

**THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE LAGOS JUDICIAL DIVISION**  
**HOLDEN AT LAGOS**

**ON FRIDAY THE 1<sup>ST</sup> DAY OF MAY, 2018 BEFORE THE**  
**HONOURABLE JUSTICE A.O. FAJI**  
**JUDGE**

**BETWEEN:**

**SUIT NO: FHC/L/CS/685/17**

<b>OWEI AYIBATONYE</b>	<b>--</b>	<b>1<sup>ST</sup> PLAINTIFF</b>
<b>OWEI LILLY AMAIBI</b>	<b>--</b>	<b>2<sup>ND</sup> PLAINTIFF</b>
<b>OWEI PEARL PAGABIE</b>	<b>--</b>	<b>3<sup>RD</sup> PLAINTIFF</b>
<b>OWEI CASSANDRA</b>	<b>--</b>	<b>4<sup>TH</sup> PLAINTIFF</b>

**AND**

<b>THE NIGERIAN STOCK EXCHANGE</b>	<b>--</b>	<b>DEFENDANT</b>
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**JUDGMENT**

This Judgment relates to an Originating Summons filed on 28/4/17 seeking the determination of the following question:

1. Whether or not the Defendant is a Public Institution within the meaning and intendment of Section 2(7) of the Freedom of Information Act 2011?

The following reliefs are being sought:

1. **A DECLARATION** that, by virtue of Section 2(7) of the Freedom of Information Act 2011, the Defendant is a Public Institution within the meaning and intendment of the Freedom of Information Act 2011.

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2. ***AN ORDER*** directing the Defendant to deliver a copy of (a) the Inspection Reports(s) resulting from and being a product of the recent Special Examination carried out by the Defendant on Partnership Securities Limited and Partnership Investment Company Plc (the "Suspended Companies") between October 2016 and April 2017; (b) the report of any special or routine examination carried out on any of Suspended Companies by the Defendant between the January 2008 and September 2016 (c) documents/records showing the securities/shares currently in the portfolio of or owned by the Suspended Companies to the Plaintiffs through their counsel herein appearing, within 24 hours from the date of delivery of judgment in the instant suit.

There is a 5 paragraph affidavit in support sworn to by Olubunmi Abayomi- Olakunle Esq. There are 6 exhibits attached.

The originating summons is pursuant to Order 3 Rules 6 and 9 of the Federal High Court Civil Procedure Rules 2009 and under the inherent jurisdiction of the court.

Counsel submitted that the Defendant is a Public Institution within the intendment of the Freedom of Information (FOI) Act as it provides regulatory services in the nature of public service or a public function and ought to be declared a public institution within the meaning and intendment of the Freedom of Information Act.

By virtue of Section 13(c)(g)(i) and k of the Investment and Securities Act (ISA) the Securities and Exchange Commission being the agency of government for regulating the stock market, by issuing



Defendant with a licence to operate a Stock Exchange, has made Defendant a delegatee of the regulatory powers of SEC and is thus a Public Institution.

The Defendant uses public interest standards acts statutorily in the best interests of the public. The Freedom of Information Act has the intendment of ensuring that members of the public have access to information that is of sufficient public interest. This is regardless of the nature of the persons in custody of the information.

Counsel referred to Section 2(7) of the Freedom of Information Act on the meaning of Public Institution which includes private companies utilizing public funds, providing public services or performing public function. Counsel submitted that the Defendant is a private company that provides public services as well as public functions.

On the regulatory and thus public institution status of Defendant, counsel referred to Sections 29, 32 and 33 of the Investment and Securities Act (ISA) and Rules 198 and 199 Securities and Exchange Commission (SEC) Rule 2013. The Defendant is a self-regulatory origination (SRO) as defined by the Investment and Securities Act and literature from International Council of Securities Associations, ICSA and the International Organization of Securities Commission (IOSCO). Counsel also referred to Sections 29, 32, 33 ISA which empower a Stock Exchange to conduct inquires and audit of its members. The Sec Rules also authorize Defendant to enforce rules, investigate and take disciplinary action. It can delist issues in respect of both its dealing members (private companies) as well as publicly listed companies. It exercises control over public companies by regulating use of the

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company's website, board meetings, general meeting and listing of securities of public companies. The Defendant has published a rule book and taken many enforcement actions in order to ensure market integrity, efficiency and investor protection.

