



Nigerian Electricity Regulatory Commission (NERC)

HOLDEN AT ABUJA

This Tuesday 22nd Day of April 2008

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CASE NO: NERC/01/000002/2008

NIGERIAN ELECTRICITY REGULATORY COMMISSION APPELLANT

VS

ABUJA ELECTRICITY DISTRIBUTION COMPANY LTD RESPONDENT

TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE EXECUTIVE CHAIRMAN AND HONOURABLE COMMISSIONERS:

| | |
|------------------------|---------------|
| DR. RANSOME E. OWAN | CHAIRMAN |
| MAL. ABDURAHAMAN ADO | VICE CHAIRMAN |
| DR. ALIMU ABDUL-RAZAQ | COMMISSIONER |
| PROF. O.C. ILOEJE | COMMISSIONER |
| DR. GRACE EYOMA | COMMISSIONER |
| ENGR. ABIMBOLA ODUBIYI | COMMISSIONER |

APPEARANCE

CHIJIJOKE OBI
With AHMADU ZUBAIRU
And ADA OZOEMENA

}
for the Petitioner

ISAAC OKPANACHI
With JUSTINE DODO

}
for the Respondent

SUNDAY ADEAGBO
for the Nominal Complainant

MR. VAL IKEONU
the Notary Public

Transcriber: Ukenna Chizoba

Audio Recording Operator: Ukenna Chizoba

1 **EC:** Please be seated

2 **NP:** Case No NERC/01/000002/2008-The Nigerian Electricity Regulatory
3 Commission and Abuja Distribution Company and the case is listed for hearing.

4 **EC:** Are parties in court, are parties in court?

5 **PC:** Yes. With the greatest respect My Lord, Chijioke N.Obi. I appear for the
6 Petitioner. Appearing with me My Lord, are Ahmadu Zubairu, Mrs. Ada Ozoemena.

7 **RC:** With due respect Your Honours, Isaac Okpanachi for the Respondent. With me
8 Sirs, is Justine Dodo.

9 **EC:** Be seated.

10 **PC:** Honourable Commissioners

11 **NCC:** Most humbly Sir, most humbly Sir, S. B. Ajagbo is my name. I hold the
12 watching brief for the Nominal Complainant

13 **EC:** Are you a Petitioner, do you have standing in this case?

14 **NCC:** No Sir, I am holding a watching brief for the Fadaeyi family.

15 **EC:** Ok, Ok, alright. Thank you. Please take note of that.

16 **PC:** Honourable Commissioners, this is a petition brought under the inherent
17 jurisdiction of the Commission. This petition, Honourable Commissioners, is
18 supported by a 16 paragraph affidavit.

19 **RC:** With due respect, ah, Your Honours, we wish to bring the

20 **EC:** Are you raising an objection?

21 **RC:** Yes, Sir.

22 **EC:** What is your objection?

23 **RC:** Your Honour, Sir, we are entitled to have, the issues raised in this compiti, in
24 this petition, determined by a panel constituted in such a way that its independence
25 and its impartiality is ensured. That is a constitutional matter. The panel as it is
26 constituted right now, as far as the Respondent is concerned is not independent and
27 the likelihood of braise is there. Certainty stated, the reason we are saying so is this,
28 on the face of the petition before the panel, the petitioner is Nigerian Electricity
29 Regulatory Commission. The panel, before whom this petition is brought, is Nigerian
30 Electricity Regulatory Commission. The two affidavits filed before the Commission
31 were filed by officers of Nigerian Electricity Regulatory Commission. Of course, the
32 Lawyer who is going to prosecute this matter also is the person who signed the

1 petition. His name is Chijioke N. Obi, my learned friend here, an employee of the
2 Commission. Now the reason why we raising this objection, Sir, is because of the
3 likelihood of braise and it is a constitutional matter. I speak on the provisions of
4 section 36(1) of the Constitution of Federal Republic of Nigeria 1999. If I may with
5 your kind permission, Sir, read, section, just section 1 of that constitution. Section,
6 sorry, sub-section 1 of section 36. It says, in the determination of his civil rights,
7 (indicernible) including any question or determination by or against any government
8 or authority, a person shall be entitled to fair hearing within a reasonable time by a
9 court or other tribunal established by law and constituted in such a manner as to
10 secure its independence and impartiality. Now, on what bases.

11 **EC:** One seconds.

12 **RC:** Yes, Sir.

13 **EC:** Is this Commission entitled to make Rules and Regulations?

14 **RC:** We have read your rules and regulations, Sir.

15 **EC:** Is it entitled to enforce its rules and regulations?

16 **RC:** It is entitled to enforce its rules and regulations which are subject to the
17 Constitution of Federal Republic of Nigeria. Any law

18 **EC:** Is it entitled to also hear matters that may arise, that maybe in contravention or
19 problems arising from License Commission so issued to license holders?

20 **RC:** With due respect, Sir, all the questions.

21 **EC:** Yes or No.

22 **RC:** All the questions you are asking, I will answer them in the positive.

23 **EC:** Fine.

24 **RC:** But, but both the law that.

25 **EC:** You are.

26 **RC:** Both the law that set up this Commission.

27 **EC:** Barrister.

28 **RC:** Yes, Sir.

29 **EC:** I want to establish.

30 **RC:** Yes Sir.

31 **EC:** For the record, if the Commission is properly placed to hear matters that arise
32 due to its license condition it gave to licensees.

1 **RC:** Yes, Sir.
2 **EC:** Are we entitled to do so?
3 **RC:** Well, May I also ask you a question, Sir.
4 **EC:** No, you answer mine, Yes or No?
5 **RC:** With due respect, Your Honour, what I should even request for at this point.
6 **EC:** Are we entitled?
7 **RC:** Let me.
8 **EC:** To deliberate on matters that arise.
9 **RC:** Let me land, sir. Let me land.
10 **EC:** I will give you good opportunity to land, answer my own questions first. I am
11 trying to rule on your objection.
12 **RC:** I have not finish making my objections, Sir. I have not finish making the
13 objection, Sir.
14 **EC:** Ok, then continue.
15 **RC:** Yes, Sir. I am grateful, Sir. The constitution which is the grand norm of every
16 law in Nigeria requires that any Tribunal or Administrative Body that is going to hold
17 a hearing must be constituted in such a way that its independence or impartiality is
18 ensured, if not, whatever it does will amount to a nullity. It is void and a null. My
19 personal opinion is this, Sir, I'm so grateful and I'm so ah, over joy that such a thing
20 like this, is happening in Nigeria. That a Commission is sitting to call public utility
21 like my own client to order. But I want this Commission to succeed, that is why I am
22 making this observation. Succeed by following what the law says so that nobody will
23 raise objections like I am raising. Finally Sir, before I sit down, in the cause of
24 investigating the matter that led to what is being heard here today, letters have
25 exchanged hands, meetings have been held and certain people who have expressed
26 opinion on this matter or have received letters or written letters are sitting in
27 judgment over the Respondent. It is unconstitutional for people who have
28 participated in the investigation of this matter to sit in judgment over the
29 Respondent. They should be people who have never had knowledge of this matter . in
30 the cause of the investigation of this matter, Engr. Bola Odubiyi wrote letters and
31 participated in the, in the investigation. He cannot now sit as a Member of this panel.
32 Also Sir, you as Chairman, sir, a letter dated the 19th of April was copied to you.

1 Certainly, you formed an opinion on that letter. You too cannot sit on this panel, Sir.
2 Then, Dr. Alimi Abdul-Razaq, commissioner,
3 **HC4:** Ehm, Barrister, barrister.
4 **RC:** I am closing now. I am finishing what I'm saying in one minute, one minute.
5 **HC4:** Ok.
6 **RC:** I will finish what I'm saying now. Then, Dr. Alimi Abdul-Razaq, Commissioner
7 Legal support, Licensing and Enforcement wrote letters, participated in the
8 investigation of this matter. He is sitting. I don't know who is Commissioner G and
9 A. Actually I don't know the name of G and , G and C A. Whoever he is, he
10 participated in the investigation of this matter. He cannot sit in this panel. Apart
11 from that, anybody else who is not mentioned among these four, can sit in this panel.
12 If you do so, you will succeed. We will submit to the jurisdiction of the panel and we
13 will go ahead and defend ourselves. That is my position, Sir. If these four people are
14 disqualified from sitting on this panel, we would go ahead with the panel, sir. That is
15 all, Sir.
16 **EC:** Honourable Counsel.
17 **RC:** Yes, Sir.
18 **EC:** Are you through?
19 **RC:** I'm through now, Sir.
20 **EC:** Ok. Question to you.
21 **PC:** Yes.
22 **EC:** Not you, counsel
23 **PC:** Yes, I ammmmm.
24 **EC:** No, no, no have a seat. Not you. Is it informed judgment that the Commission
25 has no right to act in the public interest?
26 **RC:** I didn't say so, Sir. I, I.
27 **EC:** Yes or No.
28 **RC:** I believe in.
29 **EC:** Excuse me.
30 **RC:** What the Commission is doing.
31 **EC:** Ok, fine.
32 **RC:** I believe in what the Commission, in fact.

