

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT COURT 2, IKPOBA HILL, BENIN CITY  
ON FRIDAY THE 4<sup>TH</sup> DAY OF NOVEMBER, 2016  
BEFORE HIS LORDSHIP THE HONOURABLE  
JUSTICE O. O. TOKODE - JUDGE

SUIT NO: FHC/B/CS/192/2015

BETWEEN:

REGISTERED TRUSTEE OF EMPOWERMENT FOR  
UNEMPLOYED YOUTHS INITIATIVE - - - - - PLAINTIFF

AND

1. CODE OF CONDUCT BUREAU }  
2. MR. SAM SABA } - - - - - DEFENDANT

RULING

By originating summons dated 16<sup>th</sup> August, 2015 and filed on 19<sup>th</sup> August 2015, the Plaintiff placed before this court the following questions for determination:

1. Whether by sections 6 (6) (a) and (b), 251 (1) (p) (q) and (r), paragraph 3 (a) (b) (c) and (d) of Code of Conduct Bureau and Tribunal Act 2004 and section 7 (1) (p) (q) (r) of the Federal High Court Act of 2009, the Federal High Court has jurisdiction over the administration, control and management of records of public officers in the custody of the defendants.
2. Whether having regard to the provisions of section 9 (2) of the Freedom of Information Act 2011 and section 3 (a) (b) (c) and (d) of

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the Code of conduct Bureau and Tribunal Act 2004, the Defendants is under any legal obligation to make public the assets declared by a public officer.

3. Whether the plaintiff has locus standi in this suit.

Pursuant to the foregoing, the Plaintiff seeks the following reliefs from the court.

1. **DECLARATION** that by the provisions of section 251 (1) (p) (q) and (r) of the 1999 Constitution and section 7 (1) (p) (q) and (r) of the Federal High Court Act of 2009 the Federal High Court has the power to adjudicate on issues connected with the administration, control and management of records of public officers in the custody of the defendants.
2. **DECLARATION** that the 1<sup>st</sup> Defendant 's register of officials' declaration must be made public on request by any person or group of persons immediately after a public officials' take oath of office.
3. **DECLARATION** that the third party can access private information of public officers in public custody.
4. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendants from barring access to assets declaration of public officers Nigeria forthwith.
5. **AND FOR SUCH FURTHER OR OTHER ORDER** as this Honourable Court may deem fit to make in the circumstance.

The summons is supported by a 21 paragraph affidavit, deposed to by one Momoh Danesi, trustee of the Plaintiff, one exhibit (Ex. A the certificate of

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Incorporation of the Incorporated Registered Trustees of the Plaintiff). There is also the Plaintiffs' written address.


The foregoing processes were served on the 1<sup>st</sup> and 2<sup>nd</sup> defendants by a bailiff of this court who deposed to an affidavit of service dated 28/10/15.

When the matter came up for hearing before this court the defendants were neither present nor represented by counsel. Thus the Court ordered hearing notice be issued and served on the defendants. Pursuant thereto hearing notice dated 3<sup>rd</sup> November 2015 was served on the 5<sup>th</sup> November 2015 and another dated 19<sup>th</sup> February 2016 was served on the 24<sup>th</sup> February 2016 on the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Despite this, the defendants did not attend court nor were they represented by counsel. The case came up on the 2/11/15, 19/11/15, 10/12/15, 11/2/16 and 18/4/16. When the defendants still failed to attend court despite the service on them of the hearing notices, this court granted Plaintiff's Counsel the leave to proceed with his motion since the defendants have shown reasonably that they have no intention to defend the case.

In moving the application, the Plaintiff Counsel, President Aigbokhan referred the court to the originating summons and all the processes attached thereto. He placed reliance on the affidavit in support and adopted the written address as his arguments in the case. He referred the court to the fact that the defendant did not file any process to oppose his application despite the service of the originating processes on them as well as the hearing notices. Therefore, he urged the court to regard the depositions in the affidavit as unchallenged. He referred to paragraph 15 of the affidavit and submitted that public information is public participation governance. That it is their legal right to participate in the government. He urged the court to grant his application.

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In his written address, the plaintiff submitted three issues for determination as follows.

1. Whether by sections 6 (6) (a) and (b), 251 (1) (p) (q) and (s), paragraphs 3(a) (b) (c) and (d) of Code of Conduct Bureau Tribunal Act 2004 and section 7 (1) (p) (q) (r) of the Federal High Court Act of 2009, the Federal High Court has jurisdiction over the administration, control and management of records of Public officers in the custody of the defendants.
2. Whether having regard to the provisions of section 9(2) of the Freedom of information Act 2011 and sections 3(a) (b) (c) and (d) of the Code of Conduct Bureau Tribunal Act 2004, the defendant is under any legal obligation to make public the assets declared by a Public Officer.
3. Whether the Plaintiff has locus standi in this suit.

On issue NO 1, Plaintiff submitted that its purpose of approaching the court is for the interpretation of sections 6(6) (a) & (b), 251 (1)(p), paragraph 3 (a)(b)(c) and (d) of part 1 of 3<sup>rd</sup> schedule to CFRN 1999, section 7 (1) (p) (q) (r) of the Federal High Court Act and section 9(2) of the Freedom of Information Act 2011 as to whether the Defendants can deny the Plaintiff access to public record.

Counsel submitted that pursuant to paragraph 18 of the affidavit in support of the motion, this case is not of public officers' non compliance with the Code of Conduct for public officers but of statutory interpretation of the aforementioned provisions of law.

