IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT COURT 2, IKPOBA HILL, BENIN CITY
ON FRIDAY THE 4TH DAY OF NOVEMBER, 2016
BEFORE HISLORDSHIP 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 16th August, 2015 and filed on 19th 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 1st 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

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

The foregoing processes were served on the 1st and 2nd 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 3rd November 2015 was served on the 5th November 2015 and another dated 19th February 2016 was served on the 24th February 2016 on the 1st and 2nd 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.

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 N0 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 3rd 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

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

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 (5th Cir.1979).***

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 3rd and 5th 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 5th 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 1st 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

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***

1999. He submitted that the word, *"any law relating thereto"* in that paragraph simply refers to FOIA 2011. That the primary purpose of FOIA 2011 is to make available to public, information concerning records in public custody and this is to enhance a smooth disclosure of information to the requesting public by the defendants. He referred to paragraphs 14 and 18 (a) of the supporting affidavit.

Finally, on the 3rd issue, whether the Plaintiff has established locus standi in the suit, counsel submitted that assets declaration is a public exercise of solemn affirmation of honesty by a public officer to the defendants. He referred to paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 21 of the supporting affidavit and submitted that the factors which justify access to the records with the defendants are that the defendants have extra ordinary sets of responsibilities which are accompanied by public expectations, that access to records in the custody of the defendant will breathe down the incidence of corruption in Nigeria and most importantly that the mandate of the defendants complements the national goal of government in search for transparency, responsibility and accountability.

Counsel submitted further that the long title of the FOIA is to "make public records and information more freely available, provide for public access to public records and information".

That locus standi in this case is connected to the string of public interest of the Plaintiff that warrants recognition and protection. He submitted also that in a modern democracy, a significant part of the totality of public information a citizen requires is in the hand of the state. That the defendants must be subject to a general obligation to make records in its custody available to the Plaintiff. He referred to the case of *Gupta V Union of India (1982) AIR (SC) 149 at 232*

paragraph 66 at 80 and submitted that placing privacy "veil" on public records with the defendants is prone to instigate violation of morality required for good leadership. That an ethical agency that is comfortable in secrecy cannot lay claim to decency.

Counsel finally referred to the case of ***Ladejobi V Oguntayo (2004) 18 NWLR (pt. 904) 149 at 173 paragraphs G-H.*** He submitted that the applicant has shown its locus standi in paragraph 3 of the supporting affidavit. That the Plaintiff's power to promote rule of law is safe guarded in section 6 (6)b CFRN. He submitted that where the court conceives that a Plaintiff is somehow connected to a dispute in which he feels that it should exercise his right of access to court to protect his own interest or group interest, such plaintiff should not be shut out as far as it can be discerned from his pleadings that he has a protectable interest of some sort.

Counsel concluded his submission by posing a question that, for how long shall the defendants pamper privacy interest against public accountability of the requesting plaintiff? He submitted that not after today.

As I stated earlier in this ruling the defendants did not file any response to the plaintiff's affidavit neither were they represented throughout the hearing despite the fact that the plaintiff's processes were served on them. This court also caused hearing notices to be issued and served on the two defendants, at different times to give them notice of the hearing of the case, yet they took no step to defend the suit thereby denying the court the benefit of their position on the Plaintiff's questions and submissions. Nevertheless, this case will be decided on its own merit but solely on the Plaintiffs arguments and submissions.

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For the purposes of guidance, I have formulated three issues to be decided to resolve the questions raised by the Plaintiff.

(1) Whether this court has the requisite jurisdiction to entertain this suit.

(2) Whether the Plaintiff has the locus standi to present the suit

(3) Whether the court can grant the prayers sought by the plaintiff in this suit.

Because of its fundamental nature as well as its inter relationship with the issue or jurisdiction, I shall decide, first, the issue of locus standi to determine whether the plaintiff have the necessary proprietary interest or right to present the suit in the first place.

If the court hold that the plaintiffs have locus standi to present the case, then I will proceed to issue no 2, that is, jurisdiction. But if I come to the conclusion that the Plaintiff's lack locus standi to present the case, there will be no need to proceed further as the absence of locus standi will impede on the court's jurisdiction to determine the case.

