

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 18TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/490/18

BETWEEN:

PROFESSOR ERNEST OJUKWU, SAN ...CLAIMANT/RESPONDENT

AND

- 1. THE REGISTERED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION**
- 2. JONATHAN GUNU TAIDI
(GENERAL SECRETARY OF THE ...DEFENDANTS/APPLICANTS
NIGERIAN BAR ASSOCIATION)**
- 3. PAUL USORO,SAN
(PRESIDENT, NIGERIAN BAR ASSOCIATION)**

RULING

The Defendants filed a Preliminary Objection. Upon receipt of an application by Professor Ernest Ojukwu SAN challenging the refusal of the Defendant Registered Trustees of the Nigerian Bar Association, Jonathan Gunu Taidi, Secretary General of the Nigerian Bar Association

and Paul Usoro SAN-President of the Nigerian Bar Association (as at 2018 when this action was instituted) for the review of the denial of Request for access to the information in the documents list in the schedule as contained in the application.

In the Preliminary Objection the Respondent wants an Order of this Court dismissing the application and all other processes attached thereto filed by the applicant for want of Jurisdiction. The Preliminary Objection is predicated on the following grounds- That the Nigerian Bar Association is neither a Public Institution nor a Business Venture. That it is a non-profit organization and has no Government interest and that it does not take subvention nor is it an appendage to any government related establishment. That Nigerian Bar Association was registered under PART C of the CAMA which shows it is ordinarily out of realm of business venture. That it does not also fall within the scope of the provision of the Freedom of Information Act.

That it does not also keep any Public Records or Public documents within the confines and meaning of the provisions of Section 102 Evidence Act 2011. They urge the Court to dismiss the Suit.

In the written address which they attached to the Preliminary Objection they raised an issue for determination which:

“Whether NBA is a Public Institution which keeps Record and Public Documents within the confines and meaning of the provision of Section 102 of the Evidence Act 2011”.

That a careful look at the Freedom of Information Act shows that the sole intention of the Act is to regulate access to Public Record. Such

Public record is synonymous with Public documents as defined in Section 102 Evidence Act.

That Freedom of Information is centered on Public Institutions. That it is the duty of the Claimant to prove the applicability of the Freedom of Information Act to the NBA which is registered under CAMA which takes NBA out of the realm of the Private Business Venture. That NBA is therefore not a Public Institution and does not fall within the scope of the provision of the Act. Again the Freedom of Information Act 2011 is not a Statute of general application. It is only applicable to agencies of Federal and State Government. That for it to apply to a State it must have been adopted by the State, domesticated and enacted by the State House of Assembly of such state as a Law. They referred to the following cases:

ALO Vs SPEAKER ONDO STATE HOUSE OF ASSEMBLY (2018) LPELR-45154 (CA)

EDOSACA Vs OSAKWE & ORS (2018) LPELR-44157(CA)

That Court is called upon to give the words of the Act its internal meaning. They referred to the case of:

I.G.I CO. LTD Vs ADOGU (2010) 1 NWLR (PT.1175) 337@354

That the applicant is trying to mislead the Court by his application. He urged the Court to answer the sole question for determination in the negative. They also urge the Court to dismiss the application for want of Jurisdiction and as an abuse of Court process.

Upon receipt of the Preliminary Objection the Applicant filed a reply to the Preliminary Objection, where he raised 2 issues for determination which are:

“Whether the Nigerian Bar Association that Utilizes Public Fund and perform Public functions is a Public Institution under the Freedom of Information (FOI) Act bond by the provision of the Act”.

“Whether the Respondents denial of access to information requested by the Applicant is not wrong under Freedom of Information Act”.

ON ISSUE NO.1: He submitted that the Freedom of Information is a special legislation pertaining specifically to the area it covers. That general legislation supercede the special legislation where there is a conflict. They referred to the case of:

A-G OGUN STATE Vs A-G FEDERATION FWLR (PT.143) 206 @246

INDEPENDENT TV & RADIO Vs EDO STATE BOARD OF INTERNAL REVENUE (2014) LPELR-23215(CA)

That Section 13 Freedom of Information clearly defines what a public institution means under the Act.