These regulatory powers are to serve a public purpose. Where a private entity bears such rule making, enforcement and disciplinary powers over other entities both public and private companies, such an entity must be held to provide a public service or a public function within the intendment of the Investment and Securities Act.

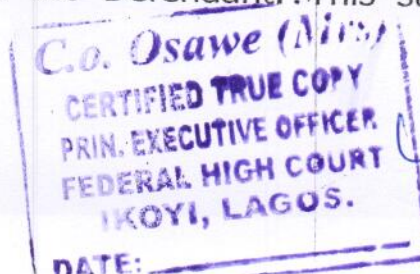
The Defendant also uses a public interest standard in carrying out its functions such as:

- Granting approval to register a securities exchange or capital trade point
- Refusing to list securities of an overseas issuer
- Delisting a company from the stock Exchange
- Assessing the suitability of chief executive and principal officers of the exchange

This is pursuant to Section 29(3) ISA; Rules 10.2 and 13.25 of the NSE Rule book and rule 183(2) SEC Rules.

Public interest is defined as the general welfare of the public that warrants recognition and protection OR something in which the public as a whole has an interest ie. an interest that justifies governmental regulation.

Rule 183(2) Securities and Exchange Commission Rules also imposes a statutory best interest obligation on the Defendant. This standard



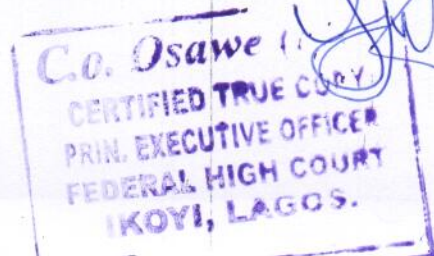
enures to the benefit of the investing public. The Defendant is thus expected at all times to do what is in the greatest benefit of the investing public and put the interest of the investing public above its own commercial interest and also in a conflict situation. This statutory best interest obligation is on Defendant in recognition of its public service or function.

Counsel urged the court to declare Defendant as a public institution within the intendment of Freedom of Information Act (FOIA) and grant the reliefs sought.

A Counter Affidavit of 9 paragraphs was deposed to by Kenechukwu Chukwujekwu Esq of Counsel. There are 7 exhibits attached. A written address was also filed.

Counsel urged the court to disregard Plaintiff's arguments on the SEC Rules, ISA, ICSA report as they have no bearing on the interpretation of Section 2(7) of the Freedom of Information Act- in particular the arguments in paragraphs 3(VII)-XXVII) of the Plaintiff's address.

Counsel submitted further that the burden of proof in this case is on the Plaintiff based on Plaintiff's processes. Since relief 2 is dependent on relief 1, Plaintiff must establish relief 1 to succeed in this action. Relief 1 is a declaratory relief. Plaintiff must succeed on the strength of his own case and not the weakness of the Defence. The burden is heavy and cannot be discharged even on the basis of an admission by the Defendant.



The court is to construe the statutory provision put up for interpretation in its ordinary sense and meaning so as to bring out the intention of the legislature from the words used in the enactment where they are clear and unambiguous. The court is not to pronounce on the wisdom or otherwise of the Act but only to determine its meaning. This literal rule is sacrosanct save where it would defeat the intent of the legislature. Counsel relied on:

***AGWUNA VS AG OF THE FEDERATION (1995) LPELR-258(SC).***

The Freedom of Information Act (FOIA) is applicable to institutions recognized as public institutions Section 2(7) FOIA defines public institution to include private companies utilizing public funds, providing public function. The determining factor is that the private company utilizes public funds.

The 2 other considerations come in thereafter. The Section is disjunctive. Private companies utilizing public funds can only perform public functions or service, otherwise that would be a crime and not intended by the legislature. The word 'OR' applies to public services and public functions as alternatives to each other. The private company therefore utilizes public funds to provide either service or perform public functions. The law cannot intend that a private company carry out public functions without utilizing public funds. Only private charitable organizations or Non-Governmental Organizations are in this category. The law could not have intended to categorise such bodies as public institutions.