1 **EC:** Are you aware
2 **RC:** Yes,Sir.
3 **EC:** Of our Business Rules?
4 **RC:** I have read the Business Rules.
5 **EC:** Are you aware that the Commission speaks through its orders.
6 **RC:** All these things I agree with, Sir.
7 **EC:** And, one seconds.
8 **RC:** I agree with what you are saying, Sir.
9 **EC:** And if you do not like the orders that may arise, you can appeal to the
10 Commission and if you are not satisfied, you can then reference you matter
11 elsewhere, are you aware of that process?
12 **RC:** Chairman, Sir, what will be the need of wasting the time of this.
13 **EC:** Yes or No?
14 **RC:** I am aware.
15 **EC:** Ok, Fine.
16 **RC:** But let us not waste the Commission's time or anybody's time.
17 **EC:** In other words, the Commission should not hold a hearing where it brings up an
18 issue itself for violation or potential violation of its own rules and regulation. It
19 should give it to somebody that is impartial to trial.
20 **RC:** Correct, Sir.
21 **EC:** Ahaa. However, if an outcome of a procedure as such as this is in favour of the
22 Respondent, would that be valid?
23 **RC:** It is not, it is not valid. It is not valid if people who participated in the
24 investigation of this matter sit over it, it is not valid.
25 **EC:** Ok, I thing I will let others, my high table speak.
26 **HC2:** Counsel,
27 **RC:** Yes, Sir.
28 **HC2:** Can you say exactly what bias you anticipate from (indiscernible)
29 **RC:** Not bias, likelihood of bias.
30 **EC:** What, what is it?
31 **HC2:** (indiscernible)

1 **RC:** Yes, the people who investigated this matter and wrote letters, certainly have
2 formed opinions as to the standing of my client, the Respondent.
3 **EC:** Anticipatory opinion.
4 **RC:** Sir?
5 **EC:** Anticipatory opinion.
6 **RC:** No. Not anticipatory. They have, they have given orders. They have said do this,
7 do that and .
8 **HC2:** It may well be that you are the one who have formed an opinion of your client.
9 **RC:** I am entitled. When, when I am defending someone, I should form an opinion.
10 **EC:** I, I reserve.
11 **RC:** Yes, sir.
12 **EC:** I will ask the Petitioner's lawyer before I rule on your objection.
13 **RC:** Yes, Sir. Whatever he says, then I will reply him before you rule, sir.
14 **EC:** Don't worry.
15 **RC:** Yes, Sir.
16 **EC:** You have sufficient opportunity to rebut.
17 **PC:** Yes, My Lord. Aham, it does appear, My Lord that my learned friend is not sized
18 of the laws governing the Commission. He sa, the constitution is the grand norm,
19 agreed. But the constitution does not preclude the Commission or any other
20 Commission from establishing an administrative panel of inquire. This is an
21 administrative hearing, My Lord, ehm, Honourable Commissioners. It is not a court
22 of law and it is trite that in, that all over the world, that for the proper functioning of
23 Regulatory Commissions all over the world, there is the establishment of an
24 administrative hearing for purposes like this. I also want to refer my friend to the
25 provisions of Section 74 of the Act, it, this section, Honourable Commissioners
26 allows the Commission so moto, section 44, 74, and with the kind permission of this
27 Honourable Panel, I read- upon receiving a complaint from any customer, eligible
28 customer, Consumer Association, Association of eligible customers or other licensees
29 or on its own initiative, the Commission may enquire into the conduct or functioning
30 of any licensee in carrying out the licensee's obligations which is what, exactly what
31 the panel is doing, under this Act, Rules or Regulation, Codes of Conduct of the
32 terms and conditions of the license. The Commission issued license to Abuja

1 Distribution Company. That is clear. There are terms and conditions. The
2 Commission empowers, the Commission, the Act empowered the Commission to put
3 out regulations that will guide its operations. The Commission is not running foul of
4 the law. It is not going contrary to the provisions of the Constitution of the Federal
5 Republic of Nigeria. It is not a court. It is an administrative hearing. Other regulatory
6 bodies have administrative panel. So I don't understand what, you know, my learned
7 friend is saying that there is likelihood of bias. I don't think there is any likelihood of
8 bias. I think I also have to bring to the attention of my learned, learned friend that
9 the Act and the Regulation may, pursuant to the Act, provide that the Commission
10 can on its own, even after receiving all the documents, all the evidence and all that,
11 issue order to the Respondent. But it decided not to do so because it wants fair
12 hearing. It wants the principle of natural justice to be there and that is why it invited
13 the Respondent to hear from it. So I don't understand what my learned friend is
14 saying. I urge the court to over rule the objection and let us continue with this
15 matter, thank you.

16 **RC:** In reply. I am entitled to reply him, Sir.

17 **EC:** You are.

18 **RC:** Yes, Sir. Sir, Nigeria does not operate in vacuum. All that we are doing is
19 regulated by law. I did not say that the Commission has no power to do any thing
20 that it is doing. It is the constitution of this panel that we are raising objection
21 against because certain or four out of the people who are sitting on this panel now,
22 have participated in investigating this matter. That will mean that their position in
23 sitting over this panel is compromised. That is all we are saying. Now, there is a locus
24 classical, my learned friend knows, when Richard Akinjide was Attorney General of,
25 Attorney General of this, of this federation, Barr. Gani Fawemi ran foul of some rules
26 of professional conduct for lawyers, so Richard Akinjide caused his sub-ordinate in
27 the office to write a letter to Gani Fawemi that, you have done certain things wrong
28 and we are inviting to appear before the disciplinary committee. Gani Fawemi
29 arrived at the scene of the hearing of the Disciplinary Committee and found Richard
30 Akinjide sitting as Chairman and he objected. Chairman with three other people who
31 had, you know, written letters and expressed opinion about what he has been
32 accused of and when he objected and the committee decided to go ahead, he went to

1 court to stop the court and he eventually stopped the committee because the
2 Supreme Court agreed with him. It is so that the work of this panel or this
3 Commission should succeed, that is why at the very first hearing, it is necessary for
4 us to point out. Please, if the Commission is going conduct successful hearings, if a
5 panel is being constituted, people who participated in any way, who wrote letters,
6 who called anybody, who sat down with anybody should not sit. When other cases
7 come up that those people did not participate, they can sit so that nobody will raise
8 the issue of bias. That is what I'm saying. This Commission has a right to sit and do
9 public hearing and give its orders. It is for the benefit of every one of us. But, this
10 Commission has the power to seize anybody's license and put them out of business.
11 Now, my client runs the risk of being put out of business by people who have sat and
12 sat down with them and held conferences, investigated this matter and then they are
13 coming to sit as impartial arbiters. It is not possible. It will not be fair. The public will
14 not see it as impartial and independent. This is the point we are raising. Once this
15 matter is taken care of, then, we can go ahead and then defend our self before the
16 Commission. That is what I am saying. All that you are doing, you have the power to
17 do and we agree and it is the proper thing to do but it is the constitution of the panel
18 that we are quarreling against. That is all, Sir. And the case I am referring to which I
19 shouldn't bother you with but it is a reported case, in case you will like to see it, Sir.

20 **EC:** Is counsel through?

21 **RC:** Yes, Sir. Finally, let me give you the citation of this case or even hand over this
22 book to you if you will like to go through it because

23 **RC:** Make your case, we can understand.

24 **RC:** It is better that this thing is done proper. That is all that we are saying

25 **EC:** Make your case (indiscernible), we will understand.

26 **RC:** Finally, Sir, so I will ask that the people that I named be disqualified from sitting
27 on this panel.

