



**Solola & Akpana**  
(Law Firm)

# **DO BASE TRANSCIVER STATIONS/ COMMUNICATION MASTS QUALIFY AS BUSINESS PREMISES UNDER APPLICABLE BUSINESS PREMISES REGISTRATION LAWS OF STATES**

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**T**he Federal High Court sitting in Port Harcourt delivered a judgment on February 15, 2023 in **Suit No. FHC/PH/CS/179/2021 – IHS (Nigeria) Limited & Anor. v. The Commissioner, Rivers State Ministry of Commerce & Industry & 2 Ors.** wherein the Plaintiffs asked the court to determine, amongst others, *“Whether by a combination of Sections 4(1), 31, 32, 33, 34, 35, 36, 37, 38 and 39 and in particular Section 157 of the Nigerian Communications Act Cap N97 Laws of the Federation of Nigeria 2004, the Plaintiffs’ Base Transceiver Stations/Communication masts are not network facilities, licensed and regulated by the Nigerian Communication Commission.”*

The Plaintiffs’ action was provoked by a Demand Notice served on them by the Defendants demanding the payment of the sum of ₦1, 426, 800, 000. 00 (One Billion, Four Hundred and Twenty-Six Million, Eight Hundred Thousand Naira) and other sums as payment for registration/renewal of business places per annum for the Plaintiffs’ Base Transceiver Stations/Communication Masts located in parts of Rivers State, pursuant to the Registration of Business Places Law of Rivers State.

It was on receipt of the said Demand Notice that the Plaintiffs filed an Originating Summons for the determination of whether their Base Transceiver Stations are not being exclusively regulated by the Nigerian Communication Commission and if same constitute a “business premises”.

Solola & Akpana argued for the Plaintiffs that from the provisions of the Nigerian Communications Act (NCA), Base Transceiver Stations (BTS) are network facilities and do not qualify as business premises under the Registration of Business Places Law of Rivers State. Not

being business places therefore, BTS cannot be subject to payment of fees/taxes for the registration and/or renewal of business permits and that such BTS are within the regulatory control of the Nigerian Communication Commission (NCC).

Arguments were made on behalf of the Rivers State Government along the lines that the provisions of Sections 4(1), 31, 32, 33, 34, 35, 36, 37, 38 and 39 of the NCA could not have been intended and neither do they in fact limit the powers of the Rivers State Government to make laws imposing taxation on business concerns in the State. It was also argued for the Rivers State Government that even if the foregoing were true, the referenced provisions of the NCA do not exempt the Plaintiffs from the obligation to register their business place under the Registration of Business Places Law of Rivers State.

This argument was, however, traversed by the Plaintiffs for whom Solola & Akpana argued and distinguished that the subject suit does not dispute the legislative powers of the Rivers State House of Assembly to make laws imposing taxation on corporate citizens resident in Rivers State but that the suit questions whether BTS are business places within the context of the Registration of Business Places Law of Rivers State.

Before determining the merits of the case, the Court had to resolve the jurisdictional issue raised by the Defendants that because the subject matter of the suit was premised on the Registration of Business Places Law of Rivers State, a law validly passed by the Rivers State House of Assembly and the jurisdiction of the Federal High Court is delineated under Section 251 of the Constitution, the Federal High Court lacks the jurisdiction to entertain the suit. More so, it was argued, the jurisdiction of the Federal High Court is activated when a suit involves the Federal Government or any of its agencies and not the Government of a constituent State and a private corporate citizen.

This ground was, however, refuted by arguments put forward for the Plaintiffs to the effect that the Constitution does not limit the jurisdiction of the Federal High Court to only the matters enumerated in Section 251(1) of the Constitution. Rather, it contemplates such other jurisdiction as may be conferred on the Federal High Court, one of which is jurisdiction over matters arising from or connected with the provisions of the NCA, which the subject suit seeks an interpretation of.

Resolving the issue of jurisdiction in favour of the Plaintiffs, the Court held that:

*"The jurisdiction of the Federal High Court, is derived from Section 251 of the 1999 Constitution of the Federal Republic of Nigeria, as amended... Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in Civil causes and matters.*

...

*Again, Subsection (1) (s) of Section 251 supra equally provides that: "Such other jurisdiction Civil or Criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly."*

*There is no doubt that from the above provisions of Section 251 of the 1999 Constitution of the Federal Republic of Nigeria, the creation and conferment of jurisdiction on the Federal High Court is sacrosanct but in addition to the jurisdiction conferred by the Constitution, the Federal High Court shall also have and exercise additional jurisdiction whether exclusive or concurrent conferred upon the Court by the Act of the National Assembly. This was exactly what the National Assembly did in conferring additional exclusive jurisdiction on the Federal High Court in Section 138 of the Nigerian Communication Act, 2003 Cap. N97 LFN. This Section states as follows: "The Federal High Court shall have exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon this Act or its subsidiary legislation and all references to Court or Judge in this Act shall be understood and deemed to refer to the Federal High Court or Judge of the Court."*

After resolving the jurisdictional issue raised in favour of the Plaintiffs, the Court proceeded to determine the substantive suit on the merit and in favour of the Plaintiffs, making a notable pronouncement to the effect that BTS do not constitute a "business premises" and thus, not liable to pay registration/renewal fees. In doing this, the Court paid particular attention to the definition of network providers under Section 157 of the NCA and the definition of business premisses under the Section 27 of the Registration of Business Places Law of Rivers State, holding that:

*"Guided by the definitions in Section 157 of the NCA and section 27 of the Registration of Business Places Law of Rivers State...I am inclined to categorise the Plaintiffs' Base Transceiver Stations/Communications Masts as Network facilities.*

*"I however, find and hold that the said Telecommunication Mast locations is not a business premises within the contemplation of the provisions of Section 27 of the Registration of Business Places law of Rivers State to warrant a demand for registration and renewal as done by the defendants in the instant case.*

*Having found as above, it in effect equally means that they are not liable to pay the fees and penalty charges imposed on them by eth Defendants."*

The Plaintiffs were represented by the Firm of Solola & Akpana and the Team comprised Esosa Omo-Usoh (Partner) who was assisted by Henry Madukolu (Associate), Abraham Aigba (Associate) and Daniel Obinna (Associate).