That Public Institutions include private bodies providing public services, performing public functions or utilizing public funds. He referred to an unreported case Suit No./M/3059/13 Public and Private Development Centre Ltd/ GT(PPDC) Vs Integrated Parking Services, Ltd delivered by Justice A.O.Adeniyi of the FCT High Court Sitting at Apo, where the Court granted a request for information made on private Company Ltd because the company was involved in performing Public functions and utilizing Public funds.

That by paragraph 11-23 of the Affidavit in support of this application it is clear that NBA provides public services, performs public functions and utilizes public funds under the Legal Practitioners Act and Rules of Professional Conduct. He further submitted that the portion of the cases of ALO Vs SPEAKER OF ONDO HOUSE OF ASSEMBLY (SUPRA) and EDOSACA Vs OSAKWE & Ors (supra), cited by the Respondents in the Preliminary Objection has no relevance to this Suit and shows a misconception of the Suit of the Applicant that the functions of the NBA as contained in the Legal Practitioners Act which covers Public service and Public function it performs is an act of National Assembly and not state law. That Rules of Professional Conduct made pursuant to the said Legal Practitioner Act was made by the General Council of the Bar which is a Statutory body under Section 12(4) of the Legal Practitioners Act.

He also submitted that the same Council was established by Section 1 of the same LPA that the Council made Rules on the requirement of Stamp and Seal used by every Legal Practitioner in Nigeria. That it only delegated the management of stamp and seal to the NBA. That the Rules of Professional conduct made pursuant to the power derived under the LPA, no Lawyer can practice in Nigeria unless the person pays for the NBA stamp and seal whether or not that person is a member of the Nigerian Bar Association.

That the provision of the Evidence Act 2011 on Public document as referred to by the Respondents has no bearing with the special provision of the Freedom of Information Act. That Court has duty to follow strictly the provision of the FOI Act and not rely on the extraneous provision that has no bearing to the matter before the Court. That in line with the provision of the same FOI Act the burden to

prove that there is justification for denying the information sought is on the Respondents not on the Plaintiff. He referred to the provision of Section 24 FOI Act and the following cases:

ABEGUNDE Vs OSHA (2015) 8 NWLR (PT.1461) 314@353

IBRAHIM Vs FULANI (2010) 17 NWLR (PT.1222) 241@267

IGI CO. LTD Vs ADOGU (2010) 1 NWLR (PT.1175) 337@354

He urge Court to resolve the Issue No 1 in the affirmative.

ON ISSUE NO.2 : The Applicant submitted he is entitled to the Orders sought in this application. He also submitted in response to the Paragraphs 3.1, 3.2, 3.4 & 3.7 of the Respondents written address in opposition that the argument relating to admission and cause of action are misconceived and a misunderstanding of the application and facts placed before the Court. He cited paragraphs 14, 15 & 19 of his Affidavit. That the cases of AISHA JUMMAI ALHASSAN SUPRA, A-G RIVERS Vs A-G AKWA-IBOM SUPRA, MULIMA Vs USMAN SUPRA and ABE Vs UNILORIN SUPRA.

All cited by the Respondents is a misconception as the cases have no relevance to the Suit of the Applicant which is predicated on Freedom of Information Act. That contrary to the submission of Respondents the applicant did not make any admission as wrongly submitted by the Respondents. That the information in paragraph 16, 17 and 21 of Respondents Affidavit are not related to the information sought by him-Applicant. That those information contained therein are not the information the Applicant seek from Respondents in the main application as shown in the Exhibits attached to the Originating Process.

He referred to paragraph 24 of the Affidavit in support of the application. That Respondents have not offered any argument on any of the provisions or Section of the FOI Act as contained in the main Suit. He urged the Court to dismiss the application-Preliminary Objection and grounds the sought in the Originating Motion.

COURT:

In the Preliminary Objection the Defendants are challenging the Suit of the Plaintiff in that the NBA is not a Public Institution going by the definition of the Public Information Act 2011. And as such the Suit of the Plaintiff is incompetent and that Court lacks the jurisdiction to entertain the Suit. They want the Court to dismiss the Suit.

To determine whether this Court lacks the requisite jurisdiction to entertain the Suit it is imperative to determine the meaning of Public Institution in the Freedom of Information Act 2011. And who are subject to the provision of the said Act.

To start with the long title to the Act states.

