

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA.**

**BEFORE HON. JUSTICE J.E. OBANOR**  
**ON MONDAY THE 8<sup>TH</sup> DAY OF MARCH, 2021.**

**SUIT NO: FCT/HC/CV/001/2021**

**BETWEEN:**

**HURRIYA ABUBAKAR HUSAIN                          .....APPLICANT**

**AND**

**1. ABUJA MUNICIPAL AREA COUNCIL CHAIRMAN**  
**2. HON. ABDULLAHI ADAMU(CANDIDO)                          ..... RESPONDENTS**

**JUDGMENT**

By an Order of this Court made on 9<sup>th</sup> day of February, 2021 granting leave to the Applicant to seek for an Order of Mandamus pursuant to Order 44 Rule 3 of the High Court of Federal Capital Territory (Civil Procedure) Rules, 2018, the applicant's Originating Motion filed on 4<sup>th</sup> January, 2021 without leave was deemed properly filed pursuant to Order 5 Rule 1 of High Court of Federal Capital Territory (Civil Procedure) Rules, 2018. In the Originating Motion brought pursuant to Order 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018; Section 20 of the Freedom of Information Act, 2011; Section 39 of the Constitution of the Federal Republic of Nigeria, 1999 and under the inherent jurisdiction of this Court, the Applicant seeks for the following reliefs:-

1. "A DECLARATION that the refusal, failure and or neglect by the Defendants/Respondents to release the information requested by the Claimant/Applicant concerning Abuja Municipal Area Council, FCT-Abuja within 7days without

lawful excuse amounts to a violation of Section 4(a) of the Freedom of Information Act(Supra) and an infringement on the right of the Claimant/Applicant to access information as contained in Section 1 of the Freedom of Information Act (Supra) therefore is wrongful, illegal and unconstitutional.

2. A DECLARATION that the refusal, failure and or neglect of the Defendants/Respondents to give the Claimant/Applicant notice of denial to access information concerning Abuja Municipal Area Council, FCT- Abuja within seven(7) days of the receipt of the application dated 21<sup>st</sup> December, 2020 amounts to wrongful denial.
3. AN ORDER OF MANDAMUS directing the Defendants/Respondents including their servants, agents, privies, officials and or cohorts to within 14days of the delivery of Judgment furnish the Claimant/Applicant with certified true copies of;
  - a. Proof of the total allocation received from January 1, 2019 to December 2020;
  - b. All receipts from the Joint Account Allocation Committee within the period under review.
  - c. Financial Statement of Account from January 2019 to December 2020;
  - d. Proof of the total expenditure of the local government for the period of January 1, 2019 to December 2020;
  - e. List of Capital projects of Abuja Municipal Area Council, FCT-Abuja within this period.
  - f. List of Locations of Capital projects in (e) above, their status ( Completed or ongoing) within the period under review;
  - g. Payment vouchers for each project mentioned in (f) above as well as the contract agreement.
  - h. The total amount realized from Internally Generated Revenue within the period under request and proof of expenditure;

- i. Salary payment voucher of Abuja Municipal Area Council, FCT-Abuja staff from January 1, 2019 to December 2020; and
  - j. Salary payment voucher and other emoluments of the chairman and councilors in Abuja Municipal Area Council, FCT Abuja.
4. AN ORDER OF THIS HONOURABLE COURT directing the Defendants/Respondents severally to pay a fine of N500, 000.00 (Five Hundred Thousand Naira) for wrongful denial of the Claimant/Applicant, the right of access to information sought within the Defendants/Respondents custody.
  5. AN ORDER DIRECTING the Defendants/Respondents to pay the sum of N2, 000,000.00 (Two Million Naira) only as cost of this action.
  6. ANY FURTHER ORDER(S) as the Court may deem fit and proper to make in the circumstances of this case.”

The application is supported by statement which contains Reliefs sought, grounds upon which the application is brought, affidavit verifying the facts relied upon and Written Address of the learned Applicant’s Counsel.

In opposition to a grant of the application, the Respondents on 5<sup>th</sup> February, 2021 filed a 21 paragraph affidavit deposed to by Musa Dauda and written address of their counsel.

