

CASE BRIEFS

PRESIDING JUDGE: HON. JUSTICE O.A ADENIYI (30/01/2014)

SUIT NO: FCT/HC/CV/3057/13

BETWEEN:

PUBLIC & PRIVATE DEVELOPMENT CENTRE LIMITED / GTE

APPLICANT

AND

1. THE HON. MINISTER OF FCT

2. THE SECRETARY, FCT TRANSPORT SECRETARIAT

RESPONDENTS

FACTS:

The applicants commenced an action against the respondents seeking a declaration that a refusal by the respondents to respond to a request for information under the Freedom of Information Act, 2011 amounted a wrongful denial under the Act; and an order compelling the respondents to provide the requested documents to the applicants.

The documents requested included the number of companies the FCTA engaged for the purposes of controlled parking/collection of parking fees; the terms of engagement; the amount remitted so far to the FCTA since inception; the statement of accounts showing the remittances and the contract of agreement with each company.

The respondents claimed that (1) it willingness to provide several documents upon payment of administrative fees, which had not been paid and (2) that the exemption of third party information under Section 15 (1) (a) of the Act exempted disclosure of the Statement of account.

The Court held thus:

- That no evidence existed to show that the applicants were informed of the administrative fees payable and therefore this was nothing but an after thought
- That the respondents failed to satisfy the burden of proof upon them as a public institution to show that it had the authority to deny an application.
- That the exemption claimed under S. 15 (1) (a) did not apply as what was requested was an account of public monies paid to the third party companies engaged and not for their financial statements.

The Court therefore declared that the denial was wrongful and ordered the release of the requested documents to the applicants.

PRESIDING JUDGE: HON. JUSTICE O.A ADENIYI (09/07/2013)

MOTION NO: M/3059/13

BETWEEN:

PUBLIC & PRIVATE DEVELOPMENT CENTRE LIMITED / GT

PLAINTIFF

AND

INTERGRATED PARKING SERVICES LTD

RESPONDENTS

FACTS:

The Applicant in a written letter dated 13th December, 2012 requested several documents from the Respondent under the FOIA, 2011. The documents requested included the following: How much has the Respondent realized from inception of engagement of services by the Federal Capital Territory Administration up to date?; How much was remitted to the FCTA till date and by what means was the sum remitted; terms of engagement between the FCTA and the respondent and how much accrues to the respondent under the engagement; CTC of the respondents account showing all the monies realized under the engagement; and CTC of the contract of engagement between the respondent and the FCTA. The respondents failed to provide any response.

By an ex-parte application, the Applicants sought leave to bring an instant application. The respondents failed to respond to the application. The Court granted the leave sought.

The Court after careful examination of the processes filed by the Applicant held that

- The Applicant was entitled to the information sought by virtue of the provision of **Section 1** of the **FOIA, 2011**.
- By virtue of the provisions of **Section 2 (7)** and **Section 31** of the **FOIA, 2011** the respondent is under lawful obligation to disclose to the Applicant the information sought by the instant application.

The Court declared that the failure of the Respondent to furnish the Applicant with the information sought; vide her letter 13th December 2012, amounted to a wrongful denial of information and in violation of FOIA, 2011

The Hon. Judge issued an order of Mandamus to be served on the Respondent compelling same to furnish the applicant information requested.

PRESIDING JUDGE: HON. JUSTICE A.F.A ADEMOLA (01/03/2013)

SUIT NO: FHC/ABJ/CS/582/2012

BETWEEN:

PUBLIC & PRIVATE DEVELOPMENT CENTRE LIMITED / GT (PPDC)

(For itself and on behalf of the Nigeria Contract Monitoring Coalition)

APPLICANT

AND

1. POWER HOLDING COMPANY OF NIGERIA (PHCN) PLC

2. HON. ATTORNEY GENERAL OF THE FEDERATION

RESPONDENTS

FACTS:

In 2011, Power Holding Company of Nigeria (PHCN) {1st Respondent} through its Project Management Unit (PMU) conducted a public Procurement exercise for the award of contract for supply and installation of 300 No. 11 KV, 500A on load sectionalizers at Karu, Luth, Ogba, Agege and Challenge – Ibadan High Voltage Distribution System (HDVDS) 4 Network.

