

Case Review

Attitude of Nigerian Courts Regarding Electricity as a Human Right: Revisiting *Nwaka V. Abuja Electricity Distribution Company*

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Abstract

It has been argued that when it comes to human rights performance compared to other countries in Sub-Saharan Africa, Nigeria is performing worse than average. The Country scored 54.6 per cent for the right to food, 48.7 per cent for right to health, 35.7 per cent for the right to housing and 32.0 per cent for the right to work.¹ Nigerians are still struggling with poor electricity services; there is need to improve this situation. The Courts will be required to treat access to electricity as a form of human rights. This piece reviewed the decision of the court in *Dr. N. Nwaka v. AEDC*. It concludes by stating that the court adopted a narrowed view of the provisions of section 42 of the Constitution and argues that the court should subsequently adopt a broader view in ensuring that consumers can enforce access to electricity as a human right.

Keywords: Electricity Access, Human Rights, Institution, Courts, Community

1. Introduction

Electricity is the foundation upon which any meaningful society can develop. One of the major challenges in the world today is that of improving and providing electricity access to all and sundry.² In a bid to achieve this, the Nigerian government embarked on the major reform of its electricity sector in 2005 and 2023 respectively. These reforms were all aimed at liberalizing the Nigerian Electricity Supply Industry (NESI) to expand access to improved electricity services. This aspiration by the government is far from being achieved as Nigerians still grapple with epileptic power supply or access to improved power supply,³ with an electricity access rate of less than seventy percent of its total population,⁴ a marginal increase in electricity generation that stood at 5,801.84MW as at February, 2025 for a population of over two hundred million people,⁵ there is an urgent need to improve this situation and strong institutions have been identified to drive this

¹ Repression of Human Rights Worsening in Nigeria- Human Rights Watch, Accessed from <<https://www.premiumtimesng.com>> accessed on the 8th of September, 2022.

² Uduak S. Akpan, Salisu R. Isihak, Ye- Obong N. Udoakah, “ *Electricity Access In Nigeria: Viability of Off Grid Photovaltic System* (2013) Conference Paper Institute of Electrical and Electronics Engineers (IEEE) Mauritius.

³ Balogun Sofiyullahi, 'Rights of Electricity Consumers and Regulatory Framework for Consumer Protection Under Electricity Law In Nigeria' accessed on the 16th of October 2021 from <<http://ssrn.com/abstract=3637554>>

⁴ Share of Population with Access to Electricity In Nigeria from 2012 to 2022 accessed from [www. Statista .com](http://www.Statista.com) on the 6th of March 2025.

⁵ Chinedu Agu, “Nigeria Hits Record 5,801.84MW Power Generation as Citizens Decry Worsening Blackouts” Accessed from [www. Bncollar.com/Nigeria-hits-record-5801-84mw-power-generation-as-citizens-decry-worsening-blackout](http://www.Bncollar.com/Nigeria-hits-record-5801-84mw-power-generation-as-citizens-decry-worsening-blackout), on the 6th of March, 2025.

process.⁶ The reviewer argues that one of such institution is the court in Nigeria; they will be required to identify, categorize and enforce the existence of a personal and house hold entitlement of access to electricity as a human right.⁷ The Courts will be required to treat human right as a form of infrastructure development similar to roads, schools, hospitals and electricity which are vital to improving people's lives and strengthen the Nigerian society.⁸

Enforcing access to electricity by the Nigerian Courts as a human right will place an obligation on critical stakeholders such as the government and service providers in the (NESI) to account for their actions and in actions in the provision of access to electricity or otherwise to consumers.⁹

In this respect, the aim and objectives of this paper is to critically review the role, the Court played in the case of *Dr. N. Nwaka v. Abuja Electricity Distribution Company (AEDC)*,¹⁰ in enforcing access to electricity as a human right and identify the potential adverse effect of the court's decision on electricity consumers, in the improvement of electricity access in the NESI.

In achieving the above, the papers discusses the facts of the case, issues for determination and the decision of the court, it further argues that electricity should henceforth be recognized as a form human rights by the courts as this may improve electricity access for consumers in the NESI.

