dispute Act to apply, there must be clear case of an employer/employee agreement between the parties, and the point of agreement between them must point unequivocally to a trade dispute. See ***BPE v. NUEE [2003] 13 NWLR (Pt. 837) 382***.

83. In light of section 48 of the Trade Dispute Act and the Notice of Preliminary Objection raise the question is where lies the authority of an individual or legal entity to challenge the actions of a Trade Union or its members to participate in a Strike Action? The applicant, to my mind, adequately addressed this point when counsel in his written address refer this Court to the case of ***Nestoil Plc v. NUPENG (NLLR) 8290***, where the Court held thus:

"A union has the right to unionize staff of its organization who is within its jurisdictional scope and only two categories of person have the Locus to challenge this right and they are:

- a. A rival Union challenging the jurisdictional mandate of the defendant over the staff and;*
- b. The Staff indicating individually and in writing that they are opting out."*

84. From the reliefs and the facts contained in the affidavits deposed to by the claimant/respondent in the Originating Summons, one can see that the claimant seeks to urge this court to declare the strike by the defendants as illegal and also for this court to grant an injunction



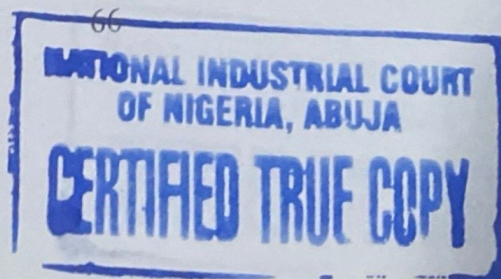
restraining the defendants from embarking on any industrial action. It is not in doubt that the claimant/respondent is not a union member and is not also a staff wanting to opt out of a Trade Union. On these grounds I find no reason to align myself with the position of the respondent to the Notice of Preliminary Objection as he, as claimant, lacks the locus to initiate this suit. I so find.

85. On the second leg of the Notice of Preliminary Objection which has to do with the absence or non-fixing of Claimant Counsel's seal on the court process, Counsel urged this Court to render the documents filed by Claimant as a nullity. The Respondent countered this argument and submitted that on the authority of the case of **Senator Yaki v. Senator Bagudu & 2 Ors [2015] 18 NWLR [1491] 288**, noncompliance of this nature only renders the Court process as avoidable and can be regularized by mere fixing the seal at any stage of the proceeding. I am in agreement with this reasoning. And I so hold. In the light of the foregoing, the Notice of Preliminary Objection filed at the instance of the 1st Defendant/Applicant is hereby upheld in the main and this suit is hereby struck out at the instance of the 1st Defendant/Applicant.
86. Coming to the Notice of Preliminary Objection filed by Counsel on behalf of the 2nd Defendant which is dated and filed on the 3/03/2025, the preliminary objection primarily seeks the striking out of the name of the 2nd Defendant from this suit for lack of jurisdiction. The objection is premised on the ground that giving the legal framework and the rights and privileges guaranteed to Trade Unions, the 2nd Defendant cannot be held liable for the actions and inactions of the 1st Defendant. Counsel submitted that for this reason there is no reasonable cause of action established against the Applicant. The applicant further contended that the 2nd Defendant is not a juristic person having been sued as "Abuja Electricity Distribution Company". Counsel to Applicant therefore urged this Court to strike out the name of the 2nd Defendant as sued. In responding to these preliminary objections, I observed from the brief of argument of the Claimant/Respondent counsel that he did not react to the issues raised, but rather resorted to addressing the non-compliance of certain paragraphs of the Applicant's affidavit to the provisions of the Evidence Act which to my mind does not go to the substance of this suit. In light of the provision section 12 of National



Industrial Court Act, 2006 I hereby discountenance this affidavit-based argument and in the interest of justice depart from the provision of the Evidence Act.