Issues having been joined, the application was heard on 9<sup>th</sup> February, 2021 with counsel for the parties adopting their written addresses as their oral submissions in support of their various contentions and the matter slated for judgment on 8<sup>th</sup> March 2021.

I have carefully read and digested the averments in the affidavits of the parties and submissions of their Learned

Counsel. The cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the reliefs sought in the Originating Motion.

The gravamen of the Applicant's case as disclosed in the affidavit is that on 21<sup>st</sup> December, 2020, the Claimant/Applicant wrote an application to the Defendants/Respondents which was received on 21<sup>st</sup> December, 2020, that the Claimant/Applicant should be allowed unfettered access to certain certified true copies of information concerning Abuja Municipal Area Council, FCT-Abuja which is within the control and custody of the Defendants/Respondents. The acknowledged copy of the receipt of the application dated 21<sup>st</sup> December 2020 marked Exhibit P1 was attached. The Defendants/Respondents have since failed, refused and or neglected to grant the Applicant unfettered access to the information sought within seven (7) days as provided by Law. The Claimant/Applicant believe that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents refusal to grant the Claimant/Applicant access to the said information is rooted in the fact that the 2<sup>nd</sup> Defendant/Respondent misappropriated and diverted the funds within the period under review to his personal use which is against the interest of good governance, trust and justice. Unless the Defendants/Respondents are compelled by an Order of this Honourable Court they will continue to fail, neglect and or refuse the Claimant/Applicant access to the certified true copies of information sought by the Claimant/Applicant from them. The claimant/Applicant is of the earnest belief as a champion of good governance with the objective of bringing governance and accountability closer to the electorates, the application if granted by the Defendants/Respondents would aid proper accountability by our leaders and encourage citizen's participation in governance in line with extant constitutional provisions. It is in the interest of justice that this Honourable Court should grant the Claimant/Applicant's reliefs.

In his Written Address in support, P.D. Pius Esq of Counsel for the Applicant formulated three issue for determination thus:-

- 1. Whether by true interpretation and construction of Section 4 (a) and ( b) of the Freedom of Information Act, 2011 the Defendants/Respondents are obligated to allow the Claimant/Applicant unfettered access to certified true copies of the documents requested as contained in the Claimant/Applicant's letter dated 21<sup>st</sup> December, 2020 as it concerns Abuja Area Council, FCT- Abuja upon the Claimant's/Applicant application.*
- 2. Whether the refusal, failure and or neglect of the Defendants/Respondents to grant the Claimant/Applicant access to the requested information and or notify the Claimant/Applicant in writing if the request is denied upon the receipt of the Claimant/Applicant application within the stipulated time under the Freedom of Information Act (supra) amounts to denial of access to information under the Act?*
- 3. Whether by a true interpretation and construction of the provisions of Section 7 (5) of the Freedom of Information Act (Supra) the Defendants/Respondents are not liable to pay a fine of N500, 000.00 (Five hundred thousand Naira) each for wrongful denial of the Claimant/Applicant right of access to the information sought?"*

Arguing issues nos 1 & 2, P.D. Pius Esq of Counsel for the Applicant submitted that by virtue of the Provisions of Section 4(a) of the Freedom of Information Act 2011 , the 1<sup>st</sup> Defendant/Respondent is by law duty bound to grant the Claimant's/Applicant's request for access to information upon an application made to them within Seven(7) days after receipt of the said application. He further submitted that Sections 11,12,14,15,16,17,19 and 20 of the Freedom of Information Act (Supra) contain grounds where a public institution may deny one access to information. He maintained that flowing from the above

provisions of the Act, the Defendants/Respondents have no just cause in law to deny the Claimant/Applicant access to the requested information and that by Section 4 (a) and (b) of the Act, the Defendants/Respondents are under an absolute duty to grant the Claimant/Applicant's request upon an application made to them within seven (7) days or deny same in writing with reasons for doing so clearly stated in line with the provisions of the Freedom of Information Act which the Defendants/Respondents did not do. Finally on issues 1 and 2 he submitted that the refusal, neglect and or failure to communicate to the Claimant/Applicant the position of the Defendants/Respondents about the information requested by the Claimant/Applicant amounts to denial of information as mandated by Section 4(b) of the Act.