“An Act to make Public records and information more freely available provide for Public Access to public records and information, protect public records and information to the extent consistent with the public interest and protection of personal privacy, protect serving officers from adverse consequences of disclosing certain kind of official information without authorization and established procedures for the achievement of those purpose and for related matters”.

It is equally imperative to state the provision of Section 2(7) of the Act which provides:

“Public Institutions are all authorities whether executive, legislature or judicial agencies, ministries and extra-ministerial departments of the government together with all corporations established by law and all companies in which government has controlling interest, and private companies utilizing public funds providing public services performing public functions.”

From the long title of the Act it is clear that it is an act that is geared to make public record and public information more freely accessible to the general public and not to a “professional public” like the NBA.

By Section 2(7) of the Act it is equally clear that the Public Institution meant by the Act are those Institutions that the authorities whether executive, legislatures and judicial agencies and all corporations and companies which are under the control of the government as well as private companies which provides and perform public services and public functions. From all indication the role of the NBA like other professional bodies is to take care of the interest of its members as a professional body ensuring that they perform and practice the profession within the boundaries as provided by the law and their Constitution. In as much as the members cater for the legal need of the persons/individuals that patronize them it does not culminate or metamorphose into the NBA being regarded as a Public Institution.

For all intent and purposes the NBA is not a Public Institution in as much as it carter for the welfare of its members. It is only a Public Institution as far as its members are concerned. It does not keep public record. Its record is not meant to the public. It is a private professional body or Institution like the Nigerian Economic Society and Nigerian

Medical association. Its records are meant to be private and should be private.

The records cannot be made open to the public not even to its individual members or the public or any member of the public. This is singularly because it is not by the definition of the extent provision of the Freedom of Information Act a Public Institution.

It is clear that the Nigerian Bar Association is registered as a non-profit Organization, it is not a business venture, it does not fall within the scope of what the Act described Public Institution going by the provision of section 2(7) as well as by the provision of Section 31(1) of the Act the interpretation Section of the Freedom of Information Act Public Institution means:

“Any Legislative, Executive, Judicial administrative or Advisory body of the government including Boards Bureau, committees or commissions of the state and any subsidiary body of those bodies including but not limited to committees and subcommittees which are supported in wholes in part by public funds and which expends public funds and private bodies providing public service, performing public functions or authorizing public funds”.

From the above it is clear that the NBA does not in any way falls within the category of the bodies mentioned above. To start with Court does not authorize public funds to be expended it is not a public office. It is as already stated severally a private professional organization made up of members of the legal/law profession like other similar profession. It is not an advisory body of the government stricto sensu or subsidiary of any such body. In as much as it can herd voice to issue of legal nature.

The fund it has are mainly professional practicing fees paid by its members the fees for stamp and grants from private donor agencies and the like. The NBA is not included in the government budget and it is therefore not involved in expending public funds since it does not person as a body any public function its records are for the body and its members. The document it keeps are not in any way public document or fall within the definition of public record as provided in the Act as well as Section 102 evidence Act 2011 as amended.

By Section 31(1) of the Act Public Record means:

“Any record in any form having been prepared been used or being used received, possessed or under the control of any public bodies
...relating to matters of public interest”.

The above provision seals the deal. It is very evident that the record of NBA is not a public record. It is not meant for public consumption. It is not affected by the provisions of the Freedom of Information Act 2011. As the Claimant is trying to portray.

From the above analogy can it be said that the Applicant going by the summary of this submission as captured above has been able to convince this Court that the Suit of the Plaintiff is incompetent and this Court lacks jurisdiction to entertain the Suit in that the Nigerian Bar Association is not Public Institution and does not keep public records? Or can it be said that going by the Reply of the Plaintiff that the Suit is competent and the Court has jurisdiction to entertain it.

It is the humble view of this Court that it has NO right to entertain the Suit though going by the definition of the NBA is not a Public Institution as defined in the said Act.

This Court therefore holds that it lacks jurisdiction to entertain the case and the Suit as it is presently constituted.

There is n point going with the main application as the Court has no jurisdiction to make the pronouncement sought and grant the relief. This Preliminary Objection is meritorious and the matter is hereby Struck out for want of jurisdiction.

This is the Ruling of this Court delivered today.

Theday of September, 2020.

K.N.OGBONNAYA
HON.JUDGE
FCT-ABUJA