1. Facts of the Case:

*Dr. N. Nwaka v. AEDC*¹¹

The Applicant in this case relocated to Abuja from Kano and lodged at a hotel in Maitama District for eight weeks during which he experienced steady power supply, with outages lasting only about two to four minutes on the average. However, on moving to his permanent residence in Citec Estate Jabi Mborra District, Abuja, his power supply experience was enormously different, with instances of over twelve hours of power outage and in one instance over thirty five hours.

In an attempt to resolve this issue, the Applicant issued a pre- action notice to the Respondent, which resulted in a phone call from the Respondent that the power outage situation will be resolved. The Applicant subsequently wrote a letter to the Respondent's CEO, which was ignored, and the power outage problem was not fixed. This led to the Applicant's application for the enforcement of his fundamental rights at the Federal High Court, Abuja.

One of the issues for determination was whether indiscriminate power outage constituted a breach of fundamental right under section 42 of the 1999 Constitution of the federal republic of Nigeria, which shall subsequently be referred to in this paper as the (1999 Constitution).

The Applicant averred in his affidavit that the Respondents power outage pattern in Maitama district is very different from that of Jabi-Mborra district, and as such amounts to an unwarranted and unconstitutional discrimination against him, in contravention of the provisions of section 42 (1) of the 1999 Constitution. He then relied on the case of **Ransume Kuti v. AGF**¹² where it was held

⁶ Law Amadi, Peter Chukwuma Obutte, 'Framing Petroleum Management Law For Energy Sector In Nigeria' *Journal of Sustainable Development Law and Policy* [2019] 10: 1 & 2, 324

⁷ Stephen Tully, 'Access To Electricity As A Human Right' *Netherland Quarterly of Human Rights*, [2016] (24) (4) 571-573.

⁸ Law Amadi, Peter Chukwuma Obutte, 'Framing Petroleum Management Law For Energy Sector In Nigeria', 235

⁹ *Ibid*, 235.
¹⁰ 2021) 3 E.L.R 42.

¹¹ [2021) 3 E.L.R 42

that:

Where it is shown that a fundamental right has been violated, an applicant is entitled to general damages. Based on the oppressive, outrageous, unconstitutional and unjustified action of the Respondent, he is entitled to damages.

The Respondent on their part argued amongst others that despite the Applicant's claims, the compliant did not disclose a breach of fundamental rights under section 42 of the 1999 constitution. At best the compliant is a dispute on irregular supply of electricity. And as such the court has no jurisdiction to entertain the suit as couched as a breach of fundamental rights. They further argued, that there is no fundamental right of access to electricity supply from AEDC PLC, that what is actually obtainable, is a contract with the company in that regard, and upon payment of electricity bills as and when due. They went on to argue that section 42 of the 1999 Constitution protects Nigerian citizens from discrimination based on community, ethnicity, place of origin, sex, religion or political opinion from any executive or administrative action of government and from disability or deprivation by reason of the circumstance of his birth.

In resolving this issue the court stated that section 42 of the 1999 Constitution provides for right to freedom of discrimination, the Constitution in expanding this right provides in 42 (1) (a) that:

a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person: (a) subjected to either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action by government to any disabilities or restrictions to which citizens of Nigeria of other communities, ethnic group, place of origin, circumstance of birth, sex, religion or political opinions are not made subject.

Section 42(2) provides that:

No citizen of Nigeria shall be subjected to any disability or deprivation merely by reasons of the circumstances of his birth. The law provides that the right to freedom from discrimination cannot be claimed or called in unless the discriminatory action was constituted by any law in force in Nigeria or any administrative or executive action of government by reason of the circumstances set out under section 42.

The Court relied on the case of **Lafia Local Government v. The Executive Governor Nasarawa State & Ors**¹³ and held that:

In other words the right can only be claimed against government in respect of any law in force in Nigeria or any executive or administrative action of government which promotes or fosters discrimination against some particular class or classes of citizens, while favoring others. Further it can only inure to a citizen who has satisfied the requirement that the reason for the alleged discrimination stems from the fact of his sex, religion, particular community, ethnic group or political opinion.