On issue 3, counsel submitted that by Section 7 of the Act, where it is established that a public institution from which access to information is sought by an applicant under the provision of Section 4 of the Freedom of Information Act failed to release such information to the applicant within 7 days after the receipt of such application, such defaulting officer or public institution shall be liable under conviction to payment of a fine of N500,000.00 (Five Hundred thousand Naira) only. Learned counsel contended further that from the facts deposed in the affidavit in support of the Originating Motion, the Defendants/Respondents have bluntly and adamantly failed, neglected and or refused to reply or release the information sought by the Claimant/Applicant and the Defendants/Respondents have not premised this refusal, failure or neglect on any justifiable Sections of the Freedom of Information Act. Counsel also referred the court to item 1.6 of the GUIDELINES ON THE IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT 2011 REVISED EDITION 2013 which gives the public institution the scope to extend the period to respond by another seven (7) days and concluded by urging the court to resolve all the issues raised above against the Defendants/Respondents and grant all the reliefs sought by the Claimant.

In response the Respondents in their counter affidavit averred inter alia that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants deny the Plaintiff's deposition contained in paragraphs 6,7,8,9,10,11 and 12 of the affidavit in support of the Claimant's Originating Motion as they are not the true representation of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' position. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants received the Claimant's application dated 21<sup>st</sup> of December 2020 on the same date. As at the time the said application was received, it was towards the end of the year and the Defendants had gone on holiday on 24<sup>th</sup> to 26<sup>th</sup> and 31<sup>st</sup> and 1<sup>st</sup> of December, 2020 to resume on 2<sup>nd</sup> of January, 2021. Based on the request of the Claimant some of the information requested in the said letter does not fall within the ones the 1<sup>st</sup> and 2<sup>nd</sup> Defendant can avail the Claimant and some that the Defendants can avail are voluminous which will take time before the Defendants can make them available. The information requested for by the Claimant bothers on the functions and duties of the 1<sup>st</sup> Defendant and how it runs its affairs and its funds and expenditures of the 1<sup>st</sup> Defendant as contained in its Statute that created it and particular section of the Freedom of Information Act equally prohibit the Defendants to avail members of the public such information. The claimant could not provide the request of the Claimant on the ones permitted by law within the stipulated time because the Claimant's application was submitted during the festive period in December, 2020 and also because of the administrative procedure of the Defendants. The time given to the Defendants by the Claimant is short because the Claimant's application was submitted on the 21<sup>st</sup> of December, 2020 while some of the key staffs that will make the information available had gone on December, 2020 break and to resume on the 4<sup>th</sup> of January, 2021 which is the date the Claimant rushed down to the court and filed this suit. The Federal Government Directive on the COVID 19 Protocols of all Staff from Grade Level 12 staying at home hindered the Administrative performance of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. All the documents the Claimant requested for has been ready before the service of this processes on the

Defendants except the ones the law did not allow the Defendants to avail the members of the public. A careful reading of the contents of the said application letter of the Claimant shows the contents do not concern public interest, social justice, good governance and accountability. Power of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on how to run the affairs of the 1<sup>st</sup> Defendant is enshrined in the statute that created them. The three information out of the information requested for by the claimant are strictly restricted mainly for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as provided under the statute that created the 1<sup>st</sup> Defendant and also under the Freedom of Information Act, 2011. The Defendant is ready to furnish the Claimant with the information requested in paragraph 3a, b, c, d, e, f, and h of his prayers which had since been ready even before the service of the Originating summons on the Defendants but prayers 3g, i and j falls within the information restricted to the Defendants by its statute and freedom of Information Act, 2011. The reason for the 2<sup>nd</sup> Defendant not to reply the Claimant's request in order to state the reasons for the non disclosure of the information was due to the administrative procedure of the 1<sup>st</sup> Defendant as stated above and the period the letter was submitted and as at the time the Defendants resumed office and procured that information for the claimant, the Claimant had filed this suit without giving the Defendants enough time. The Claimant's suit is frivolous, malicious and gold digging because the allegation of misappropriation and mismanagement of public funds by the Defendants is baseless.