Counsel urged the court to discountenance Plaintiffs' argument on this score.

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Counsel submitted further that the Defendant is not a public institution as there is no indication that it utilizes public funds. There is no definition of 'public funds' in any legislation. The Constitution of the Federal Republic of Nigeria only defines public service of the federation to mean the service of the federation in respect of the government of the federation and includes service in certain specified bodies as well as staff of any company or enterprise in which the government of the federation or its agency owns controlling shares or interest. See Section 318(g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Service in the Defendant does not fall within this definition. Section 18 of the Interpretation Act defines public officer within the context of the constitution. The constitutional definition of public service cannot be expanded as held in ***OJUKWU VS YAR'ADUA & ORS (2009) LPELR-2403 (SC)***. The court was urged to hold that Defendant is not a public institution and ignore reference to the regulatory functions of Defendant or its affiliation to foreign associations in order to determine its public status under the Freedom of Information Act.

Counsel argued in the alternative should the court find that Defendant is a public institution.

It is not every request for information that can be granted under the Freedom of Information Act. Counsel referred to Sections 11, 12, 14-17 and 19 of the Freedom of Information Act. The Act exempts the personal and financial information of individuals and third parties. This was made known to Plaintiff by letter of 14/3/17- Exhibit NSE<sup>5</sup>. Under Section 14(1) the public institution must deny the access. On no account

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must personal information be disclosed. Section 15(1) also employs the word 'shall' which is synonymous with 'must'-mandatory. There are exceptions as laid down by **AGIM JCA in UGWU & ORS VS PDP & ORS (2013) LPELR-21356(CA) 50-51**. The exceptions do not however apply. Private information can only be disclosed with the consent of the individual or where the report is itself publicly available. Neither is the case here. The report is also with SEC whose directives are being awaited by Defendant as per paragraph 7(j) and 8(b) of the Counter Affidavit. There is no evidence before the court that the individuals involved have given their consent.

The Plaintiff has not made out a case as the Defendant is a private institution, with no record of utilization of public funds or provision of public services. There is no evidence to substantiate paragraph 3(Z) and 3(aa) of the supporting affidavit. Relief 2 can only be granted if relief 1 succeeds. Where a principal relief fails a consequential order has no basis. In any event, relief 2 falls under the category of information exempted under Sections 14 and 15 of the Freedom of Information Act. The Defendant is not under any obligation to release the information.

Finally, counsel submitted that the suit is an academic exercise, brought in bad faith-with a sinister motive to mislead or deceive. Counsel referred to paragraphs 5(a) 7(i)(j)(k) and 8(b) (e) of the Counter Affidavit. The Defendant did not generate the report in issue and is itself subject to the regulatory powers of SEC. The investigation was carried out by SEC to whom the Plaintiffs' demands should have been directed. The instant suit is thus an academic exercise as it does not require an adjudication because it is unnecessary to the case in

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hand. It does not affect the live issues. The court only resolve live not academic issues. Counsel referred to ***DANIEL VS INEC & ORS (2015) LPELR-2456(SC).***

The reports are already in the public domain and acted upon by SEC. it is clear that the report is available to the public through SEC. By Exhibit NSE 6, Plaintiffs need the report to enable them recover their money from the promoters and management of partnership securities and partnership company. They however chose to apply for same from Defendant rather than a public institution that has all the capacity to provide them with it. This action is thus in bad faith and should be dismissed.

Counsel urged the court to dismiss the suit.

A Further Affidavit was deposed to by Kingsley IHEAKARAM to exhibit the NSE Rules and a Certified True Copy of the Target examination report which were inadvertently omitted from the Counter Affidavit. The 2 documents are exhibits NSE1A and NSE2A. No address was filed. Counsel submitted orally that issues were not joined on paragraph 6(a) to (g) of the Counter Affidavit as regards partnership Investment Company Ltd. Defendants cannot therefore be compelled as regards that company.

Plaintiffs filed a reply on points of law on 31/10/17.

Counsel submitted that the issue in this matter has not been decided by any court in Nigeria before as it is novel in so far as it relates to entities like the Defendant.