28 **HC3:** Can you give us the citation again.

29 **RC:** The citation, Yes, Ma. This is ***Legal Practitioner Disciplinary Committee***
30 ***Vs Fawemi. It is reported in 1985, pt 2, Nigerian Supreme Court cases,***
31 ***pg 998***, I am referring particularly to pg

32 **EC:** Pg 998.

1 **RC: 998, particularly pgs 1018-1019**, dealing with the issue that a man should
2 not be the judge in his own case. Petition is by Commission, prosecution is by
3 Commission, witnesses is by Commission, judges by Commission. There is no
4 partiality, impartiality at all. That is what we are complaining against, Sir. That is all,
5 Sir.

6 **EC:** You rest your case?

7 **RC:** I rest my case, Sir.

8 **PC:** Honourable Commissioners.

9 **RC:** My learned friend.

10 **PC:** Yes.

11 **RC:** You know you that you have no right, you have no right to talk again.

12 **EC:** I want hear. You finish you case?

13 **RC:** (indiscernible)

14 **EC:** Ok. Counsel, be seated for one minute.

15 **PC:** My, Honourable.

16 **EC:** Be seated.

17 **HC3:** Counsel for the Respondent.

18 **EC:** Counsel for the Respondent.

19 **RC:** Yes, Sir.

20 **EC:** Question from the bench.

21 **RC:** Yes, Sir.

22 **HC3:** Ehm, you are asking that ehm, three of the serving Commissioners that make
23 up the Commission, step down.

24 **RC:** Yes, Sir.

25 **HC3:** And you have seen six Commissioners here today, three of whom I think you
26 have meant to step down

27 **RC:** Yes, Sir.

28 **HC3:** Leaving three of them.

29 **RC:** Yes, Sir.

30 **HC3:** Now leaves three to hear this matter.

31 **RC:** Yes, Sir.

32 **HC3:** And three will not in our own ehm, law permit this hearing to hold.

1 **RC:** No, three, three is a recommended number.
2 **HC3:** That is one and also, you were talking about Gani Fawemi's case
3 **RC:** Yes.
4 **HC3:** And it is a Legal Practitioners eh,
5 **RC:** Disciplinary Committee.
6 **HC3:** Disciplinary Committee,
7 **RC:** Yes, yes Ma.
8 **HC3:** Do you make a distinction on your own with this commission.
9 **RC:** Now, just like the Disciplinary Committee is not a formal court, in the same way.
10 **HC3:** I want you to make a distinction between the two.
11 **RC:** No, there is no distinction.
12 **HC3:** There is no distinction.
13 **RC:** That is what I'm saying, Sir. Just like that Disciplinary Committee is not a
14 formal court, yet it was bound by rules of natural justice. Even though this
15 Commission is not a normal, formal court, it is bound by the same rules.
16 **HC3:** Can I, can I tell you that the Legal Practitioner Disciplinary Committee is a
17 body within an association
18 **RC:** Yes, Sir.
19 **HC3:** Of, of, of, ehm, people.
20 **RC:** Yes, Sir.
21 **HC3:** It does not have a force of law behind it.
22 **RC:** No, (indiscernible) court of law but you have powers.
23 **HC3:** No, no we are not talking about court of law.
24 **RC:** Yes, Sir.
25 **HC3:** I'm just trying to see if you can withdraw your objection because we are going
26 to rule anyway.
27 **RC:** No, you have to rule.
28 **HC3:** Alright.
29 **RC:** In one way or the other, you have to rule.
30 **HC3:** Chair
31 **HC3:** Chairman, Sir.

1 **RC:** But the issue, the point, the point ah, Your Honour, Sir, is panel that has powers
2 with far reaching effect in the orders that it can make, must, must at the, at the, at
3 the, at the basic minimum be required to operate by natural justice. That a man
4 should not be the judge in his case.
5 **HC3:** That means the Commission cannot be a judge in this case.
6 **RC:** Yes. The Commission, no, no.
7 **HC3:** Because the Commission is the Petitioner.
8 **RC:** Yes. Commission is Petitioner, Commission is witness, Commission is
9 prosecutor. It cannot go on. It is not fair.
10 **EC:** Commissioner Iloeje, question for counsel for the Defendant
11 **HC2:** Yes, for the counsel for the Defendant. Ehm, do you see the Commission
12 taking on the position of the public in the public interest?
13 **RC:** I do as a matter of fact. I have said so. I am happy that this Commission is
14 sitting.
15 **HC2:** If the Commission then takes on the position of the public in the public
16 interest, is the Commission acting in its own interest in such a situation?
17 **RC:** Well, that public, sir, decided to a constitution that any time.
18 **HC2:** Please answer the question directly.
19 **RC:** Sir
20 **EC:** Counsel.
21 **RC:** It is my answer.
22 **HC2:** Kindly answer the question directly
23 **EC:** Counsel.
24 **RC:** That public.
25 **EC:** If we direct you to say yes or no, we prefer you do not pointificate.
26 **RC:** No, Sir.
27 **EC:** You say yes or no.
28 **RC:** My Lord,
29 **EC:** We are creating a record.
30 **RC:** With due respect, with due respect Your Honour, this is, this is a free society,
31 yes or no.
32 **EC:** We direct.

1 **RC:** Yes or no should not be, should not be demanded of me, Sir.
2 **EC:** We will ask you, if a question, I think you are familiar with court proceedings?
3 **RC:** Very.
4 **EC:** In your humble opinion, are there times will questions are proffered and yes and
5 no answer is required, free country or not. Is it through or false?
6 **RC:** That there are yes or no answers.
7 **EC:** Yes.
8 **RC:** When yes or no answers are, are relevant, yes. But when an explanation is
9 necessary, we should, we should explain.
10 **EC:** I think you understand my point.
11 **RC:** Yes, Sir.
12 **EC:** Go ahead.
13 **RC:** So, I, I believe in what the Commission is doing and I support a 100% but let us
14 do it properly.
15 **HC2:** I don't think you are addressing my question.
16 **RC:** I am, sir.
17 **HC2:** No, you are not.
18 **RC:** I believe, I believe in what the Commission is doing. That is, in favour of the
19 public.
20 **HC2:** It is in the public interest.
21 **RC:** It is in the public interest.
22 **HC2:** And the Commission is adopting the position, the interest of the public in its
23 presentation. What the public, what the Commission.
24 **RC:** Well.
25 **HC2:** I will like to.
26 **RC:** This is, I'm sorry, Sir.
27 **HC2:** I am trying to make you understand what the whole, this whole forum is all
28 about.
29 **RC:** Yes, Sir. I have, I have read the law, Sir.
30 **HC2:** Yes.
31 **RC:** This public, this public that, Your Honour you are talking about, my client is
32 part of that public. My client stands the risk of losing its license as a result of

1 | whatever goes on here. If people who are sitting in judgment over my client have
2 | formed opinion on this matter because of participating in the issue that led to this
3 | case being tried today.

4 | **HC2:** Can I stop you?

5 | **RC:** How are we sure that this.

6 | **HC2:** Can I stop you so far.

7 | **RC:** Yes, Sir.

8 | **HC2:** Please, you are digressing.

9 | **RC:** I am not digressing, Sir.

10 | **HC2:** You are. We want to esta, I want to establish.

11 | **RC:** Yes, Sir.

12 | **HC2:** Ehm, whether you do understand that the law had a reason, if you listen to
13 | section 74 which was just read out.

14 | **RC:** I have read it, I have read it, Sir.

15 | **HC2:** You will see where a list of persons who could bring cases before the
16 | Commission and deliberately, it was included that the Commission could bring a case
17 | which it will hear before the Commission. Now, there is a reason why that was done.

18 | **EC:** On its own initiative.

19 | **HC2:** On its own initiative, and that is, that in some situation, a case can arise, a
20 | situation can arise which is in the public interest and which an external public, eh,
21 | public external to the Commission may not have identified. The Commission has the
22 | responsibility to identify it and bring it forward for open hearing. Now, we try to
23 | understand that the Commission is not a court and must never be equated to a court.
24 | In fact it will not be able to do its work well if it were to operate like a court or to be
25 | subjected to court rules and court procedures. It is suppose to act, in the public
26 | interest to be a fact finder and this is precisely what we are doing now. To find out
27 | facts in an open fashion by creating this forum for the purpose of finding out facts.
28 | Then, the facts so found, will inform the Commission on what it will do. So, if one
29 | were to insist on looking on the Commission as a court, and should be, ehm,
30 | constituted in a manner similar to how a court is constituted, the person will be
31 | digressing and making a mistake. So, I think you should do, see what is happening in
32 | this context, so that.