Locus standi or standing to sue is the legal right of a party to an action to be heard in litigation before a court of law or tribunal. A person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed. See ***Adesokan V Adegorolu (1991) [illegible] (pt. 179) 293 at 307 paragraph B per Akpabio JCA; Olagunju V Yahay[illegible] NWLR (pt. 542) 501 CA; Okafor V Asoh (1999)3 NWLR (pt. 593) 35 [illegible] V AG. Rivers State (1999)3 NWLR (pt. 593) 82 CA; Ogunmokun V Mil[illegible] Administrator of Osun State (1999) 3 NWLR (pt. 594) 261 CA; Ibrahim V INEC [illegible] NWLR (pt.614) 334 CA.***

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As a general rule, a person has locus standi in a given situation if it is possible for such a person to show that the issue at hand causes him harm and that an action undertaken by the court could redress that harm. In ***Alofoje V Federal Housing Authority & 2 Ors (1996) 6 NWLR 559,*** the Court of Appeal held that where an appellant have no legal capacity or standing to institute the action, the court will have no jurisdiction to adjudicate in the matter. See also the case of: ***Gombe V PW Nig Ltd (1995) 6 NWLR (pt. 402) 402 at 567 paragraphs F-G***

In R V Paddington Valuation, Ex Parte Peachey Property Corporation Ltd (1966) 1 QB 380. Lord Denning (MR) said that the Court will not listen, of course, to a mere busy body who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done.

In A. G. Akwa Ibom State V Essien (2004) 7 NWLR (pt. 872) 288, the court of Appeal held:

> ***"It is trite that for a litigant to invoke the judicial power of the court in the realm of public law, he must show sufficient interest or threat of injury he has or will suffer from the infringement complained of. This interest or injury test is the yardstick in determining the question of the locus standi of a complaint and it is to be determined in the light of the facts or special circumstances of each case"*** See also ***Akinnubi V Akinnubi (1997) 2 NWLR (pt.486)144 S.C***

As I said earlier, in this ruling, it is pertinent to note that locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought. Thus where there is

no locus standi to file an action in the first place, the court cannot properly assume jurisdiction to entertain the suit. See ***Waziri V Danboyi (1999) 4 NWLR (pt.598)239 CA.***

A. G. Akwa Ibom State V Essien (2004) 7 NWLR (pt.872) 288 CA

Where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the court lacks the jurisdiction to entertain it. See

Ejikeme V Amaechi (1998) 3 NWLR (pt.542)456 CA

Ogunmokun V Military Admin of Osun State (1999) 3 NWLR (pt. 594) CA

Ayoda V Baruwa (1999) 11 NWLR (pt. 628) 595.

I have examined carefully the plaintiff's affidavit to be able to establish the plaintiff's interest in the case and the harm or injury which this suit is sought to redress.

It is also trite that in an application to determine whether a claimant has locus standi or not, the judge is bound to confine himself within the four walls of the writ of summons/statement of claim before him and no more as these are matters of laws. See: ***Adesokan V Adegorolu (1999) 3 NWLR (pt. 179) 293 at 305–306 paragraphs H –B per Akpabio JCA; A. G Federation V AG Abia (2001) 11 NWLR (pt. 725) 689 SC at 742, paragraph A per Wali JSC.***

Since the plaintiff commenced the suit by originating summons, I can only look through the summons and the affidavit in support to determine whether the plaintiff has locus standi to present the suit.

In paragraph 3 of the affidavit in support, the plaintiff deposed as follows:

> ***"That the plaintiff is registered with the Corporate Affairs Commission to defend the interest of unemployed youths in Nigeria among other objectives".***

Also in paragraph 5, the Plaintiff deposed as follows:

> **"That one of the objectives of the plaintiff is to create an environment for empowerment of unemployed youths in the country."**

Although the Plaintiff attached to the affidavit the certificate of Incorporation of the Incorporated Trustees of Empowerment for Unemployed Youth Initiative, however, it did not attach its memorandum or constitution which could have allowed the court to glance into its objectives to see whether they include the power to present this suit or make the prayers sought in the summons. In the absence of that, I do not see how the foregoing objective give the Plaintiff power to seek the reliefs sought in this suit.

The importance of the Plaintiff having the requisite locus standi is further underlined by the provisions in sections 6(6)(b), 46 (1) and 272 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

For the avoidance of doubt, these sections are reproduced verbatim below:

(1) **S. 6 CFRN 1999 provides;**

The judicial powers vested in accordance with the foregoing provisions of this section -

(b) **Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person"**

(2) **S. 46 (1) CFRN 1999 provides'**

"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.

(3) S. 272 (1) CFRN 1999 provides;

"Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

What cut across from the foregoing three provisions of the constitution is the need for the existence of specific legal right or interest which is infringed or likely to be infringed before a plaintiff can present a suit. There is nowhere in the whole of the plaintiff's affidavit where it claim that its right is trampled upon, threatened or likely to be tramped.