  
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Counsel submitted that contrary to Defendants' submissions, Plaintiff's paragraph 3 (VII)-(XXVII) constitute the crux of Plaintiffs' case. On the onus of proof, it is Plaintiffs' position that Section 1 Freedom of Information Act has been satisfied.

On the interpretation of Section 2(7) of the Freedom of Information Act (FOIA) the phrase private companies utilizing public funds, providing public services or performing public function being in the present continuous tense describes an on-going action occurring at the time of speaking. Different undertakings are therefore envisaged. The word OR after utilizing public funds is disjunctive, creating an alternative. The comma after 'public funds' is to separate the different items in the list. It would seem that Defendants' interpretation would read: 'utilising public funds for providing public services or performing public function'.

That is not however borne out by a literal Interpretation of the Section.

Counsel submitted that it is possible for a private company to perform a public function by using its own funds. It can thus perform a public service without utilizing public funds.

It can also use public funds to perform a public function. The Act therefore applies not only to private entities that utilize public funds but also to private companies that provide a public function. The public is thus entitled to information from entities that receive public funds and those that may not have received public funds but have been tasked, by contract, statute or other legal means with the obligation to perform a public function or service.

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Whether government pays a contractor to build a road or not, that contract should be a subject of public record and public interest.

Counsel referred to the explanatory note and long title to the Freedom of Information Act and submitted that a purposive interpretation of Section 2(7) FOIA shows that the Act applies to private companies which utilize public funds and to private companies who may not be utilizing funds but are saddled with a contractual, statutory or other responsibility to perform a public function or perform a public service.

On the submission that because Defendant does not utilize public funds and the Federal Government does not own controlling shares in it then it does not come within the purview of the Freedom of Information Act, Counsel submitted that a company in which the Federal Government or its agency owns controlling shares or interest is only one of the entities that the Freedom of Information Act applies to. The Defendants' functions or services it provides are of a public nature as shown in the relevant Sections of the Investment and Securities Act and SEC Rules 2013. Global best practices in Stock Exchanges and securities regulations are also relevant to affirm that Defendant carries out or performs public services which are of public interest. It is common ground as per paragraph 5(c) of the Counter Affidavit that Defendant is a member of the said international bodies.

On disclosure of personal or third party information under Section 14 Freedom of Information Act counsel referred to Section 14(2) and submitted that there is public interest in the said disclosure and it

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outweighs the protection of the privacy of the suspended companies. The Plaintiffs merely requested for:

- a. The Inspection Report(s) resulting from and being a product of the recent Special Examination carried out by the Defendant on Partnership Securities Limited and Partnership Investment Company Plc (the "Suspended Companies") between October 2016 and April 2017;
- b. The report of any special or routine examination carried out on any of Suspended Companies by the Defendant between the January 2008 and September 2016
- c. Documents/records showing the securities/shares currently in the portfolio of or owned by the Suspended Companies to the Plaintiffs through their counsel herein appearing.

The Regulator- Securities and Exchange Commission- has made available one of the reports exhibited as Exhibit NSE1. It is thus a matter of concern that if the regulator can release the said report NSE will refuse to release similar investigation/examination reports conducted by the Defendant on the said companies in the past.

Counsel referred to NSE 2 which is the decision of the Administrative Proceedings Committee of Securities and Exchange Commission on the fraudulent activities of the suspended companies in which findings were made on the effects of such activities on confidence in the capital market, the registration certificates of the companies cancelled, fines imposed and promoters banned for life from capital market activities and directorship of public companies.



The public interest in this disclosure therefore far outweighs the protection of the privacy of the suspended companies. There is no *personal information requiring protection which has not been disclosed* as per Exhibit NSE 2.

On onus of proof, counsel submitted that Plaintiff did not allege that Defendant utilizes public funds. The matter is by Originating Summons for the interpretation of Section 2(7) of the Freedom of Information Act and its applicability to Defendant. Plaintiffs need not demonstrate any Specific interest or plead any facts. There is also unison that the suspended companies perpetrated a massive capital market fraud as per Exhibits NSE 1 and NSE 2. This fraud affected the investments of many Nigerians- Plaintiffs being among such.