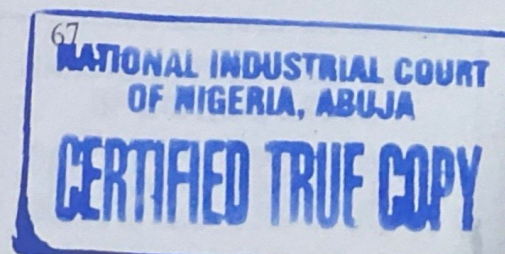
87. I have carefully studied the issues raised by the applicant in the Notice of Preliminary Objection and I intend to treat the issues as argued. On the issue of whether the 2nd Defendant has any power over the activities of 1st Defendant (TU) to warrant being sued over a trade dispute and thereby invoking the jurisdiction of this court, I am mindful of the well-established jurisprudence of this Court that an employer cannot take punitive measures against employees solely for their membership in a trade union or for participating in any legitimate trade union activities. The right to join a trade union is a fundamental aspect of the right to freedom of association, as affirmed by the Court of Appeal in *Aupctre v. SSASCGOC & Anor [2023] LPELR-60813(CA) Pp. 31-33, Paras. D-F*). It therefore follows that any action by an employer that seeks to undermine this right of a Trade Union, such as dismissing or discriminating against an employee for union membership, would be viewed as unlawful. While employers have a right to manage their businesses, their ability to interfere with the legitimate rights and activities of a trade union during a trade dispute is significantly constrained by Nigerian labour laws. The law protects the freedom of association, the right to form and join unions, and the right to engage in industrial action within defined parameters. Any employer action that seeks to unlawfully suppress union activities, discriminate against union members, or undermine the collective bargaining process would be considered an illegal interference. Be that as it may can the reliefs as seen on Originating Summons be said to have raised a cause of action?
88. It is the case of the Applicant to the Notice of Preliminary Objection that the Claimant/Respondent could not disclose a reasonable cause of action against the 2nd Defendant and therefore this suit should be struck out at the instance of the 2nd Defendant. The term "cause of action" means all those things necessary to give a right of action whether they are to be by the Claimant or a third party. Cause of action has been held from the earliest time to mean every fact which is material to be proved to entitle the claimant to succeed. In effect, it is every fact which the Defendant would have a right to traverse. See *S. A. Akinola v.*



Wema Bank Plc [2015] All FWR (Pt. 795) 292 and **Ikine v. Edjerode [2001] NSQLR Vol. 18 @ 341**. A cause of action consists of two elements: (a) the wrongful act of the Defendant which gives the Claimant the cause of action to take action and (b) the consequential damages. See **NLNG Ltd. v. Onwukwe [2019] 10 NWLR (Pt. 1680) 247 CA**. The SC in the case of **Owodunni v. Regd. Trustees of CCC ['2000] LPELR --2 852 (SC) @ (PP. 75-76, paras. C-G)**, per Ejiwunmi, JSC held:

"The words "cause of action" comprise every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the Court (See Read v. Brown (1889) 22 QBD 128, Per Lord Esher, M.R. at 131). (2) The phrase comprises every fact which is material to be proved to enable the plaintiff to succeed. See Cooke v. Gill (1873) L.R. 8 C.P. 107, Per Brett, J at 108. (3) The words have been defined as meaning "simply a factual situation, the existence of which entitles one person to obtain from the Court a remedy against another person (Per Diplock, L, in Letang v. Cooper (1965) 1 QB 232 at 242); (4) In Ireland, these words have been held to mean the subject matter of grievance founding the action, not merely the technical cause of action (O'keefe v. Welsh (1903) 2 JRP 218). Having quoted with approval the above principles enunciated by the English and Irish Courts, Obaseki JSC, then opined thus: "I would say having regard to the constitutional provisions in Section 6(6) (b) of our 1979 Constitution, that a cause of action is the question as to the civil rights and obligation of the plaintiff founding the action to be determined by the Court in favour of one party against the other party."

89. Furthermore, a reasonable cause of action, as the name implies, is one with some chance of success when only the allegations in the pleadings (affidavit in support of OS) of the claimant are considered. So, where the pleadings of the claimant disclose some cause of action, or raises some question fit to be decided by a judge, a reasonable cause of action is said to have been disclosed. See **Yusuf v. Akindepe [2000] 8 NWLR (Pt 669) 376**. The issue giving rise to this action as can be gleaned from the affidavit in support of the OS arose out of an industrial action which gave birth to a trade dispute. The industrial culminated in the strike action of the 5th and 6th of September 2023 and also the



threat of 14th November, 2023. An action relating to trade dispute is plainly within the exclusive jurisdiction of this Court. And at this stage this Court is only obliged to consider the pleadings of the claimant and not to go to the merit of the case. From the way and manner this suit is structured, where a public-spirited individual, can invade the Trade Unions Act and Trade Disputes Act and invoke the powers of this Court, lives me with the only legal conclusion that in line with Section 48 Trade Dispute Act, this suit raises no question fit to be decided by any judge. On this ground I find that there is no reasonable cause of action against the 2nd Defendant to warrant the invocation of the jurisdiction of this court. Accordingly, I hereby find that the preliminary objection of the 2nd Defendant on the whole is meritorious and is accordingly hereby upheld. This I so hold.