1 **RC:** Well, my, my answer is very short and straight forward, sir. The public on whose
2 behalf the Commission is sitting, that public made a constitution that nobody should
3 be subject to any trial of any sort. Whether by a regular court or an panel of any
4 enquiry without observing the basic minimum of natural justice, that a man should
5 not be a judge in his own affairs. This panel can be constituted in such a way that it
6 can do this job that it is doing now without anybody raising an objecting. It can. That
7 is the issue that we are raising, Sir.

8 **EC:** Alright, is counsel through?

9 **RC:** We are all (indiscernible) the same level, Sir.

10 **EC:** Counsel, are you through?

11 **RC:** Yes, sir.

12 **EC:** Alright, the Commission shall rise, deliberate and we will return with an answer.

13 **NP:** Court.

14 **COURT RESUME SITTING**

15 **NP:** Court.

16 **EC:** You may be seated. Counsel for Abuja distribution zone. We heard passion plea
17 and case you made for your client. We carefully considered your position and we rule
18 that your objection is overruled and we will proceed.

19 **RC:** As the court pleases

20 **EC:** Counsel for the Petitioner?

21 **PC:** Yes, Commissioner. My Lord, this petition is brought under the inherent
22 jurisdiction of this panel. The petition My Lord, is supported by a 16 paragraph
23 affidavit and a 7 paragraph further affidavit. Honourable Commissioners we shall be
24 relying on all the paragraphs of the affidavits and with the kind commission of the,
25 the kind permission of the Commission I read some section, some paragraphs.
26 Paragraph 3 of the affidavit;

27 *That the Commission has the statutory responsibility to ensure the safety,*
28 *security, reliability and quality of service in the production and delivery of*
29 *electricity to the consumers pursuant to section 32(e) of the Electric Power*
30 *Sector Reform Act 2005.*

1 *That the Respondent is an electricity distribution company licensed by the*
2 *Commission with license No. NERC/LC/032 to engage in the purchase and*
3 *distribution of electricity in the Federal Capital Territory and its environs.*
4 *The licensed is hereby attached and mark Exhibit "A". it is attached and mark*
5 *Exhibit*
6 *"A". It is already before the court. It is before the court. Paragraph 5;*
7 *That the Respondent is subject to the terms and conditions of his license. The*
8 *EPSR Act 2005 as well as the provisions of the Grid Code and the*
9 *Distribution Code being regulation issued by the Commission, the Grid Code,*
10 *the Distribution Code, the License and the Distribution Code are attached and*
11 *marked as Exhibit "B" and "C" respectively and before the Commission.*
12 *That by virtue of section 75 of the Act and the provisions of the Business Rules*
13 *which was made pursuant to the Act, Business Rule No., regulation No. NLC-*
14 *R-0306 the Commission may carry out investigations into or hearings into*
15 *alleged violations of license terms and conditions, rules or regulation, codes*
16 *of conduct and licensee's obligation under the Act.*

17 Honourable Commissioners, this is precisely why we are here, that the Commission
18 may carry out this investigation or hearing; and we are saying that there has been a
19 violation of the license issued the Abuja Distribution Company, the Respondent.
20 There has been violation of the provisions of the license terms and conditions and let
21 me read one of the or some of the relevant sections of this conditions. Condition 18;

22 *The license shall, the licensee shall take all reasonable steps to protect*
23 *persons and property from injury and damage and may be, and that, that ay*
24 *be caused by, that may be caused by the licensee while carrying out the*
25 *license business. The licensee shall comply with all applicable Nigerian laws*
26 *and regulations relating to the health and safety of the employees and of the*
27 *public.*

28 My Lord, the (indiscrible) of this petition is that the Abuja (indiscernible) refused
29 and/or, and/or neglected to carry out this license conditions by not taking the safety
30 of members of the public into consideration in carrying out its license terms and
31 conditions. Back of our case, Honourable Commission, is that the sub-station in
32 question, the sub-station in question where the little girl, the deceased was

1 electrocuted was not protected. It was not protected. It was a danger to the members
2 of the public and that was why the incident of the 18th of April 2007 occurred. They
3 refused and or neglected to conform with the conditions of the license issued by the
4 Commission. Paragraph 6;

5 *That the Commission has the powers to sanction any licensee for violating*
6 *any provisions of the Act, Rules or Regulation, Code of Conduct, terms and*
7 *conditions of the license or licensee's obligation under the Act.*

8 *That the Respondent in accordance with the provisions of the Act, the*
9 *regulations as well as the terms and conditions of his license has an*
10 *obligation to ensure that its installations are save and are not dangerous to*
11 *customers and the public in general.*

12 That is our case and which I just mentioned. Paragraph 10 or paragraph 11;

13 *That the sub-station in question where the incident took place was unkept*
14 *when a visit was paid therein. There, it was unkept, it was unsecured and a*
15 *danger to the public. Attached are pictures of the sub-station marked as*
16 *Exhibits "D 1" to "D7".*

17 It is already before the panel and may be in course of my presentation, My Lord, I
18 will show, I will have to bring out, I think it is necessary for us to bring out, you
19 know, ehm, some of the sub-stations within the Abuja Distribution Company so that
20 you will have a look at it. Honourable Commissions, these are the state of the sub-
21 stations within the Abuja Distribution Company. These pictures were taken in
22 February 2008, several months after the Commission had issued out its directives to
23 the sub-station. These stations My Lord, are just not what they should be. These are
24 dangerous to the members of the pub, public and that is, you know, precisely why we
25 have been having incessant cases of electrocution in Nigeria.

26 *That in the course of the preliminary investigation, the Commission had a*
27 *meeting with officials of the Respondent on the 24th day of April 2007 at*
28 *which the Respondent was directed to do the following:*

29 *1. To clear the bush and trees in the sub-station.*

30 *To construct a barb wire fence and fix a gate to separate the sub- station*
31 *from the walk way.*

1 *To carry out an audit of the company's sub-station in its area of operation*
2 *and develop a program for securing them.*

3 *To take stock of all their installed equipment and ensure safety of life and*
4 *property in accordance with existing regulations.*

5 Honourable Commissioners, the sub-station was expected to fully comply with the
6 directives of the Commission. No half measures. They were expected to fully comply
7 and within the period of April 25th 2007 to this day the directives, the, the, the, the
8 Abuja Distco has not complied fully with the directives of the Commission.

9 *That several letters were issued to the Respondent requesting compliance*
10 *with the directives including obtaining a medical report on the deceased*
11 *to no avail.*

12 Some of these letters are attached and marked Exhibit "F" and "G"

13 *That instead the respondent in a letter to the Commission dated 31st July*
14 *2007 claimed that the company had embarked on the demolition of those*
15 *combat units with the view to protecting them against intruders, procure*
16 *(indicernible) pillars, 50 fedal pillars which are being installed to replace the*
17 *ones in bad condition, commence preparation for the enlightenment*
18 *campaign*

19 *That upon inspection of the sub-station with Respondent's area of, within the*
20 *Respondent's area of operation by the Commission, it was observed that they*
21 *had not been secured to ensure the safety of life and property as directed by*
22 *the Commission. Attached here are the pictures of the sub-station which I*
23 *just showed the Commission, Some of the pictures of the sub-station which*
24 *we just showed the Commission.*

25 Honourable Commissioners, I want to bring to your notice that the Abuja
26 Distribution Company had never intended to comply with the directives of the
27 Commission. They had never intended to comply with the directives of the
28 Commission. The documents are before this Honourable Commission. And with the
29 kind permission of this Honourable Commission, I wish to call some witnesses to
30 collaborate the petitions and in doing this, I want to call the Commission to the
31 provisions of the Business Rules, clause 34(2) in presenting this petition. Clause
32 34(2), inherent powers of the Commission. I want to draw the attention of the