The Applicant applied to the 1st Respondent through its PMU for the copies of the documents and information. The 1st Respondent in response to the application wrote a letter annexing the documents/information required to the Applicant except the document a copy of the bid evaluation report of the technical subcommittee of the Tenders' board for the procurement.

The Applicant brought a motion on notice dated 14/12/2012 to the honourable court praying for the **a DECLARATION** that the failure of the 1st and 2nd respondents to furnish Applicant with the documents/information sought vide Applicant's letter of 30th August 2012 amounts to a wrongful denial of information under the Act and an **ORDER** compelling the Respondents to furnish the Applicant with the information and copies of the documents set out in the Schedule.

The 1st Respondents Counsel opposed the grant of relief sought relying on **Section 15(1) (b) FOIA, 2011** submitting that the information and documents sought by the Applicant involves a third party **CROWN RESOURCES DEVELOPMENT CO. LTD** (CONTRACTOR) and the release of such information to the Applicant would affect the contractual relationship between parties to the contract. In this case the contractor has contractual relationship with 1st Respondent and not the Applicant, and 1st respondent cannot be required to disclose information or documents between her and the contractor to the Applicant who is not privy to the contract since it would be contrary to Law.

The Court Held:

- That for a public institution to claim exemption under S. 15 (1) (b) the transaction must still be at a negotiation stage; a third party must be involved; and the disclosure of the information could reasonably be expected to interfere with the contractual or other negotiations of a third party.

- That the evidence before the Courts states that the negotiations had been concluded and contract awarded before the application for information made by the Applicants. Therefore the disclosure of the information sought by the Applicant cannot by any stretch of the imagination reasonably be expected to interfere with any contractual or other negotiations of the third party.

The Court granted the Applicants Motion on Notice particularly and awarded the cost of N20,000:00 jointly and/or severally against 1st & 2nd Respondents in favour of the Applicant.

PRESIDING JUDGE: HON. JUSTICE A.R. MOHAMMED (23/05/2013)

SUIT NO: FHC/ABJ/CS/278/2013

BETWEEN:

PUBLIC & PRIVATE DEVELOPMENT CENTRE LIMITED / GT

APPLICANT

AND

1. NIGERIAN NATIONAL PETROLEUM CORPORATION (NNPC)

2. THE GROUP MANAGING DIRECTOR NNPC

RESPONDENTS

FACTS:

The Applicants had by a letter of request under the FOIA, 2011 sought procurement records from the 1st respondent in respect of an advertised bidding process. The letter of request had been submitted at the 1st Respondent's office and an acknowledgement signed by one Kingsley O. who had declined to stamp the letter noting that the Standard procedure for the 1st respondent was to sign acknowledged copy of a letter. The Respondents averred that the Kingsley O. was not in the employ of the 1st Respondent. The Respondent further raised a preliminary objection urging the Court to strike out the suit on the ground that a condition precedent to the institution of this suit has been satisfied, that the Applicant did not serve a statutory pre- action notice on the 1st Respondent. That by **Section 12(2)** of the **NNPC Act Cap N123 LFN 2004**, it is mandatory on anyone who intends to commence an action against the 1st Respondent to first issue and serve on it a pre-action notice.

The Applicant argued that by **Section 20** of the **FOIA, 2011** any person who was denied access to information upon request made under the F.O.I Act may seek redress from the Court within 30 days of such denial or deemed denial. An application of **Section 12(2)** of the **NNPC Act** will operate to deny an Applicant of the right of access to Court because by the time the duration of the pre-Action Notice

would have elapsed, the time allowed in F.O.I Act to seek redress would also elapse. By Section 1(1) of the F.O.I Act, right of access to information pursuant to the Act is guaranteed and is not subject to the provisions of any Act or Law including the NNPC Act.

The Court Held:

- that the provisions in statutes regarding pre-action notice are held to be proper as the Applicant did not show the Court that it issued and served a pre-action notice on the 1st Respondent and therefore a condition precedent to the action was not fulfilled.
- That the failure rendered the suit incompetent and by extension robbed the Court with jurisdiction to entertain the suit.

The suit was struck out for being incompetent.

This judgment is currently being appealed.