In this case the applicant has not identified the particular law in force in Nigeria or the executive or administrative action of government

¹² [1985] 2 NWLR (PT6) 211,214

¹³ (2012) LPELR 20602

which curtails or tends to curtail his right from freedom of discrimination.

The court went on to rule in favor of the Respondent and dismissed the action accordingly. The premise upon which the court arrived at its decision on this issue is with due respect too restrictive. The court did not avert its mind to the provisions of **The Elimination of All Forms of Discrimination against Women (CEDAW)** which clearly recognizes electricity as a human right.¹⁴ In the case of **Dododo v. E.F.C.C** it was held that:

The socio-economic rights and duties to provide good governance are enshrined in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act which is now part of the laws of Nigeria protecting the socio-economic rights of citizens... The African Charter is preserved by the 1999 constitution and must always be relied on to recognize public and socio-economic rights.¹⁵

It is pertinent to state that in line with the position of the above case and section 12 of the 1999 Constitution, the provisions of the African Charter and that of the CEDAW share the same status having being ratified and these provisions form part of Nigerian law preserved by the 1999 Constitution, which must always be relied upon to recognize public and socio-economic rights. Also the African Commission on Human and Peoples Rights went on to provide that failure of States to provide basic services such as electricity is a violation to the right to health.¹⁶ The reviewer argues that based on the above; there was actually a law in force in Nigeria that regards electricity as a human right. And so the court was not correct to have argued that the Applicants application under section 42 of the 1999 Constitution could not stand by reason of the fact that there was no law in force in Nigeria that regarded access to electricity as a human right.

The Court ought to have declared that access to electricity though not covered by section 42 of the 1999 Constitution is a socio economic right and a violation of the right to health of the Applicant in line with provisions of African Charter on Human and Peoples Rights and the decision of the African Commission on Human and Peoples Rights.

Furthermore, the court in delivering its judgment argued that the Applicant did not show any form of discrimination by reason of the fact that where he came from or was resident in is a different community. With due respect, it is the opinion of the reviewer that the position of the court may not be correct or its understanding of the word community may also be restrictive. The main contention of the Applicant was that while he lodged at a hotel in Maitama District for eight weeks he experienced steady power supply, with outages lasting only about two to four minutes on the average. However, on moving to his permanent residence in Citec Estate Jabi Mboru District, Abuja, his power supply experience was enormously different, with instances of over twelve hours of power outage and in one instance over thirty five hours. This suggests that there were two districts or communities (Maitama and Jabi) with different power supply experiences.

The Black's Law Dictionary defines the word Community to amongst others mean:

¹⁴ Stephen Tully, 'Access To Electricity As A Human Right' *Netherland Quarterly of Human Rights*, [2016) (24) (4) 558.

¹⁵ (2013) 1 NMLR. Part 1336 @485.

¹⁶ Stephen Tully, 'Access To Electricity As A Human Right' 579.

a neighborhood, vicinity, or locality...¹⁷

Also the Chambers 21st Dictionary defines the word Community to amongst others mean: a group of people living in a particular place...¹⁸

Maitama and Jabi are two different neighborhoods, vicinity, or locality with different electricity supply experiences, the Applicant could not understand why people in these localities or vicinity had different electricity supply experiences, to him this was purely a form of discrimination that only the court could stop or curtail.

The reviewer argues that the court ought to have treated the poor electricity supply experiences in Jabi as a form of discrimination. The Applicant who experienced poor electricity supply would have been entitled to enforce his fundamental rights under section 42 of the 1999 Constitution, by reason of the fact that he was a resident of Jabi community as distinct from the satisfying electricity supply experience in Maitama community.