1 Commission to the fact that the Commission may adopt any procedure as long as it is
2 in conformity with the Act notwithstanding that it is at variance with this regulation.
3 Honourable Commissioners, I wish to call Engr.
4 **HC3:** Counsel
5 **EC:** Counsel.
6 **PC:** Tasiu
7 **EC:** Counsel
8 **HC3:** Before you call your first witness and we have heard your case, I have some
9 questions.
10 **PC:** Yes.
11 **HC3:** I have questions regarding the level of contributory negligence perhaps on the
12 part of , perhaps, the (indiscernible) in this case, I don't know, I am asking because
13 you have said that they were negligent in the performance, I mean, the, the, in the
14 case.
15 **PC:** Yes.
16 **HC3:** That is what you (indiscernible).
17 **PC:** Yes.
18 **HC3:** And then, you may have to note them because I just said them all and then you
19 can answer them. Now, you said also that ehm, so I need to know the level of
20 contributory negligence and then you said ehm, the fidal pillars was suppose to be
21 ehm, secured, ehm, and that hasn't happened, can I know the level of compliance if
22 any. Are you saying non of them in Abuja has been secured since this incident? And
23 then, you were inputting intention, I hope your witnesses will be able to show what
24 you started to say. The intentions on the part of Abuja Distco where they did not
25 intend to do any of what you say they were suppose to do.
26 **EC:** In addition, are you through?
27 **HC3:** I'm done.
28 **EC:** Counsel for the Petitioner.
29 **PC:** Yes, Sir.
30 **EC:** The Respondent has not stated its case now. They will have an opportunity to
31 state their case. But I want you to focus your mind on the potential claim of
32 substantial compliance and what it means. You don't need to answer the question but

1 | it may come to play the issue of comp, substantial compliance. Yes, Commissioner
2 | Iloeje.

3 | **HC2:** Yes, ehm, in presenting your board of pictures, I believe you intended to
4 | demonstrate some abnormalities of whatever in the state of the sub-stations. I am
5 | not sure that you have actually demonstrated that because you have not indicated
6 | what abnormalities you observed, what should be and what was not. So you need to
7 | (indiscernible) you mind to that. You have just made a simply statement that they
8 | were in bad sh, in bad condition but it is not demonstrated.

9 | **EC:** You may now call your witness, else you wish to respond directly to the
10 | questions from the bench.

11 | **PC:** Yes, My Lord, ehm, let me respond to the observations of the Commission. Now,
12 | with regards to the contribution of the deceased to the accident, I don't know if that
13 | was, that was the question.

14 | **HC3:** (indiscernible) the deceased for, there must be some contributory negligence,
15 | you know, you are talking about the negligence of the, on the part of Distco.

16 | **PC:** Yes.

17 | **HC3:** My question is there any contributory negligence on the part of the Petitioner
18 | on whose behalf you are petitioning?

19 | **PC:** Yes, My lord, ehm, the, the sub-stations as I.

20 | **HC3:** I am not asking you to make a case for the petitioner, I mean, for the
21 | Respondent.

22 | **PC:** Yes.

23 | **HC3:** I am only asking, since this case was investigated also.

24 | **PC:** Yes.

25 | **HC3:** By the Commission, there might be evidence that indeed, even though there
26 | were negligence and there may have been.

27 | **PC:** Yes.

28 | **HC3:** And I don't know that there is.

29 | **PC:** Yes.

30 | **HC3:** I am just high lightening the issues of some negligence on the part of the
31 | victims of this case.

32 | **EC:** Ok. That is, that is fine. I think we will.

1 **PC:** No, I understand the question.
2 **EC:** No, proceed.
3 **PC:** Ok. Now, the issue of substantial compliance in my presentation before this
4 Commission, I pointed out the facts that the directives to the Abuja Distco was to
5 comply fully. That there was no half measures. It is not a question of substantial
6 compliance.
7 **EC:** Proceed with your witness. Who do you call to the stand?
8 **PC:** Ehm, Engr. Tasiu wudil.
9 **EC:** Is he present?
10 **PC:** Yes, he is present.
11 **EC:** May the process of the court.
12 **NP:** All other witnesses in this court should be out court and out of hearing. All other
13 witnesses in this issue should be out court and out of hearing.
14 **PC:** Ehm.
15 **EC:** Hold on, one second counsel. A directive has been given that all other witnesses
16 should be out court and out of hearing. Are they any other witnesses that may be
17 called upon? Please wait for their exit.
18 **PC:** Now, Engr. Would you, are you.
19 **EC:** No, let them swear.
20 **PC:** Yes.
21 **NP:** (indiscernible) I
22 **PW1:** I.
23 **NP:** State your name.
24 **PW1:** Engr. Tasiu Wudil.
25 **NP:** Do solemnly affirm.
26 **PW1:** Do solemnly affirm.
27 **NP:** That the testimony I shall give.
28 **PW1:** That the testimony I shall give.
29 **NP:** Before this Honourable Commission.
30 **PW1:** Before this Honourable Commission.
31 **NP:** Shall be the truth.
32 **PW1:** Shall be the truth.

1 **NP:** The whole truth.
2 **PW1:** The whole truth.
3 **NP:** And nothing but the truth.
4 **PW1:** And nothing but the truth.
5 **NP:** Chairman Sir, Members of the Commission, the witness has affirmed and he is
6 testifying in English language.
7 **EC:** Thank you. Counsel you may proceed.
8 **PC:** Now, tell this court your names, your names.
9 **PW1:** My names is Engr. Tasiu Wudil.
10 **PC:** Occupation.
11 **PW1:** Ehm, Electrical Engineer. Public servant.
12 **PC:** Tell this court, this panel where you work.
13 **PW1:** I work with Nigerian Electricity Regulatory Commission (indiscernible)
14 **PC:** Now, are you aware, are you seized of the fact of this case?
15 **PW1:** Yes, when I was employed, I came, (indiscernible), so Ehm, I was briefed
16 (indiscernible).
17 **PC:** You were briefed about the case?
18 **PW1:** Yes.
19 **PC:** Now, in brief, tell us what you about the case, just in brief, may be in about three
20 sentences.
21 **PW1:** Ahm, a little girl walked into a sub-station and she was electrocuted and the
22 distribution company was informed on the case by the staff of the Commission who
23 happens to be living near the sub-station and ehm, and investigation, the, the
24 distribution company investigated and later found out that the girl died after some
25 time and the Commission wrote a letter to the company to secure its own sub-
26 stations.
27 **PC:** Ok.
28 **PW1:** I think.
29 **PC:** Ok, now, did you visit the sub-station in question after the incident?
30 **PW1:** Yes, I did.
31 **PC:** What were your observations of the sub-station?

1 **PW1:** Ahm, initially when we came in, there was, there was ahm, It was during the
2 raining season. The station was (indiscernible) a lot of weeds inside. It was
3 (indiscernible) and it was not secured. There were those but they were not locked.
4 **PC:** Ok, are you aware of the directives to Abuja Distco after the incident?
5 **PW1:** Yes, I am aware. I (indiscernible).
6 **PC:** Ok, at the point of visiting the sub-station, the state in which the sub-station
7 was, was it the proper state the sub-station was suppose to be at the time you visited?
8 **PW1:** No. It was not, sir.
9 **PC:** It wasn't.
10 **PW1:** It wasn't.
11 **PC:** Now.
12 **PW1:** It was over grown by weeds and it was open. Anybody can enter, animals can
13 enter, human beings can enter.
14 **EC:** Counsel, do not lead the witness but proceed.
15 **PC:** Now, how many times did you visit the, the sub-station.
16 **PW1:** Twice.
17 **PC:** Apart from your own visit, were there other, any other visits to the sub-station?
18 **PW1:** Yes, my (indiscernible) instructed one of my, one of my colleagues to visit the
19 place and he took some pictures.
20 **PC:** He took some pictures?
21 **PW1:** Yes.
22 **PC:** Now, what is a standard a sub-station, right, should entail, that in constructing a
23 sub-station what and what should be there, you know, you know in constructing a
24 sub-station.
25 **PW1:** Apart from the, the transformer and whatever is inside the sub-station for, for
26 delivering of electricity for safety, according to CAP 106 which is a standard, there is
27 a standard CAP 106, there has to be, there has to be a barb wire and there is
28 (indiscernible) distanced between the barb wire, section of the barb wire which is
29 200 millimeters. There has to be (indiscernible) effective (indiscernible) in case of
30 accident the (indiscernible) to be able to operate. Then, perhaps there has to be
31 (indiscernible) stating the voltage level of that sub-station and it has to be secured to