In his written address Adeosun Kolade Esq of counsel for the Applicant raised a sole issue for determination thus:

“Whether the Claimant has placed the material fact before this Honourable Court that will show that all the kind of information requested is the one the 1<sup>st</sup> and 2<sup>nd</sup> Defendants can furnish the Claimant under the law.”

Treating the issue, learned counsel submitted that the facts placed before the court by the Claimant is not enough to



establish that the information requested for is part of the ones the Defendants can furnish him with. Accordingly, the content of Exhibit P1 summarily is for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to furnish the Claimant the information in paragraphs 3 a - j therein. He stated that the information requested by the Claimant from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the functions and duties of the 1<sup>st</sup> Defendant prescribed for under the Act for the running of the affairs of the 1<sup>st</sup> Defendant in performing its administrative duties as provided by the 1<sup>st</sup> Defendant's Act that established it and under the Constitution. Counsel referred the court to Section 7(3) of the Constitution of the Federal Republic of Nigeria (1999) as Amended.

Counsel further submitted that the funds of the 1<sup>st</sup> Defendant and its management is strictly restricted to the 1<sup>st</sup> Defendant as provided under Section 14 and 15 of the 1<sup>st</sup> Defendant's Act and the law gives the 1<sup>st</sup> Defendant autonomy on its expenditure without giving the members of the public account on how its funds is being expended and on anything concerning salary of the 2<sup>nd</sup> Defendant who is a public officer. He referred to Section 14(b) of Freedom of Information Act, 2011 and maintained that the 1<sup>st</sup> Defendant only acted according to the provision of the Act establishing the 1<sup>st</sup> Defendant and its law and therefore paragraph 3g, i and j cannot be granted while others are available and reason for not furnishing them to the Claimant was because of short timing and administrative procedure of the Defendants.

Counsel also submitted that it is the duty of the Claimant to place before the Court evidence showing that the information he requested falls within those the 1<sup>st</sup> and 2<sup>nd</sup> Defendants can furnish him under the law. He commended to the court the cases of **FAJEMIROKUN V C.B. (C.I) NIG LTD (2002) 10 NWLR (PT 774) 95, RATIO 4; EZEADUKWA V MADUKA (1997) 8NWLR (PT 518) 635 and ONOGORUWA V IGP (1991) 5NWLR (PT 195) 593**. Learned counsel further emphasized that the Claimant requested information regarding the acts of the Defendants

relating to the affairs of the 2<sup>nd</sup> and the staffs and this cannot be granted as same is protected by the Freedom of Information Act, 2011 to save and guard the affairs of the Defendants. The exempted information includes any information the disclosure of which may be injurious to the conduct of International affairs and the defence of the Federal Republic of Nigeria, information on administrative enforcement proceedings and by any law enforcement or correctional agency for law enforcement purposes. Personal information, third party information such as trade secrets and commercial or financial information and records subject to professional privileges such as legal practitioner/client privileges, health workers/client privileges, journalism confidentiality privileges and any other professional privileges conferred by any other law. He commended to the court **PUBLIC & PRIVATE DEVELOPMENT CENTER LTD/GTE V. FED. MINISTRY OF FINANCE (UNREPORTED) SUIT NO FHC/ABJ/CS/856/13, SECTION 11(1), SECTION 12(1), SECTION 14, 15 AND 27(1) AND (2) OF THE FREEDOM OF INFORMATION ACT, 2011, MOMOH V STATE (1981) 1NCLR.**

In conclusion learned counsel submitted that three out of all the information requested by the Plaintiff from the 1<sup>st</sup> Defendant are the ones stated in the exceptions and the reason for delay was due to the public holidays and administrative procedures. For reference purposes he submitted to the court copies of the information contained in paragraph 3a, b, c, d, e, f, and h. He urged the court to hold that the Claimant has not satisfactorily proved the case to warrant the court invoking its statutory powers in favour of the Claimant.

I have carefully read and digested the Written Addresses as disclosed in the records. I have also considered the averments in the parties affidavits and as said earlier the cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the reliefs sought in the Originating Motion.