Counsel submitted that this court has exclusive jurisdiction to entertain and determine matters of administration, management and control of public

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records in the custody of the defendants. That the power conferred upon the Federal High Court by the constitution in S. 251 (1) (p) (q) and (r) cannot be whittled down by anything contrary contained in any law of the National Assembly. That it is indisputable that by S 251 (1) (p) (q) (r) of the CFRN, the Federal High Court has exclusive jurisdiction in civil cases and matters where the management, control, operation and interpretation of the constitution as it affects the Federal Government or any of its agencies is in issue. He referred to the case of *Justice Ayo Salami V NJC & 9 ORS (2014) LPELR – 22774 (CA) 25 -27 (paragraphs E – D)*.

On issue No.2, the Counsel argued that the Freedom of Information Act (FOIA) 2011 creates a duty on the part of the defendants to maintain public register or assets disclosure of public officers to which individuals are entitled to have access on application. He referred to S. 9(2) Freedom of Information Act 2011.

Counsel argued that the aims and objectives of the Defendant is to ensure that the actions and behavior of public officers conform to the highest standards of public morality and accountability. He referred to paragraphs 4 and 11 of the affidavit and S. 2 Code of Conduct Bureau and Tribunal Act.

Counsel submitted that as part of maintaining public standards, asset declaration decreases incidence of corruption, restores hope and confidence of the people towards their servants because a public officer is a public delegate and a trustee of the Commonwealth of the people. He submitted further that it is relatively easy to identify corrupt public officers, making a comparative analysis of assets declared on assumption of office and on exit so as to observe or detect

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ostentatious accumulation. He referred to section 3(a) & (c) of the Code of Conduct Bureau and Tribunal Act Cap. 15 LFN 2004.

Counsel further submitted that where a private record like assets declaration is kept with the bureau, it becomes a public record. And in order for the wider public to know which public documents are in the possession of a Public Authority, the FOIA 2011 and Code of Conduct Bureau and Tribunal Act 2000 create a duty on the part of the public authorities to maintain a register of public documents, a register that in itself is a public document to which individuals are entitled to have access. Counsel submitted that a document is public in so far as it is held by a public authority and has been submitted to a public authority by a private party or another public authority. Counsel further submitted that the Defendants are under a legal obligation to make assets declaration public for inspection.

Learned Counsel also submitted that publication of asset declaration is an internationally recognized obligation for public officers including members of the legislative and judicial arm of government. He referred to S.52 (1) and S. 94(1) (2) of the CFRN 1999 (as amended) He submitted that the main essence of declaration of assets is to prevent public officers from over value their assets as groundwork to embezzling public funds and that the defendant is under legal obligation to make assets of public officers a public thing on request by a third party.

Counsel referred to the situation in the United States of America and submitted that the US Court protect the right of its citizens to see a private record of judges. He cited the case of *Duplantier V United States* 606 F. 2d 654 (5<sup>th</sup> Cir.1979).

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Learned Counsel further submitted that all public officers are mandated under the law and the constitution to declare all his properties assets and liabilities and those of his spouse or unmarried children under the age of 21 years. He referred the court to the 3<sup>rd</sup> and 5<sup>th</sup> schedule to the Constitution of the Federal Republic of Nigeria 1999 and the Code of Conduct Bureau and Tribunal Act 2004. He submitted that it is important for Citizen to know the assets and liability of public officers before and the period of representation because secrecy comes before stealing. That the refusal of defendant to publish assets of public officers is far more injustice than privacy invasion.

He also submitted that under the Code of Conduct Bureau and Tribunal Act 2004, the defendants are expected to receive and investigate disclosures made by public officers. And under FOIA 2011, the defendants are expected to release to third party the records of public officers. That assets declaration/disclosure is immediately a public officer takes oaths of office. That the legal duty to release assets declaration is on request as long as the record is in the possession of the defendants. He referred to paragraph 11 (1) of the 5<sup>th</sup> schedule CFRN 1999.

Counsel further submitted that the information filed in the asset form is under the privacy rule because it is strictly confidential but that the information becomes a public document once it is sworn to in court and filed with the 1<sup>st</sup> defendant. That the combined effect of S.3 of the CCB and Tribunal Act and S. 9 (2) of the FOIA made every citizen to be entitled to become a watch dog rather than leaving the cumbersome task at the mercy of the defendant. That privacy rule in a democratic setting is unacceptable and the uppermost standard is an open register. That a public officer is in a public glare even if the information required is a large amount of intimate details, it should be disclosed because it

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explains transparency. He referred to paragraphs 12, 13 and 17 of the supporting affidavit.

Furthermore, Learned Counsel submitted that the right to information is a necessary ingredient of participatory democracy. That there is a symbiotic relationship between the right to information and the rights of democratic participation and that they are organically integrated. That the principle of political theory recognises the people as the repository of sovereignty. That participatory democracy without access to information by the people is hypocritical. That access to public documents or information held by the defendants is a political right ensuring oversight over government and increasing the accountability of government. That a public officer is expected to sustain a high level of morality, accountability and responsibility which must be exercised within the milieu of rule of law. That access to assets declared by a public officer is an oversight responsibility of citizen over representatives. He referred to paragraphs 13, 14, 15 and 16 of his affidavit in support and submitted that free access to information of public interest promotes democratic values in public administration by enabling people to check the lawfulness and efficiency of the operations of government and its officials. That also by paragraph 8 of the supporting affidavit, the complexity of the civil sphere is making the Plaintiff's crave for accurate data on public administration which cannot be effective unless public authorities as the first defendant is willing to disclose pertinent public information. He urged the court to so hold.

Counsel also submitted that the constitution makes it compulsory for the defendants to comply with the provisions of FOIA 2011 to promote transparency in governance. He referred to paragraph 3 (d) of the third schedule Part 1 CFRN

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