90. On the issue raised by the Applicant's which is to the effect that the 2nd Defendant is sued in a name not known to law; I reviewed the argument of Counsel to the Applicant and also look at Exhibit AEDC 1, which is a receipt evidencing payment for electricity bill from the 2nd Defendant. The acronym AEDC is the shortform or the acronym of the name of the 2nd Defendant as sued. The applicant who is also the 2nd Defendant and who raised the objection also fail to put before the court its registered name known to law but only submitted that the name as described on the Originating Summons is a name not known to law. It is appropriate at this juncture to restate the position of the law that the Rules of this court envisages situations such as this one in **Order 13 Rule 26** of the Rules of this court. The Rules specifically provide thus: *"Any person carrying on business within the jurisdiction in a name or style other than the person's own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit, all Rules relating to proceedings against Firms shall apply."*

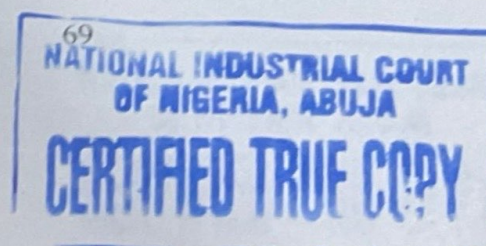
The Supreme Court also considered a similar provision such as this in the case of ***Iyke Medical Merchandise v. Pfizer Inc. & Anor [2001] LPELR-1579(SC) (PP. 18 Paras. C)*** where the Court held thus:

"It could happen that a person may carry on business in a name other than his name but may fail to register it as required under Part B - Business Names - of the Companies and Allied Matters Act, 1990. Such persons undoubtedly come within those who conceal their names. The



solution to such device by that type of persons can be found in the rule that allows suing them in the name in which they carry on business. And this is intended to obviate obstacles against actions against them if their real name had first to be ascertained. So, the question of the production of the Certificate of Registration of the business name as submitted by learned Counsel for the appellant would not arise and becomes a non-issue. If it happens that the business name had not in fact been registered, that would be a contravention of S. 667 of the Act and there are penalties provided. That does not provide immunity against being sued in that name, whatever its status, in accordance with the said Order 14 R. 42 applicable in the Federal High Court."

91. Going by the provision of the Rules of this Court and the ratio of the Supreme Court, it appears that parties usually do this to obviate obstacle against actions or suits against them. What is even interesting in this case is that not only is the purchase receipt bearing this name but the objector fails to provide the registered name even when arguing this case. It is therefore in situations such as this as in the instant case Order 13 Rule 26 of the Rules of this Court steps in and appropriately address the non-registration of the name with which artificial persons such as the 2nd Defendant in this case carries on businesses. I find that on this note the name of the 2nd Defendant as presented in this suit is known to law and therefore 2nd Defendant is appropriately sued in this matter. This I so hold.
92. Now having considered the Notice of Preliminary Objections let me consider the Originating Summons on the merit assuming the rulings on the Notice of Preliminary Objection are in error. As already observed, the Originating Summons seeks for the determination of the following questions:
1. Whether by virtue of Section 31(6) of Trade Union Act, of 2005 as Amended and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the Defendants does not provide essential services thereby excluding them from embarking on industrial action?
 2. Whether by virtue of the Section of 31(6) of Trade Union Act, of 2005 Amended, and Section 4, 18, 42 of the Trade Dispute Act, 2004 and First Schedule of the Trade Dispute Act, the



Defendants are not prohibited, forbidden, restrained from embarking on any form of industrial action either by themselves or their agents or privies.

3. Whether by the previous strike action of the Defendant and their threatened action does not amount to breach of the Claimant's Consumer Rights, therefore illegal, unlawful null and void.