1 | deter unauthorized person from getting into it. So, this is in nutshell what the CAP
2 | 106 is saying and relatively anybody building a sub-station has to abide by that.
3 | **PC:** Were these features there at the sub-station at the time you visited?
4 | **PW1:** No, as I said before, there, the sub-stations were unkept. It was open.
5 | Anybody, anybody can enter. So, it has not been secured against unauthorized entry.
6 | **PC:** Ok. Now, you mentioned that there were other people, ehm, staff of your
7 | division who visited the site.
8 | **PW1:** Yes.
9 | **PC:** Ok. And , ok, ehm, that is all for this witness.
10 | **EC:** Thank you. You may step down. No, sorry, cross. One seconds. Can you see the
11 | witness from there or you need to or is ok from where you are?
12 | **RC:** With due respect Your Honours, the evidence given by this witness is technical.
13 | **HC2:** You may relocate if you want.
14 | **RC:** And we wish to properly react to it.
15 | **EC:** Ok.
16 | **RC:** So we don't rush into cross examination today. So we will humbly ask for an
17 | adjournment to allow us properly analysis the evidence he has given and properly
18 | cross examining him at an adjourned date.
19 | **EC:** Do you, counsel.
20 | **RC:** Yes, Sir.
21 | **EC:** Do you have technical people on your side?
22 | **RC:** With due respect Your Honour, this is a very, very serious allegation being made
23 | against my client and I need to react to, to it in the same manner.
24 | **EC:** Are you unfamiliar with the facts of this case until today?
25 | **RC:** Not the facts of this case but the technical evidence this witness had just given.
26 | That is what I am not familiar with, technical evidence.
27 | **EC:** On the state of the sub-stations?
28 | **RC:** He said the things that are supposed to be found in the sub-station are so and so
29 | and so and so and so. That is technical.
30 | **HC3:** (indicernible) stated are the facts.
31 | **HC4:** These are the facts and also are you aware that the Abuja Distribution
32 | Company also has technical persons that can, you can call upon.

1 **RC:** This is ehm, well.

2 **HC4:** And also as a counsel, you should have prepared yourself and also your client.

3 **RC:** I have to conduct this case.

4 **HC4:** Because this is a case that is technical and all these things you should have

5 been aware of and prepare yourself and not come to this place and ask for an

6 adjournment.

7 **RC:** It is justice we are pursuing in this matter, Sir.

8 **HC4:** Yes.

9 **RC:** So, justice should never be seen to be rushed.

10 **HC4:** Yes, but justice delayed is justice denied.

11 **EC:** Counsel.

12 **RC:** There is no delay here, yet.

13 **EC:** Counsel.

14 **RC:** There is no delay. We want to cross examine properly.

15 **EC:** Counsel?

16 **RC:** Yes, Sir.

17 **EC:** We would like for this to conducted in orderly manner. In preparation for this

18 case today, technically or otherwise, have you prepared any witnesses?

19 **RC:** In fact, it is the tenure of what is going on here today, that is going to dictate to

20 us the number of witnesses we will call and who we will call as a witness.

21 **EC:** Ok. You will have the opportunity to recall the witness if you so wish. The

22 witness will be made available to you.

23 **RC:** We are not ready.

24 **EC:** If you.

25 **RC:** We are not ready to proceed with cross examination today, Sir and it will not

26 proper if our hands are forced in this matter, Sir.

27 **EC:** We take note of your request and we proceed with our witnesses.

28 **RC:** As the court pleases.

29 **HC3:** I have a question for the witness though. Ehm, Mr. Wudil, Engr. Wudil, I just

30 want, may be it will help me with the case I posed earlier. You said the little girl

31 walked into the station or sub-station and was electrocuted, that was your statement.

32 Now, I just don't know how people just walk, you didn't paint a picture for me. How

1 do people walk into a station and get electrocuted. Obviously, you are trying to say
2 more than that. It is not a casual act of just walking on, walking on the road.

3 **PW1:** Yes, Ma, this case ehm, this incident happened in April last year. I was
4 employed in June. When I came, I was, I saw the letter that Abuja Distribution was
5 asked to secure its own station. And as I told you, there was a fence and there was a
6 gate. If that gate was closed, that girl wouldn't have entered there to be electrocuted
7 and as I was told, as I saw it from the table, from the file that initially it was not built
8 like that and after the incident, if they really wanted to comply but the only thing that
9 I noticed when I visited the place was that it was not locked and many other things
10 would have happened. Fortunately, I'm in charge of Letos. I am the manager in
11 charge of Letos. Distribution. I work with the distribution and transmission. I have
12 been going round Abuja snapping pictures. Most of these pictures, I snapped them.
13 Some of these places, you can see it, they are dead end. Anybody who goes in there,
14 the terminals, the terminal are open. Anybody can (indiscernible). There are a lot of
15 things.

16 **HC3:** Alright. (indiscernible)

17 **PW1:** But what happened at that.

18 **EC:** Ok.

19 **PW1:** Anti killer, anti killer sub-stations, I can not tell you.

20 **EC:** Ok.

21 **HC3:** You don't know the full facts of that matter.

22 **EC:** Alright, the point we are trying to make here and counsel you should note, the
23 Commission holds a panel hearing to help it further develop information that may or
24 may not have been given in written representation. That is why we hold an oral
25 hearing and a public hearing for that matter so that we can complete the record. It
26 beholds participants to be aware that this is not intended to be an advisory
27 proceedings because the Commission as (indiscernible) to give license and set
28 conditions. Among its four objectives and mission is to make sure that electricity is
29 adequate, it is safe, it is reliable and it is affordable. It is under the condition of safety
30 that we try to create a record because we believe that this condition has universal
31 applicability through out the system. And so we try to create a record so that it can
32 help us improve safety in the system so that people who enjoy electricity and those

1 | who walk around it are as well save. So that is the main purpose here. It is not
2 | advisory as it may seem but trying to create a fuller record. The witness may step
3 | down. Counsel, do you have another witness?
4 | **PC:** Yes, Sir.
5 | **EC:** Please, call the person.
6 | **PC:** Sir, as I earlier stated, I want to bring this to the notice of the or to the attention
7 | of this Honourable Commission. As earlier stated, this is not a court of law. This is an
8 | administrative hearing. I want my learned friend; I'm saying this because of the
9 | posture of my learned friend in this issue. The Commission was set up for a purpose
10 | and the Respondent has submitted itself to the jurisdiction of this panel. There was
11 | an affidavit, there was a counter affidavit which they submitted to this court and the
12 | issues I put to the witness are contained in their counter affidavit. That is exactly
13 | what I want my learned friend to know. Probably he is not very seized of this. I' m
14 | calling on my next witness, My Lord. I am calling the medical doctor, Dr. O.O
15 | Olayemi of the National Hospital Abuja. Dr. Olayemi.
16 | **NP:** Repeat after me.
17 | **NP:** I
18 | **PW2:** I, (indiscernible) Olayemi
19 | **NP:** Do solemnly swear.
20 | **PW2:** Do solemnly swear.
21 | **NP:** That the testimony I shall give.
22 | **PW2:** That the testimony I shall give.
23 | **NP:** Before this Honourable Commission.
24 | **PW2:** Before this Honourable Commission.
25 | **NP:** Shall be the truth.
26 | **PW2:** Shall be the truth.
27 | **NP:** The whole truth.
28 | **PW2:** The whole truth.
29 | **NP:** And nothing but the truth.
30 | **PW2:** And nothing but the truth.
31 | **NP:** And nothing but truth.
32 | **PW2:** (indiscernible)

1 **NP:** The witness sworn (indiscernible)
2 **EC:** Thank you. You may proceed.
3 **PC:** Tell this panel your names.
4 **PW2:** My names are Dr. Oluwale Olayele Olayemi.
5 **PC:** What are your qualifications?
6 **PW2:** I have a Bachelor of Science in Medicine and Surgery in (indiscernible)
7 College of Surgery, (indiscernible) International College of Surgery. I am a qualified
8 general and (indiscernible) Surgeon.
9 **PC:** Now, where do you work?
10 **PW2:** I work with the National Hospital.
11 **PC:** With the National.
12 **PW2:** Abuja.
13 **PC:** Abuja. Cast your mind back to the 18th day of April 2007 and tell this panel what
14 you know with regards this case.
15 **PW2:** Well, around 7:30pm there about on the 18th April 2007, a six year old girl
16 was referred from Maitama Hospital to National Hospital with a referral note of
17 severe burnt following an electrocution from a sub-station (indiscernible) in Wuse II.
18 The girl came in, we had to take our own history, whatever the referral note tells us
19 to establish facts of our case and to know how to proceed in treatment. The, she
20 sustained burnt injury few hours before getting to us according to the estimation and
21 the story was that she was walking when there was an explosion in one of the
22 transformers which eventually burnt her and possibly drew her to the transformer.
23 She sustained burnt injuries to the face, the trunk, the upper limb and one of the
24 knees, with the total estimated ehm, burnt surface area of 50%.
25 **PC:** Ok. Now, it is possible for a girl of that age who sustained that magnitude of
26 burnt to still be engaged in playful activities?
27 **PW2:** That is not possible. Even for an adult, 50% burnt, you can't play with
28 anybody.
29 **PC:** Now, what happened there after on the 19th of April?
30 **PW2:** Well, the girl was managed and eventually he was resuscitated, she was
31 resuscitated and eventually sent to ICU, to the Intensive Care Unit because of the
32 magnitude of burnt.