On bad faith, counsel submitted that Plaintiff, like other Nigerians have lost investments by reason of the fraud herein, they requested for the report of the examination carried out, the Defendant refused and still refuses to release the report of the examination carried out jointly with the Securities and Exchange Commission. The Defendant has now attached the same report as NSE1. Even though the decision in NSE 2 and the content of NSE 1 are now public, defendant still refused to release the report of previous examination carried out on the suspended companies and continues to shield them. This is clear evidence of bad faith on the part of the Defendant.

In his oral address, Plaintiffs' counsel submitted that Defendant has powers over partnership securities limited which with partnership Investment Company Plc are owned by the same person. This seems to

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portfolio of or owned by the Suspended Companies to the Plaintiffs through their counsel herein appearing, within 24 hours from the date of delivery of judgment in the instant suit.

The declaratory relief seems tied to the question for determination. If the answer is No, the declaratory relief does not lie. The 2<sup>nd</sup> relief is itself dependent on the declaratory relief.

The crux of the question for determination is whether or not Plaintiff is a public institution under Section 2(7) of the Freedom of Information Act which provides:

*'Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.'*

It would seem that in a declaratory action, a Plaintiff succeeds on the strength of his case and not on the weakness of the defence.

Relief 1 alone is declaratory and it would seem merely consequential to the answer to the question for determination. It therefore seems that the issue is one of interpretation of statutes. It is also not in issue that Defendant does not use public funds for its activities. That much is clear from paragraph 3(dd) of Plaintiffs' affidavit in support and exhibit 6 thereto.

The contention is as to the phrase:

'and private companies utilizing public funds, providing public services or performing public functions'

The focus seems to be on the punctuation mark to wit: comma and the word OR. The word OR is prima facie disjunctive. See **ARUBO VS AIYELERU (1993)3 NWLR (PART 280)126 at 141-142; EDEMINAM VS UKIME (2007) ALL FWLR (PART 396) 763 at 768.**

The word bears a disjunctive meaning in an enactment separating the provision preceding it from the provision coming after it. It gives an alternative or gives a choice of one among two or more things. See **ATIKU VS YAR'ADUA (2008) 1 SC. (PART 11) 77.**

The punctuation mark-comma separates different items in a list. See: **NNAMDI AZIKIWE UNIVERSITY VS NWOKOYE & ANOR (2018) LPELR- 43961 (CA).**

It would therefore seem that the phrase in issue means there are 3 elements:

- a- A private company utilizing public funds: OR
- b- A private company providing public services Or
- c- A private company performing public functions.

Since Defendant does not utilize public funds, why is it not subject to the Freedom of Information Act? Defendants' letter of 14/3/17 states:


*'As you may well be aware, The Exchange is a private company duly registered under the Companies and Allied Matters Act, Laws of the Federation*

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*of Nigeria, 2004 and carrying on its business under the relevant laws of Nigeria. The Exchange as an entity and by extension its business is not subject to or regulated by the provisions of the FOIA upon which your request is predicated. On this ground alone, we decline to accede to your request for the supply of the afore-specified information.'*

The only reason given is that it is a private company. There is no suggestion that it uses public funds. Plaintiff has referred to the Investment and Securities Act (ISA) in seeking to show Defendants' public functions. Defendants say the ISA is irrelevant. It would seem that since there is no contention that Defendant is a Stock Exchange appointed under Nigerian Law, reference should be made to the law setting it up. The Securities and Exchange Commission (SEC) has the power to set up Securities Exchanges like Defendant under Section 13(b) ISA. It also regulates the said exchange under Section 13(g). In granting approval to register an exchange, the Securities and Exchange Commission shall ensure that the interest of the public will be served by the approval. The Exchange thus exists to serve the interest of the public. That is a public function. See Section 29(3) ISA. Such a registration can be revoked if the body corporate is operating in a manner detrimental to the interests of investors and the public. It would also seem that Defendant falls within the definition of securities exchange in Section 315 ISA. See also Section 30(1) Investment and Securities Act.

  
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The Defendant was thus established to carry out its activities in the interest of investors and the public. It would also seem that investors are more often than not, members of the public.

On a literal interpretation of Section 2(7) Freedom of Information Act therefore, it seems to me and I hold that the Defendant is a public institution and therefore subject to the Freedom of Information Act.