Before proceeding to resolve the issue, it is pertinent to recall that our legal system is adversary in nature. By that it is settled that where a party asserts a state of affair and seeks the Court's favourable finding or declaration or pronouncement on same, the burden of proof lies on him to lead preponderance of evidence in proof of it lest he fails. The burden of proof is not static but shift from party to party until the issue in contention is resolved. The evidential burden is always on the party who will fail where necessary rebuttal evidence has not been led. See: - **SECTIONS 131 TO 133 OF THE EVIDENCE ACT 2011**. It is also settled law that where a party deposed to a fact in a counter affidavit which the other party ought to rebut in a further affidavit but the later fails to do so he is deemed to have admitted such facts in the counter affidavit. **See ASOL NIG. LTD VS. ACCESS BANK NIG. PLC (2009) 10 NWLR PART 1149 P.283**. However, in a declaratory action an Applicant is to succeed on the strength of the case he is able to make out and not on the weakness or absence of defence though he can rely on the aspects of the adversary's case which support his case.

This said, the order of mandamus is one of the prerogative writs grantable at the discretion of the court. It is issued against a public officer or institution requiring him or it to do some particular thing which relates to him or its office and which is in the nature of a public duty. See **SHITTA –BEY V. FEDERAL PUBLIC SERVICE COMMISSION (1981) ISC P40**. The public duty to do the act in question may be one imposed on the recipient of the order by statute or under common law. The **Freedom of Information Act, 2011** was enacted clearly with the intention of making public records and information freely available to any member of the interested public. An Applicant under this Act needs not demonstrate specific interest in the information being applied for. This goes to show that in applying for an order of Mandamus pursuant to the Freedom of Information Act, 2011 the general requirement in Mandamus proceedings for an Applicant to show sufficient legal interest has been jettisoned. See **Section 1(2) of Freedom of Information**

**Act 2011; ALO v. SPEAKER, ONDO STATE HOUSE OF ASSEMBLY & ANOR(2018) LPELR-45143(CA)**

An applicant under this Act has the right to commence proceedings to compel compliance by any unwilling custodian. However, this right to information is not absolute as certain forms of information are exempted from disclosure by the Act. See Sections 12, 14 15, 16, 17 and 19 **CBN & ANOR v. PUBLIC & PRIVATE DEVELOPMENT CENTRE LTD/GTE (PPDC LTD/GTE) (2018) LPELR-45856(CA)**

For avoidance of doubt it is pertinent to reproduce the provisions of the **Freedom of Information Act 2011** which are relevant in this case.

**Section 4 provides thus:**

*“where information is applied for under this Act the public institution to which the application is made shall, subject to Sections 6, 7 and 8 of this Act, within 7 days after the application is received-*

- a. Make the information available to the applicant*
- b. Where the public institution considers that the application should be denied, the institution shall give written notice to the Applicant that access to all or part of the information will not be granted, stating reasons for the denial and the section of this Act under which the denial is made.”*

With regards to instance where a public institution must as a necessity deny an application for information.

**Section 14(1) provides thus:**

*“Subject to subsection (2), a public institution must deny an application for information that contains personal information and information exempted under this subsection includes:*

- a. ...;*

- b. Personnel files and personal information maintained with respect to employees, appointees or elected officials of any public institution or applicants for such positions;*
- c. ...;*
- d. ...;*
- e. ....*

**Section 14(2) provides thus:**

*“A public institution shall disclose any information that contains personal information if-*

- a. The individual to whom it relates consents to the disclosure;*
- or*
- b. The information is publicly available.”*

**Section 15(1) provides;**

*“ A public institution shall deny an application for information that contains-*

- a. ...;*
- b. Information the disclosure of which could reasonably be expected to interfere with the contractual or other negotiations of a third party;*
- c. Proposal and bids for any contract, grants or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person.”*

**Section 15(4)**

*“A public institution shall disclose any information described in subsection (1) of this section if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and if the public interest in the disclosure clearly outweighs in importance any financial loss or gain to or prejudice to the competitive position of or interference with contractual or other negotiation of a third party.*