1 **PC:** Ok.

2 **PW2:** And on the 19th, early morning of the 19th, she eventually died.

3 **PC:** In your opinion, Dr., what do you think is the likelihood of death?

4 **PW2:** For the public, burnt, severe burnt of 50% in anybody, is 100% cause of death.

5 It is automatic mortality. 50% of your burnt, just even from the (indiscernible) is

6 100% mortality talk less of when there is an electrical burnt which we can never

7 estimate the magnitude of an electrical burnt because it cooks the muscles and we

8 don't have access to the muscles. So, usually an electrical burnt of that magnitude is

9 100% total body burnt irrespective of what you can see outside the body. Eventually,

10 we know that that we were just buying time.

11 **PC:** Ok. That is all for this witness.

12 **EC:** Ahm, from the bench. Good morning Dr.

13 **PW2:** Morning.

14 **EC:** Glad to have you here. You recounted two dates, the 18th and 19th. When the

15 patient was brought in on the 18th, was she realized back to the custody of the

16 parents?

17 **PW2:** No.

18 **EC:** When did your patient at that time, when was she realized to the parents?

19 **PW2:** It was the body that was realized to the parents.

20 **EC:** I recall reading the record, this may not be on your, you may have come at the

21 second part of it, I am trying to establish two visits to the hospital. Counsel for the

22 Petitioner; were there two visits to the hospital?

23 **PC:** Yes My Lord. Ehm, the first visit is not in that National Hospital.

24 **EC:** Ok, that is what I'm trying to.

25 **PC:** When the incident happened, the deceased was first taken to the General

26 Hospital Maitama.

27 **EC:** Ok.

28 **PC:** Yes, from there she was now rushed to the National Hospital where she

29 eventually died.

30 **HC3:** The same day?

31 **PW2:** The same day.

32 **PC:** The same day, yes.

1 **EC:** Was the young girl realized to the parents and something then happened to
2 bring, to rush her back.

3 **PC:** No, she was moved straight from the General Hospital Maitama to the National
4 Hospital.

5 **EC:** Ok.

6 **PC:** Although, the PHCN report, when the documents before you are totally read,
7 you will found out that the PHCN, that was where I was going to the question asked
8 by Hon. Commissioner Dr. Eyo, yo, Eyoma. The PHCN, in their counter affidavit, in
9 the documents they submitted which is already before this court, say the girl left, you
10 know, and was playing around and at a time she wasn't, you know, too ok again and
11 that was when she was rushed to the hospital. That is what is in the.

12 **EC:** That is what I was trying to establish that the record shows that the infant, the
13 young lady was realized to the parent and almost like an after shock, please don't use,
14 I am not a doctor, so I cannot use the technical terms, but it appears from the record
15 that the patient was realized to the parents and he was feeling fine. It was after
16 something was noticed that he wasn't feeling too good or something.

17 **PC:** Yes.

18 **EC:** That resulted and I am hearing that nothing left the, she never left the hospital.
19 Is that what I am hearing?

20 **PC:** Yes, Sir. She never left the hospital. The information you just, you know, stated
21 was the information we got from the PHCN.

22 **EC:** That is fine. Ok.

23 **PW2:** Let me just corroborate what is there. This is a referral note to us from the
24 Maitama General Hospital. And when you have a referral note you are still in the
25 custody of that doctor but on transfer to another hospital. So it is assumed that you
26 are still in the hospital. And they came that same day, so I have a referral note from
27 them telling us what happened and why they sent to us (indiscernible)

28 **EC:** Understood. One seconds, counsel, any question from the bench, Dr. any, none.
29 Counsel for Abuja, cross.

30 **RC:** Well, Your Lordship, we have many question to ask him, but again we need
31 further consultations, Sir. Our questions are many, but we can't ask them today.

1 **EC:** How many questions do you have today for the doctor? Let us see if you need
2 enlargement of time.
3 **RC:** I do need enlargement of time.
4 **EC:** How many questions do you have for the good doctor today?
5 **RC:** I have read the medical report, two medical reports. Our questions are many but
6 we need further consultations just to do it at ones.
7 **EC:** How many questions do you have?
8 **RC:** With due respect.
9 **EC:** You said they are too many, how are many?
10 **RC:** With due respect.
11 **EC:** Is it 50, 60?
12 **RC:** With due respect, Your Honour, I should not be compelled to, to proceed with
13 the case, Sir. It is not (indiscernible) if I am compelled to go ahead with the case. So
14 may I be allowed to do this case at my pace, Sir.
15 **EC:** You may be seated.
16 **RC:** So our request is for an adjournment to allow us address this issue properly.
17 **EC:** You may be seated.
18 **RC:** I am grateful.
19 **EC:** Counsel, do have any other questions or.
20 **PC:** No, no, not for this witness. That is all.
21 **EC:** Ok. The witness may step down. Thank you very much Dr. for your time. We
22 appreciate it very much. Yes counsel.
23 **PC:** Yes, Honourable Commissioner, I also wish to draw the attention of this
24 Honourable Panel to the provision of the Business Rules of the Commission, Clause
25 17 (6) and with the kind permission of the court I wish to read because I think it is
26 acts on this matter.
27 **EC:** Proceed.
28 **PC:** The Commission shall not be bound strictly by the rules of evidence in court in
29 the conduct of its proceedings but shall be at liberty to vary the rules to meet the
30 justice of the matter without compromising the rules of natural justice. I am saying
31 this because of the posture of my learned friend into the court.

1 **EC:** Your learned colleague has a right to defend his client in the best way possible
2 and without prejudice, he can make his representations. Do you have any other
3 witnesses?
4 **PC:** Ehm, I still have one more witness, My Lord. Mohammed Balama Imam.
5 Mohammed Balama Imam.
6 **NP:** Mohammed Balama Imam. You are Mohammed.
7 **PW3:** Yes, I'm Mohammed Imam.
8 **NP:** And you are a Moslem?
9 **PW3:** Yes, I am a Moslem.
10 **NP:** (Indiscernible). I.
11 **PW3:** I, Mohammed Imam.
12 **NP:** Do solemnly.
13 **PW3:** Do solemnly.
14 **NP:** Affirm.
15 **PW3:** Affirm.
16 **NP:** That the testimony I shall give.
17 **PW3:** That the testimony I shall give.
18 **NP:** Before this Honourable Commission.
19 **PW3:** Before this Honourable Commission.
20 **NP:** Shall be the truth.
21 **PW3:** Shall be the truth.
22 **NP:** The whole truth.
23 **PW3:** The whole truth.
24 **NP:** And nothing but the truth.
25 **PW2:** And nothing but the truth.
26 **NP:** And nothing but truth.
27 **PW3:** And nothing but the truth.
28 **NP:** (indiscernible) I so affirm
29 **PW3:** (indiscernible) I so affirm
30 **NP:** Chairman, Sir, Members of the Commission, he affirms.
31 **EC:** Thank you very much.
32 **PC:** Now, tell this court your names.