I therefore answer the question for determination in the affirmative and grant the declaration in relief 1.

Relief 2 seeks an order directing Defendant to deliver a copy of each of the following:

1. The Inspection Report(s) resulting from and being a product of the recent special examination carried out by the Defendant on Partnership Securities limited (PSL) and Partnership Investment company Plc (PICO) (the suspended companies) between October 2016 and April 2017.
2. The report of any special or routine examination carried out on any of the suspended companies by the Defendant between January 2008 and September 2016 and
3. Documents/records showing the securities/shares currently in the portfolio of or owned by the suspended companies to the Plaintiffs through their counsel herein appearing, within 24 hours from the date of delivery of judgment in the instant suit.

There are 2 companies involved to wit: Partnership Securities Limited (PSL) and Partnership Investment company Plc (PICO). By Plaintiffs'


  
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exhibit 6, it would appear that the information, in so far as it relates to PICO, is not within the domain of Defendant since the product in issue, the Partnership securities Deposit Account (PSDA)-was issued by PICO which is not a dealing member of Defendant.

Furthermore, the product (PSDA) is not regulated by Defendant. Plaintiff's reaction is that since PICO and PSL are jointly owned by the same person then the Defendant ought to produce the information.

It is clear that Plaintiff has not disputed Defendants' position that since it has no supervisory role as regards PICO then it cannot provide information about PICO, since it obviously does not have such information in its capacity as a stock exchange. I therefore find that even though Defendant is a public institution, it cannot produce what it does not have. In so far as PICO is therefore concerned, the request for information cannot be granted and is therefore refused in so far as the items sought are concerned.

Item 3 requires attention at this point. The Defendant has said that it does not keep documents showing all securities currently owned by or in the portfolio of PSL being a dealing member firm. The Plaintiff has not shown that it does. There is an allusion that in view of Defendants relationship with Central Securities Clearing System (CSCS) then it should have access to such information. This seems to show that any such information is in the custody of the CSCS to which such a request should be directed. The request relates to documents/records showing securities/shares currently in the portfolio of or owned by PSL and PICO. The Plaintiff not having shown that such information is in the custody of Defendant by disputing the Defendants' position by way of contrary

  
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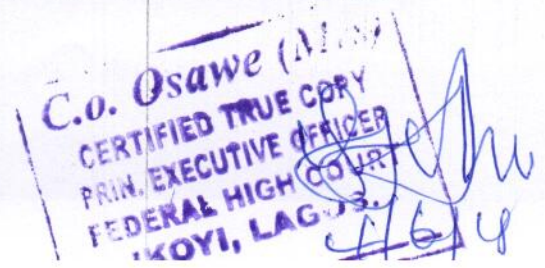
evidence, cannot show entitlement to such information. The request for such information is hereby refused.

Item number 2 is as regards special examination carried out by Defendant on the two companies (now only PSL) between October 2016 and April 2017. The Plaintiff in the affidavit in support deposed that news of PSL's fraudulent activities broke in 2017 and that PSL & Securities Exchange Commission confirmed this publicly. The Defendant then conducted a special examination and provided an investigation report indicting PICO, PSL and their promoters. A request was therefore made for.

- a. a copy of the investigation report which followed the special examination conducted by Defendant on the said companies
- b. a copy of *any* special examination carried out by the Defendant on any of the suspended companies.

It would appear that even though defendant has no role in the PSDA of PICO, the complaint about PSL's miss-appropriation of the shares of Arnold Ekpe made Defendant to formally notify Securities and Exchange Commission of same.

Defendant also requested of Securities and Exchange Commission a joint examination of PICO and PSL for the purpose of determining the complaints against them. Securities and Exchange Commission then set up a target examination Committee on or about November 2016 made up of officials of NSE (for technical expertise). That examination was concluded and a report submitted to Securities and Exchange Commission. Administrative proceedings against PSL also commenced



before Securities and Exchange Commission's administrative proceedings committee. The report of the target examination is available to the public. Same was exhibited.

Securities and Exchange Commission has also concluded proceedings at the APC and a report dated 13/09/17 was issued. The Target examination report and the Securities and Exchange Commission APC report are exhibits NSE 1 and NSE 2.

