

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS

COURT NO: 6

**SUIT NO: FCT/HC/CV/316/2014
MOTION NO: M/7550/2021**

BETWEEN:

**THE REGISTERED TRUSTEES OF GOD'S KINGDOM
SOCIETY (GKS).....CLAIMANT/APPLICANT**

AND

- 1. HONOURABLE MINISTER OF THE FEDERAL CAPITAL
TERRITORY**
- 2. FEDERAL CAPITAL TERRITORY ADMINISTRATION**
- 3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- 4. ADO KETI (Trading under the Name and Style of
"Safe Sites Services Company"**
- 5. HASSAN OLAKUNLE.....DEFENDANTS/RESPONDENTS**

RULING

By a Motion on Notice dated 4/11/2021 and filed same day, with Motion number M/7550/2021, brought pursuant to Order 44 Rules 1, 2, 4 and 5 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018, Sections 1, 4, 7 and 20 of the Freedom of the Information Act (2011), Section 15 (5) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant prays the court the following reliefs;

- (1) A Declaration that the failure of the 1st Respondent to furnish the Applicant with the documents/information sought vide Applicant's letter of 14th October, 2021 amounts to a wrongful denial of information under the Freedom of Information Act 2011.
- (2) An Order of mandamus compelling the 1st Respondent to forthwith furnish the Applicant with a Certified True Copies of the documents sought as per the Applicant's letter dated 14th October, 2021 which was duly delivered to and acknowledged by the 1st Respondent as follows;
 - (i) Department of Land Administration and Resettlement, MFCT Recommended Application for Approval forwarded by the Director, Planning & Survey on 17/6/2003, endorsed by the Permanent Secretary on 22/6/2003 and approved by the Honourable Minister of FCT on 25/6/2003 i.e. the 2003 Ministerial Approval Sheet in respect of Plot 316, Dakibiyu District (B10) with File No. MISC 21327 (New File No: MISC 50576).
 - (ii) Building Plan Processing and Approval Application Form dated 11th June, 2012 – File No. FCDA/DC/PHII/11770 submitted to the Department of Development Control by God's Kingdom Society through its agent – Arc. Chinedu Nwawuba with the attached documents:

- (a) Page 1 of the Development Permit Division Building Plans Assessment Format dated 18th June, 2012;
 - (b) Page 6 (Comment Page) of the Development Permit Division Building Plans Assessment Format dated 19th June, 2012;
 - (c) Development Permit Division Site Assessment Report dated 9th July, 2012 and endorsed by Hassan Olakunle.
- (3) **A CONSEQUENTIAL ORDER OF MANDAMUS** further directing the 1ST Respondent's agents viz: the Director, Department of Lands Administration; Director, Abuja Geographical Information System (AGIS), the Director, Department of Development Control and the Director, Legal Services AGIS/Lands to issue the Applicant the Certified True Copies of all the documents requested by the Applicant in their letter dated 14th October, 2021.
- (4) **AND FOR SUCH FURTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstance.

GROUND(S) UPON WHICH THE APPLICATION IS BASED:

1. The Applicant vide a letter dated 14th October, 2021 requested the 1st Respondent for Certified True Copies of all documents specified thereon regarding the 2002 Ministerial Approval Sheet in respect of Plot 316, Dakibiyu District (B10) with File No:

MISC 21327 (New File No: MISC. 50576) including the Building Plan Processing and Approval Application Form dated 11th June, 2012 – File No: FCDA/DC/CID/PHII/11770 submitted to the Department of Development Control by Applicant. The 1st Respondent and his agents have refused to grant the Applicant's request.

2. The 1st Respondent failure, refusal and or neglect to grant the Applicant's request as per the Applicant's letter dated 14th October, 2021 without giving written notice to the Applicant stating the reasons or grounds for the denial and or refusal constitute a breach of the Applicant's right under the Freedom of Information Act, 2011.

In support of the Motion is a 6 (Six) Paragraph affidavit deposed to by Brother Monday Ukusajuya a member of Applicant with 12 annexures attached and marked as Exhibits "GKS 1", "GKS 2", "GSK 3", "GSK 4", "GSK 5", "GSK 6", "GSK 7", "GSK 8", "GSK 9", "GSK 10", "GSK 11". Also filed a Written Address and adopts same as oral submission in urging the court to grant the application. Applicants in compliance with the Freedom of Information Act, also filed a verifying affidavit dated 4/11/2021 deposed to by Brother Monday Ukusajuya.

The processes were served on the 1st, 2nd, 3rd, 4th and 5th Defendants/Respondents. Despite service the said Respondents failed to react to the processes and were absent in court. The implication of this is that the application before court stands unchallenged and uncontroverted.

In Gana Vs FRN (2012) ALL FWLR (PT. 617) 793 @ 800 Paras D – E the court held that;

“Where an affidavit does not attract a Counter-Affidavit, the facts deposed to therein have been admitted and must be taken as true”.

In the Written Address of the Applicant Joshua Okah Esq of counsel formulated a sole issue for determination, that is;

“Whether from the facts and circumstance of the case, the Applicant is entitled to the grant of the reliefs sought”.