The court in its decision also stated that the right to freedom of discrimination under section 42 of the 1999 Constitution cannot be claimed unless the discriminatory action was carried out by any administrative or executive action of government. The question that then arises is whether the different discriminatory power experiences delivered by AEDC PLC, was an administrative or executive action of government? Counsel to the Respondent argued that the law applies to only agencies of government, which the Respondent was not. The court held that the Respondent is a company which by its contract with the Government is engaged in electricity distribution and that there is no executive or administrative action of government presented in evidence in the case that tended to foster discriminatory power supply or outages.

The word administration has been defined as:

the management or performance of the executive duties of a government, institution, or business;
collectively all the actions that are involved in managing the work of an organisation.¹⁹

While administrative action has been defined as:

a decision or an implementation relating to the governments executive function or business management.²⁰

Based on the above definition of the term administrative action, the action of AEDC PLC in the provision or non-provision of electricity services or addressing complaints of consumers amounts to an administrative action under section 42 of the 1999 Constitution for which a citizen can rely upon, in a claim for a breach of the person's fundamental right to discrimination. The claim is not restricted only to government agencies as espoused by the Respondent and the Court in the case under review.

It is obvious from the case under review that the courts narrowed view of the provisions of section 42 of the 1999 Constitution deprived the Applicant in the case of his right to enforce his fundamental rights. The Court ought to have adopted the position of Udo Udoma JSC as he then was, when he stated thus in the case of *Nafiu Rabiu v. State*:

Whenever it is possible, and in response to the demand of Justice, the courts lean to the broader interpretation unless there is something in the rest of the Constitution to indicate that the narrow interpretation will best carry out the object and purpose of the Constitution. I don't conceive it is the duty of this court to construe any of the provisions of

¹⁷ Black's Law Dictionary (11th Edition, 2019) 349.

¹⁸ Chamber's 21st Century Dictionary (8th Edition, 2007) 279.

¹⁹ Black's Law Dictionary (11th Edition, 2019) 54.

²⁰ Ibid, 54.

the Constitution as to defeat the obvious ends of the Constitution was designed to serve.²¹

The inability of the courts in Nigeria to recognize electricity as human rights and a form of infrastructure development similar to roads, schools, hospitals which are vital to improving people's lives and strengthen the Nigerian society will continue to make the government and service providers walk away for their failure to provide this all important services to consumers in the NESI. Enforcing this right will make the government and service providers sit up, knowing that they can be questioned or called to give account for their actions or in actions and also where necessary be liable to pay damages.

2. Recommendations

In making recommendations the obiter of the judge in the case under review is instructive, the judge stated that:

It is pertinent to state that what precipitated this suit is the chronic power disease in Nigeria, a country which generates less than 13,000 Mega Watts for about two hundred million (200,000,000) citizens/population, has the burden to do more in order to meet the needs of the teeming population, especially as power supply is intrinsic to developing the economy. It is far from EL Dorado in Nigeria with respect to the power sector. This is a clarion call to action.

1. Whenever the Courts (High Courts, Court of Appeal or the Supreme Court) are called upon again to enforce the right to improved electricity service as a fundamental right they should stand up to the occasion.
2. There should be constant training of Judges in updating their knowledge on the expanded scope of fundamental rights.
3. There should be constitutional amendment to the fundamental rights provision in the 1999 constitutions that recognizes electricity as a human rights and infrastructure development similar to roads, schools, hospitals which are vital to improving people's lives and strengthen the Nigerian society.
4. The National Orientation Agency (NOA) should carry out massive enlightenment campaign sensitizing Nigerian electricity consumers of the fact that access to electricity services is a form of human rights that can be enforced by the court.

3. Conclusion

It is safe to conclude that the essence of enforcing electricity as a fundamental right and enjoying improved electricity services was defeated in the case of *Dr. N. Nwaka v. AEDC*. The decision of the Court in this case represents a worrisome precedence in the history of electricity jurisprudence and governance in the NESI. The Court applied a restricted view on the issues of enforcing electricity as a fundamental right, meaning of community and administrative action. It is hoped that when given the opportunity to correct this position either as a trial or appellate Court, the Court would rise up to the occasion, so that the provision of electricity would be seen by the service providers and government as a critical component of development.

²¹(1980) 8-11 SC. 300-301