1 **PW3:** My name is Mohammed Balama Imam. I am a staff of Nigerian Electricity
2 Regulatory Commission, working with division, engineering (indiscernible) division.
3 (indiscernible).
4 **PC:** Now, are well seized of this case?
5 **PW3:** Yes, I am aware.
6 **PC:** Now, tell this court a little bit of what you know about this case.
7 **PW3:** Yes, that particular thing happened before my coming to the Commission
8 because it happened last year. I assumed duty in June, Sir. So I have to
9 (indiscernible) we were told about it, about, ok. We were told about the incident
10 during our division meetings and (indiscernible).
11 **PC:** Now, did you take any action in respect of this case?
12 **PW3:** Yes, the action I have taken is this.
13 **PC:** Speak up please for the court to hear. Be audible enough.
14 **EC:** May we correct, counsel.
15 **PC:** Yes.
16 **EC:** Don't refer to us as a court.
17 **PW3:** (indiscernible) going down to see whether the, the div, whether the
18 Distribution have complied with the directives given to the, the, the Distribution by
19 the Commission to comply to.
20 **PC:** Can you speak out a bit please.
21 **PW3:** (indiscernible) that sub-stations.
22 **EC:** We can hear you, don't worry.
23 **PW3:** Ok. (indiscernible) that sub-station (indiscernible), and clear the grasses all
24 around the sub-stations. But we have gone round the sub-stations about three times
25 in, in August, September last year and February this year. Some of them were cleared
26 by mostly, there mos, there are some many sub-stations that are still hazardous to
27 the public.
28 **PC:** Ok. Now, when you visited, how many times did you say you visited?
29 **PW3:** We visited three times.
30 **PC:** Three times.
31 **PW3:** Three times.
32 **PC:** When, tell us the periods within which you visited these sub-stations.

1 **PW3:** The first time we visited on, the first time was on August.
2 **PC:** In August, yes.
3 **PW3:** August last year. And then, on 2nd and 4th October last year and then the last
4 one is on February 19th this year.
5 **PC:** Ok. February.
6 **PW3:** 19th this year.
7 **PC:** 19th this year, ok. When you visited, what actually, did you do anything when you
8 visited there?
9 **PW3:** Yes, we snapped some pictures. The pictures are some of them are the ones
10 shows here.
11 **PC:** The pictures are?
12 **PW3:** The ones shown (indiscernible)
13 **PC:** Ok. So, and you are saying the pictures is taken on the, where taken in February
14 2008.
15 **PW3:** Some are in 2008.
16 **PC:** Ok.
17 **PW3:** We have some in, on the 2nd October.
18 **PC:** Ok. It is alright.
19 **PW3:** Yes, Sir.
20 **PC:** That is, that is all for this witness.
21 **EC:** Are there things you wanted to show further.
22 **PC:** No, the pictures I brought out earlier.
23 **EC:** Ok, then we have seen the Exhibits, we have seen the Exhibits. Counsel for
24 Abuja.
25 **RC:** Yes, Sir, just like the other witnesses.
26 **EC:** Let me predict.
27 **RC:** Yes, Sir, we will need time to prepare cross examination, sir. Yes, sir.
28 **EC:** You may be seated. Let us proceed. Do you have a comment, counsel? Do you
29 have any other witnesses?
30 **PC:** No, no more witnesses. I am just waiting for the direction of this Honourable
31 Court.
32 **EC:** You rest your case?

1 **PC:** I have not really rest my case but I am waiting for the direction. In view of the
2 fact that my learned colleague is saying he doesn't want to, you know.
3 **EC:** We will proceed on that.
4 **PC:** Ok.
5 **EC:** We take cognizance of his prayers and, and, counsel to Abuja Distribution
6 Company.
7 **RC:** Yes, Sir.
8 **EC:** We take cognizance of the representations you have made before us.
9 **RC:** Yes, Sir.
10 **EC:** That you like the opportunity for a fair hearing.
11 **RC:** Yes, Sir.
12 **EC:** And to properly examine the issues that has been raised today so that you can
13 proffer proper responses.
14 **RC:** Yes, Sir.
15 **EC:** Perhaps, technical in nature. I'm sorry, the witness may step down, sorry. We
16 are also of the opinion that we are all here to act in the public interest. You represent
17 your client and everybody shall have a fair opportunity to be heard. We take it that
18 perhaps some of the new facts you heard today, you have not had the opportunity to
19 digest and respond. We are going to grant you your prayer.
20 **RC:** Grateful, Sir.
21 **EC:** To adjourn this matter so that you would have the opportunity to prepare your
22 case and prepare to cross examine the witnesses and we are going to reconvene.
23 Because most of the written representations if not all have been submitted, and this
24 is just a proc, a proceeding to have oral representation to complete the record. The
25 commission sees it feet to adjourn this matter for two days to allow you the
26 opportunity to review the record and return.
27 **RC:** Ah, Your Honour, two days will be too short, Sir. Some thing like a week is more
28 like it, Sir.
29 **EC:** Counsel, the Commission is insisting on two days. Today is Tuesday, Wednesday,
30 Thursday, you have.
31 **RC:** Well, with due respect Your Honour.
32 **EC:** We are fixing a re-hearing on Friday.

1 **HC2:** Adjournment
2 **EC:** I mean, adjournment, adjournment until Friday. So, you have two days to go
3 over your record. Yes, counsel.
4 **PC:** No, Sir.
5 **EC:** Ok. We would make ehm, a small correction for what we have postulated
6 because there is an intervener in this matter who is the family of the deceased girl. In
7 order not to increase their burden, we consider it prudence for us to hear from that
8 witness now so that we don't create an opportunity for new records and new re-
9 hearing or adjournments. So, so we think we just hear. I think that is in order. Ok.
10 Ahm, counsel for the Petitioner, ahm, we just don't want to increase their burden, if
11 they are here now, I think we should hear from them and so that the record at least
12 on one side should be complete. It allows.
13 **PC:** Yes, I wanted.
14 **EC:** Pardon.
15 **RC:** Yes, I wanted to call the intervenor.
16 **EC:** Ok.
17 **PC:** After your speech but since I can call him now, I might as well call him.
18 **EC:** That is fine because let us complete that process. They don't have to come.
19 **PC:** Ok.
20 **EC:** So that we give counsel on the other side an opportunity to hear all of the issues.
21 We know what they will plead.
22 **PC:** Where is the father of the deceased? Ok. You can come out here.
23 **EC:** We understand you just wish to make a statement, correct?. Alright Sir, ahm, do
24 we, can you provide a microphone or where should he face. Thank you counsel.
25 Please proceed Sir.
26 **THE INTERVENOR (THE DECEASED FATHER):** The Honourable Chairman
27 of this Commission, all protocol observed. I am the father of the deceased, Aishat
28 Bolanle Fadaeyi who was electrocuted on 18th April 2007 at Wuse sub-station. Ah,
29 actually I was, it was a tragic moment for the family and I don't pray that anybody go
30 through traumatic emotions of such again. We thank those who has concerned, who
31 have pay a lot impact. I am most grateful to the Commissions and the other
32 Parastatals, **PEC** for their effort. Actually the history is not actually the Fadaeyi

1 family, it is concerned the Nigerians who may pass through that experience. We pray
2 that nothing like this will happen again. Ah, there is nothing that can bring the life of
3 my daughter back. There is nothing that can bring the life of my daughter back but
4 whatever the government decided, let it take its cause. I thank everybody, both the
5 Commissions and the PHD for their concerned and I pray that none of these people
6 who are here today will witness this tragic moment in their life. I rest my case.

7 **EC:** Thank you very much, Sir. We appreciate you coming here in spite of all the
8 condition you have gone through. Thank you very much. We appreciate your
9 presence. Thank you. Counsel, are there any other Petitioners or announced
10 appearance that we may have not touched, do have anyone else?

11 **PC:** No, My Lord. No Honourable Chairman.

12 **EC:** Ok. Well then, we will draw this proceeding to a close today. Ah, we will provide
13 the time but the date is certainly on Friday. Please, provide all access necessary to the
14 counsel for Abuja Distibution, so that they have access to the people you have called
15 so that they can properly prepare their case. We meet again on Friday.

16 **NP:** Court
17
18
19

20 **CERTIFICATION**

21
22 *I, **Ukenna Chizoba**, the assigned transcriber, do hereby certify that the*
23 *foregoing transcript of proceedings on the **Tape No.1, Index No.1 to***
24 ***Tape No.2, Index No.589** is prepared in full compliance with the current*
25 *Transcript Format for Judicial Proceedings and is a true and accurate non-*
26 *compressed transcript of the proceedings as recorded.*
27
28

29 -----
30 *Signature*

Date

31