93. For a full grasp of the context of the questions raised, it is important we reproduce the provisions of the Trade Union Act and Trade Dispute Act as relied upon and referenced by the Claimant. Section 31(6) of the Trade Unions Act, Laws of Federation of Nigeria (2004) as amended, provides as follows:

"No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a trade dispute unless-

- a. *the person, trade union or employer is not engaged in the provision of essential services;*
- b. *the strike or lockout concerns a labour dispute that constitutes a dispute of right;*
- c. *the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;*
- d. *the provisions for arbitration in the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004 have first been complied with; and*
- e. *in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.*

The First Schedule of the Trade Disputes Act, 2004 as amended defines 'essential services' as:

1. *The public service of the Federation or of a State which shall for the purpose of this Act include service in a civil capacity, of persons employed in the armed forces of the Federation or any*

part thereof, and also, of persons employed in an industry or undertaking (corporate or incorporate) which deals or is connected with the manufacture or production of materials for use in the armed forces of the Federation or any part thereof.

2. Any service established, provided or maintained by the Government of the Federation or a State, by a Local Government Council, or any municipal or statutory authority, or by private enterprise –

- a. for, or in connection with, the supply of electricity, power or water, or of fuel of any kind;
 - b. for, or in connection with, sound broadcasting or postal, telegraphic, cable, wireless or telephonic communications;
 - c. for maintaining ports, harbours, docks or aerodromes, or for, or in connection with, transportation of persons, goods or livestock by road, rail, sea, river or air;
 - d. for, or in connection with, the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely sanitation, road-cleaning and disposal of nightsoil and rubbish
 - e. for dealing with outbreak of fire.
3. Service in any capacity in any of the following organizations-
- (a) the Central Bank of Nigeria;
 - (b) Nigeria Security Printing and Minting Company Limited;
 - (c) anybody corporate licensed to carry on banking business under the Banks and Other Financial Institutions Act.

Section 18 of the Trade Disputes Act also provides thus:

1. An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any trade dispute where-
 - a. the procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; or



- b. a conciliator has been appointed under section 8 of this Act for the purpose of effecting a settlement of the dispute; or
- c. the dispute has been referred for settlement to the Industrial Arbitration Panel under section 8 of this Act; or
- d. an award by an arbitration tribunal has become binding under section 13(3) of this Act; or
- e. the dispute has subsequently been referred to the National Industrial Court under section 14(1) or 17 of this Act; or
- f. the National Industrial Court has issued an award on the reference.

Section 42 of the Trade Disputes Act provides thus:

- (1) Without prejudice to section 17 of this Act, if-
 - a. any worker ceases, whether alone or in combination with others, to perform the work which he is employed to perform without giving to his employer at least fifteen days' notice of his intention to do so; and

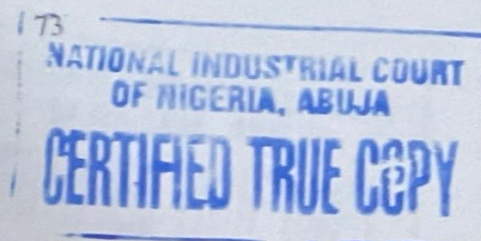
at the time when he ceases to perform that work he knows or has reasonable cause to believe that the probable consequence of his or their so doing will be- (i) to endanger human life, or (ii) seriously to endanger public health or the health of the inmates of any hospital or similar institution, or (iii) to cause serious bodily injury to any person or persons, or (iv) to expose any valuable property, whether real or personal, to destruction or serious injury, he shall be guilty of an offence and be liable on conviction to a fine of N100 or to imprisonment for six months, or both.
- 2. If a worker is entitled to terminate his contract of employment by giving to his employer less than fifteen days' notice, and does in fact give to his employer less than fifteen days' notice for that purpose, then-
 - a. he shall be deemed to have given to his employer at the same time, in pursuance of subsection (1) of this section, notice that he intends to cease work at the end of the period of fifteen days



- beginning with the day following that on which he gave the notice; and
- b. for any period for which he is by virtue of that subsection required to go on working after the termination of his contract of employment he shall be entitled to be paid as if his contract of employment had remained in force until the end of that period.
3. A worker who ceases to perform his work in circumstances such that in doing so he does not contravene subsection (1) above shall not by reason only of his so ceasing be guilty of an offence under section 196 of the Penal Code of Northern Nigeria.
4. No proceedings for an offence under this section shall be instituted except by or with the consent of the Attorney-General of the Federation or the Attorney-General of the State in which the offence is alleged to have been committed.