Relying on Section 1, 4, 7 (1) (4) 20 of the Freedom of Information Act, 2011, submit that Applicant vide letter dated 14th October, 2021 applied for Certified True Copies of Documents and information pertaining to the 2002 Ministerial Approval Sheet in respect of Plot 316 Dakibiyu District (B10) with file No: MISC 21327 (New File No MISC 50576) and other documents specifically stated in their reliefs after the 1st Respondent and her agent had been issued several subpoena. Applicant has been denied access to the information and Certified True Copies of the document request for despite payment of fees therefore seek the intervention of the court.

Submits that in presenting this application, Applicant had sought and obtained leave under Order 44 Rule 3 (1) of the Rules of Court. Refer to the case of Tabansi Vs Tabansi & Anors Vs V.C. River State University of Science and Technology Port-Harcourt (1997) 11 NWLR (PT. 329) 373 @ 379 Para G – H Ratios 1 & 3. Submits that essence of Judicial Review such

as Mandamus is to secure or enforce the performance of a public duty. Refer to Allison Akene Ayida & Ors Vs Town Planning Authority & Anor (2013) LCN/4127 (SC); Fawehinmi Vs Inspector General of Police (2007) 7 NWLR (PT. 767) @ 697 – 698 Paras H – A and Ohakim Vs Agbaso (2010) 19 NWLR (PT. 1226) @ 227 – 228 Paras F – A.

Submits finally that Applicant is entitled to approach this court to compel the 1 & 2 Respondent to provide the information and documents applied for by virtue of the Provision of Section 1 (iii) of the Freedom of Information Act. Urge court to grant the reliefs as sought by the Applicant.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibits marked "GKS 1", "GKS 2" "GSK 3", "GSK 4", "GSK 5", "GSK 6", "GSK 7", "GSK 8", "GSK 9", "GSK 10", GSK 11", the submission of counsel and the judicial authorities cited, the court finds that there is only one (1) issue that calls for determination which is;

"Whether or not the Applicant has placed sufficient facts for the grant of the reliefs sought"

The Applicant seeks an order of Mandamus to compel the 1st Respondent to act on their request brought under the Provision of Section 1 (3) of the Freedom of Information Act which reads;

"Any person entitled to the right to information under this Act shall have the right to institute proceedings in the court to compel any public institution to comply with the Provision of this Act"

Now an Order of Mandamus is a device for securing judicial enforcement of public duties. It is discretionary in nature and as such, it calls for the exercise of the discretion of court which it must exercise judiciously and judicially. For Mandamus to apply, the Applicant must establish that;

- (i) There is an imperative public duty and not a discretionary power to act;
- (ii) The Applicant must have requested for the performance of the duty and this must have been refused;
- (iii) The Applicant must have a substantial personal interest in the performance of the duty concerned.
- (iv) And the court hearing the application for an Order of Mandamus must have the jurisdiction to grant it.

See *Atta Vs C.O.P*, (2003) 17 NWLR (PT.849) 250, *Layanju Vs Arioye* (1959) 4 F. SC – 154 and *Banjo & Ors Vs Abeokuta Urban District Council* (1965) NWLR 295.

Applying the above principles to the instant case, the Applicant in paragraph 4 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) of her affidavit in support of the application disclosed facts that she made applications to the 1st Respondent vide Exhibits "GKS "1", "2", "3", "4", "5", "6", "7", "7A", "8", "9", "10", and "11" who of course has the duty to performance to issue to her information and Certified True Copies of documents which relates to the subject matter of this application and failed to perform that duty. Applicant by these depositions has also indicated her personal interest in

the subject matter of the application particularly in paragraph (h) of their supporting affidavit. The pertinent question which follows is whether this court have the jurisdiction to hear and entertain an application for an Order of Mandamus. Order 44 Rule 1 (a) of the Rules of Court clothes court with jurisdiction to hear an application for Order of Mandamus. Order 44 Rule 3 (1) of the Rules imposes on Applicant to seek and obtain the leave of court before making the application. It is the submission of the Applicant's counsel that this court granted leave for this application on 2/11/2021 and same is confirmed in the records of this court.

In all of these, the 1st, 2nd, 3rd, 4th, 5th Defendant/Respondents who was duly served with the processes did not react to the Motion. The implication of this is that the facts contained in the affidavit evidence before this court are deemed true and the court can act on it. They stand unchallenged and uncontroverted, it is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct. See the Nigeria Army Vs Warrant Officer Bunmi Yakubu (2013) LPELR 20085.

In conclusion and having considered the unchallenged and uncontroverted evidence and the position of the law which guides the grant or otherwise of an application for an Order of Mandamus, this court finds that the Claimant/Applicant have succeeded in making a case deserving of the grant of the reliefs sought. The application therefore succeeds.

Reliefs 1, 2, 3 are hereby granted as prayed.

Signed

HON. JUSTICE O.C. AGBAZA

Presiding Judge.

20/10/2022

JOSHUA OKAH ESQ. FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR THE 1ST, 2ND, 3RD, 4TH, 5TH DEFENDANTS
/RESPONDENTS