I have given due consideration to the contention of parties as well the provisions of the law. I have also read and digested the averments in the Applicant’s affidavit and Respondents’ Counter

affidavit. There is no gainsaying that by Exhibit P1 attached to the affidavit, the Applicant on 21<sup>st</sup> December, 2020 applied to the Respondents to be allowed unfettered access to certified true copies of information listed in Relief No 3 which include;

- a. Proof of the total allocation received from January 1, 2019 to December 2020;
- b. All receipts from the Joint Account Allocation Committee within the period under review.
- c. Financial Statement of Account from January 2019 to December 2020;
- d. Proof of the total expenditure of the local government for the period of January 1, 2019 to December 2020;
- e. List of Capital projects of Abuja Municipal Area Council, FCT-Abuja within this period.
- f. List of Locations of Capital projects in (e) above, their status ( Completed or ongoing) within the period under review;
- g. Payment vouchers for each project mentioned in (f) above as well as the contract agreement.
- h. The total amount realized from Internally Generated Revenue within the period under request and proof of expenditure;
- i. Salary payment voucher of Abuja Municipal Area Council, FCT-Abuja staff from January 1, 2019 to December 2020;
- j. Salary payment voucher and other emoluments of the chairman and councilors in Abuja Municipal Area Council, FCT Abuja.

The above information was not made available to the Applicant as required under the Freedom of Information Act 2011. The Applicant averred in the affidavit that the Respondents failed, refused and or neglected to grant the Applicant unfettered access to the information sought within seven (7) days because the 2<sup>nd</sup> Defendant/Respondent misappropriated and diverted the funds within the period under review to his personal use which is against the interest of good governance, trust and justice. The Respondents admitted receipt of Exhibit P1 on 21<sup>st</sup> December

2020 but denied all other depositions through Counter affidavit and averred therein that as at the time the said application was received, it was towards the end of the year and the Defendants had gone on public holidays on 24<sup>th</sup> to 26<sup>th</sup> and 31<sup>st</sup> and 1<sup>st</sup> of December, 2020 to resume on 2<sup>nd</sup> of January, 2021 and some of the information requested in the said letter do not fall within the ones the 1<sup>st</sup> and 2<sup>nd</sup> Defendant can avail the Claimant. The Federal Government Directive on the COVID 19 Protocols of all Staff from Grade Level 12 staying at home also hindered the Administrative performance of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. That all the documents the Claimant requested for had been ready before the service of this processes on the Defendants except the ones the law did not allow the Defendants to avail the members of the public. The Defendant is ready to furnish the Claimant with the information requested in paragraph 3a, b, c, d, e, f, and h of her prayers which had since been ready even before the service of the Originating summons on the Defendants. Prayers 3g, i and j falls within the information restricted to the Defendants by it statute and freedom of Information Act, 2011. Upon a careful consideration of the above, it is the court view that the Respondents having in their counter affidavit denied the averments in the Applicant's affidavit to the effect that there was no denial of CTC information by them rather the delay was caused by the intervening Christmas and New Year public holidays as well as the Covid 19 Regulation on Level 12 and below and that information in paragraph 3a,b,c,d,e,f, and h had been ready, waiting to be furnished to the Claimant/Applicant, the onus shifted back to the Applicant to lead further evidence via a further affidavit but he failed to do so thereby admitting the averments in the counter affidavit. It is settled law that where a party deposed to a fact in a counter affidavit which the other party ought to rebut in a further affidavit but the later fails to do so he is deemed to have admitted such facts in the counter affidavit. **See ASOL NIG. LTD VS. ACCESS BANK NIG. PLC (2009) 10 NWLR P (SUPRA)**. The Applicant having not controverted the averments above in a further affidavit is deemed to have admitted them.