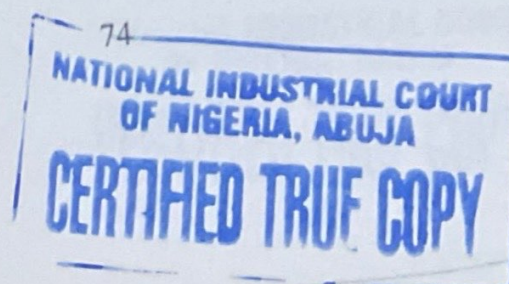
Section 4 of the Trade Dispute Act provides thus:

- 1) If there exist agreed means for settlement of the dispute apart from this Act, whether by virtue of the provisions of any agreement between organisations representing the interests of employers and organisations of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means.
 - 2) If the attempt to settle the dispute as provided in subsection (1) of this section fails, or if no such agreed means of settlement as are mentioned in that subsection exists, the parties shall within seven days of the failure (or, if no such means exist, within seven days of the date on which the dispute arises or is first apprehended) meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to the amicable settlement of the dispute.
94. From the provisions of Section 31(6) of the Trade Unions Act 2004, it is clear that no person, trade union, or employer shall take part in a strike or lockout, or engage in any conduct in contemplation or



furtherance thereof, unless certain conditions are met. Critically, subsection (a) requires that "the person, trade union or employer is not engaged in the provision of essential services." This creates a blanket prohibition on industrial action for unions in essential services, regardless of the nature of the underlying dispute. The amendment via the Trade Unions (Amendment) Act 2005 reinforced this by tying it to the procedural framework under the Trade Disputes Act, emphasizing that violations attract penalties, including fines or imprisonment. The import of Section 4 referred to is to empower the Minister of Labour and Employment to refer disputes involving essential services directly to the Industrial Arbitration Panel (IAP) for mandatory conciliation, bypassing voluntary negotiation. This ensures rapid intervention to avert action, reflecting the policy that such disputes cannot escalate to industrial action without exhaustion of these processes.

95. Section 18(1) also prohibits any strike or lockout during the pendency of conciliation, mediation, or arbitration proceedings, or before an award by the National Industrial Court (NICN). For essential services, this effectively bars industrial action entirely, as disputes are statutorily routed through compulsory arbitration, making strikes unlawful and unprotected. Courts have interpreted this as stripping workers in essential services of the right to strike to maintain public interest. See the case of ***Aero Contractors Co. of Nigeria Limited v. National Association of Aircrafts Pilots and Engineers (NAAPE) & Ors. Unreported Suit No. NICN/LA/120/2013 Judgment delivered on February 4, 2014.***
96. Section 42 provides for offences and penalties, including fines (up to N100) or imprisonment (up to 6 months) for any person who willfully disrupts or attempts to disrupt essential services through industrial action. It also allows for summary conviction, underscoring the criminal dimension of non-compliance. The First Schedule of the Trade Disputes Act on the other hand defines "essential services" expansively to include sectors vital to the economy and public safety, such as: i) Ports, harbors, docks, and aerodromes; ii) Transport by road, rail, sea, river, or air; iii) Broadcasting and postal services; iv) Road-cleansing and



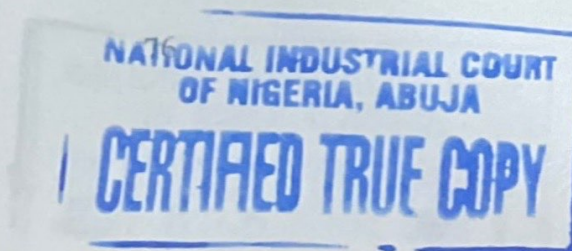
rubbish disposal; v) Services of the Central Bank of Nigeria and the Nigerian Security Printing and Minting Company Ltd; vi) Corporations licensed under the Banks and Other Financial Institutions Act. This list is not exhaustive as the courts may expand the category of Unions in essential services. One other cardinal principle here is that the Trade Dispute Act has to be interpreted consistently with ILO principles. Under the Trade Dispute Act, prohibition of strike is absolute as there is no provision for even limited strike action.