The Plaintiff's Counsel in his arguments on this issue submitted that the factors that justify access to the records with the defendants are that the defendants have extra ordinary set of responsibilities which are accompanied by public expectation and that access to records in the custody of the defendant will breathe down the incidence of corruption in Nigeria.

The foregoing and other submissions of the plaintiff in respect of the issue are not and cannot be assumed or elevated to the important requirement of legal or civil right which the Plaintiff must necessarily have before he can bring action against the defendants.

This is because it is the law that locus standi or legal capacity to institute proceedings in a court of law is not dependent on the success or merits of a case; it is a condition precedent to a determination of a case on the merits. See ***Owodunni V Registered Trustees of C. C. C (2000) 6 SC (Part III) 60, A. G. Akwa Ibom State V Essien (2004) 7 NWLR (pt. 872) 288 CA.***

Furthermore, it has been held that where no question as to the civil rights and obligation of the Plaintiff is raised in the statement of claim for determination, the statement will be struck out. See **Thomas Olufosoye (1986) 1 NWLR 669 at 682 683**

The Plaintiff cited the case of ***Ladejobi V Oguntayo (2004) 18 NWLR (Pt. 904) at 173 paragraphs G –H*** in support of their case but it is my view that, that case does not support the Plaintiffs' case. This is because the issue in Ladejobi's case is in respect of Chieftaincy title, that is, the locus standi of a family or ruling house in Chieftaincy matter and the right of a family member to sue in representative capacity to protect family interest in property or Chieftaincy title. In that case the Supreme Court per Pat Acholonu JSC; sounded a word caution that where the court conceives that a proponent of a cause is somehow connected to dispute in which he feels that he should exercise his right of access to the court to protect his own interest or indeed group interest, he should not be shut **out as long as it** can be discerned from the pleadings .

Furthermore, in ***Guda V Kita (1999) 12 NWLR (pt. 629) 21,*** the Court of Appeal held that a plaintiff can only seek redress in a court of law if he has interest which the law regards as sufficient. The term ***"Sufficient interest"*** could however be determined in the light of the facts and circumstances of each case.

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I have examined the plaintiff's affidavit and submissions in this case and could not found therein how on where their personal or peculiar interest will be affected by the prayer sought in this case.

It is my view that, from the totality of his case, the Plaintiff did not establish any particular interest in the subject matter of the dispute.

The position of the law is that the burden is on the plaintiff to prove that he has the locus standi to commence an action and failure to discharge the burden, the action must fail.

Contract Resources (Nig.) Ltd V Wende (1998) 5 NWLR (pt.549) 243 (CA)

Ezechigbo V Gov of Anambra State (1999) 9 NWLR (pt. 619)386 CA

From the foregoing analysis it is also my considered view that the plaintiff has failed to discharge the burden of proving their interest in this case.

In that circumstance what is the nature of the order the court can make. The Supreme Court answer this question in the case of ***Emezi V Osuagwu & Ors (2005) LPELR – 1130 (SC) per Akinton JSC (P21 paragraphs A – D*** where it held as follows.

> ***"It follows therefore that when a plaintiff has been found not to have the standing to sue, the question whether other issues in the case had been properly decided or not does not arise. This is because the trial court has no jurisdiction to entertain the claim. The correct position of the law therefore is that where a plaintiff is held to lack the locus standi to maintain his action, as I have found in this case, the finding goes to the jurisdiction of the court and denies its jurisdiction to determine the action.***

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> ***The proper order to be made in such a situation therefore is to strike out the claim. See Oloriode V Oyebi (1984) 1SCNLR 390; Thomas V Olufosoye (1986) 1 NWLR (pt. 18) 669; Momoh & Anor V Olofu and Madukolu V Nkemdilim (1962) 1 ALL NLR 587 (1962) 2 SCNLR 341***

Earlier, in **Adesokan V Adetunji, (1994) 6 SCNJI (Pt. 1) 123 at 146,** the Supreme Court, adopting the decision in **Oloriode V Oyebi,** held that the proper consequential order when the Plaintiff is found not to have locus standi is to strike out the suit. It held thus:

> **"At whatever stage, the finding is made that the Plaintiff lacks locus standi to maintain the action, the jurisdiction of the Court to entertain the action is affected and the course of action open is to put an end to it by striking it out "**

I humbly adopt the above reasoning of the Supreme Court and hereby strike out this case for lack of jurisdiction.

O. O. TOKODE
JUDGE
4/11/2016

<u>Counsel Appearance</u>

President Aigbokhan for the Plaintiff.

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