More so, I am of view that the request having be caught up by the intervening public holidays as well as Covid 19 Regulation made pursuant to the **Quarantine Act Cap Q2 LFN 2004**, the delay cannot be said to be wrongful. My above position is persuaded by the mandate given to the Courts by judicial authorities and Evidence Act to take judicial notice of Public Holidays and all laws or enactments and any subsidiary legislation made under them having the face of law now or previously in force in any part of Nigeria. **SEE SECTION 122 EVIDENCE ACT 2011; MR S.A. OMOROGBE & ORS V.MR MICHAEL ENEHIZENA & ORS (2018)LPELR-44833(CA); AUTO IMPORT EXPORT V. J.A.A. ADEBAYO & 2 ORS. (2002) 18 NWLR (PT. 799) 554;EFFIOM V STATE (2014)LPELR-22646(CA).**

For the information contained in **Relief 3 i and j** above, I have taken a due consideration of the provisions of the law relating to the above items of information, I am of the view that these information fall within the exempted information which the Respondents are mandatorily required to deny because they relate to personal information of the employees of the Respondents. **See Section 14(1) (Supra)**. In the above section the use of the word “must” made it compulsory to be denied. This information can only be disclosed with the consent of the employees as required in **Section 14(2) (Supra)** and there is no evidence led to the fact that consent of the employees of the Respondents was sought and obtained to warrant disclosure of the above information.

With regard to information sought in **Relief 3g** having considered the position of the law, I am also of the view that the Respondents are also mandated to deny disclosure especially as the Applicant did not show how it is for the interest of the public especially as it relates to public health, public safety or protection of the environment. **See Section 15(1)(4) (Supra)**.



By reasons of the foregoing findings, the Court has no option than to resolve the sole issue raised above partly in favour of the Applicant. The Respondents having admitted that the CTC of the information in Relief 3 a,b,c,d,e,f, and h is ready will not be averse if an order of court is made directing them to issue certified true copy of them to the Applicant. In consequence, an order of Mandamus is granted directing the Respondents to within 7 days of the delivery of this judgment furnish the Applicant with certified true copies of information in Relief 3 a,b,c,d,e,f, and h. This Court having found that failure to make available the information requested within time was not wrongful, Reliefs No 1 and 2 of the Originating Motion cannot be granted.

In **Relief no 4**, the Applicant seeks for an Order of Court directing the Respondents severally to pay a fine of N500,000.00 (Five Hundred Thousand Naira) for wrongful denial of the Applicant, the right of access to information sought within the Respondents custody. For the grant of this relief, Applicant posited that by Section 7(4) & (5) of the Freedom of Information Act, where it established that a public institution failed to release information to an applicant seven days after receipt of such application, such defaulting officer or public institution shall be liable under conviction to payment of a fine of N500, 000 (Five Hundred Thousand Naira) only. In this case, this court having found that the failure to make available the information requested within time was not wrongful cannot grant this relief. Moreover this court is of the view that this relief is misconceived. It is apposite that in our criminal jurisprudence, for a person to be found guilty of an offence, he must go through the process and procedure of a trial and which guilt must be proved by the prosecution beyond reasonable doubt. **See Section 135 (1) of the Evidence Act 2011. See BUHARI VS OBASANJO (2005) 13 NWLR (PT. 941) 1 AT 209 and DIKKO YUSUF VS OBASANJO (2005) 18 NWLR (PT 956) 96; IKPEAZU VS OTTI & ORS (2016) LPELR 40055 (SC).** The Respondents did not go through any such criminal trial and conviction to warrant the said fine of N500, 000.00 which interestingly, the Applicant desire

should be paid to her. **See EDOSACA v. OSAKUE & ORS (2018) LPELR-44157(CA)**. This relief is hereby refused and cannot be granted.

In relief no 5, the Applicant seeks for an Order directing the Respondents to pay the sum of N2, 000,000.00 (Two Million Naira) only as cost of this action. This relief cannot be granted because it falls in the realm of special damages which must be proved specifically. There is no deposition in the affidavit in support of this relief and evidence by the applicant on how she arrived at that cost, as cost of this suit was not led. Besides, the Court of Appeal in **GUINNES NIG PLC V NWOKE (2000) LPELR-6845(CA)** did hold that it is unethical and against public policy to pass on the burden of legal or professional fee in litigation to the adversary. Therefore, the Applicant having succeeded in part and the Respondents in part, I make no order as to cost.

**Signed**  
**Hon. Judge**  
**8/3/2021.**

**LEGAL REPRESENTATION**

- (1) P.D. Pius Esq/M.A. Saka for the Applicant
- (2) K. Adeosun for the Respondents