97. It is of interest to note that the ILO Committee of Experts and the Application of Convention and Recommendations have developed a comprehensive jurisprudence on essential services. The ILO defines essential services as those "whose interruption would endanger the life, personal safety or health of the whole population. See ILO's Digest of Decisions and Principles of the Freedom of Association Committee (5th Edition, 2006). According to the ILO standard, essential services in the strict sense include: Hospital services; electricity services; water supply services; telephone services; and air traffic control. While services that may be considered essential depending on the circumstances are: refuse collection; public transportation; oil and gas production and refining. From the ILO literature available, even where service is genuinely essential, the ILO emphasizes that only the minimum number of workers strictly necessary to maintain the service should be restricted. It also emphasized that workers should have access to adequate, impartial, and speedy conciliation and arbitration procedures and compensatory guarantees must be provided. One can observe from the foregoing that in the Nigerian context the definition captures the entire sectors rather than focusing on specific operations truly essential to life, safety, or health.
98. This Court, in the case of ***Aero Contractors Co. of Nigeria Limited v. National Association of Aircrafts Pilots and Engineers (NAAPE) & Ors (Supra)*** invokes the International Labour Organization (ILO) Committee on Freedom of Association literature to hold that a prohibition of the right to strike is only acceptable in essential services, which are defined as those "the interruption of which

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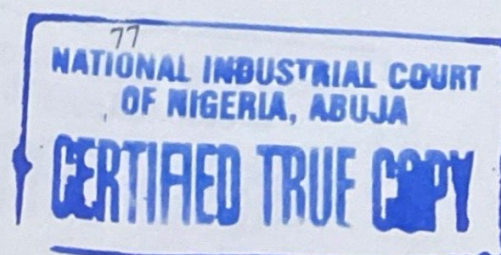
would endanger the life, personal safety or health of the whole or part of the population." On this premise the court held that unions in the aviation sector are not covered and therefore not a Trade Union providing essential services. I must state here that the restriction on strike in essential services represents a delicate balance between workers fundamental right to strike and the protection of vital public interests. As can be seen in Section 18 (2) Trade Disputes Act strike action is absolutely prohibited for workers in essential services. And going by the literal interpretation of the provision of the laws under the Trade Unions Act and the Trade Disputes Act, the prohibition is absolute and our courts have often upheld these restrictions while emphasizing that prohibition must be strictly construed and the alternative dispute resolution mechanisms must be available. In the case of ***Aero Contractors Co. of Nigeria Limited v. National Association of Aircrafts Pilots and Engineers (NAAPE) & Ors (Supra)*** the Claimant (Aero Contractors) argued that the services of the union fell under the definition of essential services as provided by the Trade Disputes (Essential Services) Act and Section 31(6)(a) of the Trade Unions Act (TUA). This Court, however, invoked its jurisdiction under Section 254C(1)(f) and (h) of the 1999 Constitution (as amended) to apply international best practices and ILO Conventions (specifically Conventions No. 87 on Freedom of Association and No. 98 on Collective Bargaining), the court concluded that the services rendered by the defendant unions' members (pilots, engineers, and general air transport employees) did not constitute essential services in the strict sense as defined by the ILO. However, I must restate that despite this position, the general understanding is that going by Section 19 Trade Disputes Act, disputes in essential services must undergo the Part 1 procedure of the Trade Disputes Act. These provisions collectively form a comprehensive regime prioritizing arbitration over confrontation in essential services, aligning with international standards under ILO Conventions.

99. Following this, it needs to be restated that the jurisdiction of this Court is established under the Trade Disputes Act and elevated by the Third



Alteration Act 2010. The law provides that this court has original and exclusive civil jurisdiction over labor, employment, trade unions, and industrial relations matters (see section 254C (1) of the 1999 Constitution as amended). This includes enforcement of the Trade Unions Act and Trade Disputes Act. Having digested the concept of essential services and its literatures, it needs to be pointed out that the ability of a member of the public to sue a trade union as in the instant case for an industrial action under the Trade Disputes Act is severely restricted. The legal framework in Nigeria, particularly the Trade Unions Act and the Trade Disputes Act, establishes a specialized regime for handling industrial relations and disputes. On this premise drawing from the provisions already highlighted, I humbly draw these conclusions:

100. Firstly, it is crucial to understand the jurisdictional aspect. The Trade Disputes Act, by virtue of Section 2(1), explicitly ousts the jurisdiction of regular courts in matters that constitute a trade dispute. It states that "*no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly, any action which, prior to the commencement of this section is pending in any court shall abate and be null and void.*" This provision channels all trade disputes to a specialized dispute resolution mechanism, culminating in the National Industrial Court (NIC) in its appellate jurisdiction. The Supreme Court, in cases like ***Tidex (Nig.) Ltd v. Maskew & Anor (1998) LPELR-6168(CA) Pp. 16-20, Paras. D-B***, has affirmed the ouster of jurisdiction of ordinary courts in matters relating to trade disputes, emphasizing the exclusive jurisdiction of this court in the exercise of its appellate jurisdiction on such matters. Therefore, a member of the public cannot initiate an action concerning a trade dispute.
101. Secondly, even if the action were to be brought before the National Industrial Court, the nature of the claim and the standing of a 'member of the public' become critical. A 'trade dispute' is specifically defined under section 48 of the Trade Disputes Act as any dispute between employers and workers or between workers and workers, which is connected with



the employment or non-employment, or the terms of employment and physical conditions of work of any person. The Supreme Court in *National Union of Electricity Employees & Anor v. B.P.E [2010] LPELR-1966(SC) Pp. 28-31, Paras. A-D* and *Osoh & Ors v. Unity Bank Plc [2013] LPELR-19968(SC)* has elaborated on the factors that must co-exist for a cause of action to be considered a trade dispute. These factors typically involve parties directly engaged in an employment relationship or their representative bodies (trade unions). A general member of the public, not being an employer or a worker involved in the dispute, would generally lack the necessary standing to initiate an action that qualifies as a 'trade dispute' under the Act. I therefore find that the claimant in this suit lacks the standing to commenced this suit under the Trade Disputes Act and thereby seeks the declaratory and injunctive reliefs sought.

102. Thirdly, and perhaps most significantly, trade unions enjoy statutory immunity from tortious actions in specific circumstances. **Section 23(1) of the Trade Unions Act, 1973**, provides a robust protection for trade unions, stating: "*An action against a trade union (whether of workers or employers) in respect of any tortious act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute shall not be entertained by any court in Nigeria.*" This means that if an industrial action, which is typically undertaken in contemplation or furtherance of a trade dispute, causes damage or injury to a member of the public (e.g., through disruption of services, nuisance, or economic loss), the trade union cannot be sued for such acts. This immunity extends to actions against the trade union in its registered name or against its representatives. While Section 41(1) of the Trade Unions Act permits peaceful picketing in contemplation or furtherance of a trade dispute, this provision does not negate the immunity from tortious actions for acts committed within the scope of a trade dispute. The intent of these legislative provisions is to protect the legitimate activities of trade unions during industrial actions, preventing them from being crippled by lawsuits arising from the economic or social disruptions that such actions inherently cause.



103. From the foregoing, it is not in doubt that in the instant case the claimant is facing a significant legal barrier to suing 1st defendant (a trade union) and perhaps other defendants for industrial action under the Trade Disputes Act. The combined effect of the ouster of jurisdiction of ordinary courts, the specialized definition of a 'trade dispute' which typically excludes general members of the public as parties, and the statutory immunity of trade unions from tortious actions committed in contemplation or furtherance of a trade dispute, makes such a lawsuit highly improbable and legally unsustainable. Any grievances arising from industrial action would generally need to be addressed through other avenues, as the legal framework prioritizes the resolution of trade disputes within a specialized industrial relations system. I therefore find that the claimant lacks standing (locus standi) to commence an action in this court solely to enforce compliance with these labor laws, as this court's exclusive jurisdiction under Section 254A of the 1999 Constitution (as amended) and the National Industrial Court Act 2006 is framed around protecting "workers, employees, trade unions," and related disputes. And this I so hold.

104. On the whole, while we may answer the triple questions in the affirmative, however in light of the fact that I upheld the Notice of Preliminary Objections of 1st and 2nd defendants and the conclusions drawn in my consideration of the Originating Summons on the merit, I find that the claimant lacks the standing to initiate this suit thereby usurping the jurisdiction of this court. This court is therefore, left with no option than to dismiss this suit for want of jurisdiction. Accordingly, this suit is hereby dismissed for lack of jurisdiction.

105. Ruling is hereby entered. There is no order as to cost.

CHIEF REGISTRAR
SNR REGISTRAR II
SIGN: *[Signature]*
DATE: 23-11-2020
COMMISSIONER FOR OATHS

NATIONAL INDUSTRIAL COURT OF NIGERIA, ABUJA
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[Signature]

Hon. Justice E. D. Subilim
JUDGE



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