It would seem that exhibit NSE 1 falls within item 1 of the 2<sup>nd</sup> Relief. NSE 2 does not however fall within item 2 of relief 2- having been published on 13/09/17 (after April 2017). NSE 1 shows that the examination was between 7<sup>th</sup> and 11<sup>th</sup> November 2016.

NSE 1 is described in the Counter Affidavit as the report of the Securities and Exchange Commission appointed Target examination committee. Even though Securities and Exchange Commission appointed, it would appear that the examination was conducted by defendant and Securities and Exchange Commission. The report bears on each page the logo of both Defendant and Securities and Exchange Commission. I would think that it is a joint report probably compiled by Securities and Exchange Commission and in the custody of Securities and Exchange Commission as the regulator. Hence the application for same by Defendant in paragraph 8(j)- Counter Affidavit.

It would also appear that as the date of filing of this action- 28/4/17- NSE 2 was not in existence, could not have formed the subject of the request and thus could not have been denied or granted by Defendant.

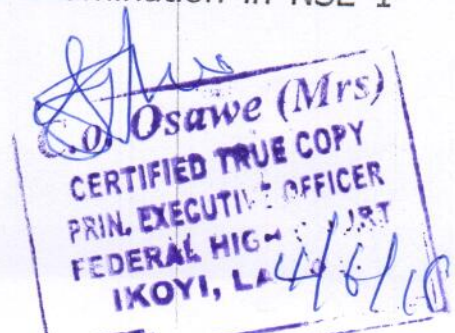
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The only document relevant to this action and the request is therefore NSE 1.

It also seems from Plaintiffs' exhibit 6 that NSE 1 is what was denied access to by Defendant in the said letter. It was in existence at that time having been carried out in November 2016. Exhibit 6 denied access to a joint inspection report. NSE 1 is an examination report conducted by both Defendant and Securities and Exchange Commission. It is thus a joint act- inspection or examination being synonymous.

The outstanding issue therefore is: was Defendant right in refusing access to NSE 1 on the ground that it contains personal and financial information regarding third parties that is the clients of PSL and PICO pursuant to Section 15(1) (a) of the Freedom of Information Act?

It would appear that the report- NSE1- revealed infractions of Securities and Exchange Commission rules and NSE rules as well as violations of the Investment and Securities Act. There was a recommendation that the matter be referred to Law Enforcement, PSL and its directors and sponsored members are to be suspended from carrying out capital market operations, persons linked with the Managing Director of PSL were recommended for questioning. There is also an appendix showing details of refunds of money and stocks to clients of PSL, their names and the value returned. It is note-worthy that the reason for the request was for Plaintiffs to use the information for recovery of their property from PSL and PICO. In the instant case, the sum involved is about N50 million. The NSE 1 showed an outstanding sum of N345, 495, 301.08 owed investors. The examination in NSE 1



had to do with a complaint of N1,237,245,095. It is clear from NSE 1 that members of the public were affected by the activities of PSL.

It may be argued that Defendant having exhibited NSE 1 (which was requested) and NSE 2 (which could not and was not requested) the Plaintiff should simply have discontinued the suit.

It would however seem that but for the litigation, Defendant would not have shown Plaintiff NSE 1.

In any event, since NSE 1 was available to the public, it is not clear why it has been suggested that producing it would affect the privacy of PSL clients. Event exhibit 6 did not state that the document was not in NSE's custody. It therefore seems that at the material time, the document (NSE1) was in the custody of NSE and could have been given to Plaintiff if NSE had no reason not to.

I will now examine the reason given, the remaining one being privacy of PSL clients. If the document is already in the public domain, one wonders why reference is being made to privacy.

The legal reason given in exhibit 6 however centres on Sections 14 and 15 of the Freedom of Information Act. Section 14 exempts personal information from being subject of an FOI request. If the information is exempted, the public institution must ie. **SHALL** deny such a request. The exempted information is stated in Section 14(1)(a)-(e). It reads:

- a. Files and personal information maintained with respect to clients, patients, residents, or other individuals receiving social, medical,

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educational, vocational, financial, supervisory or custodial care or services directly or indirectly from public institutions;

- 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. Files and personal information maintained with respect to any Applicant, registrant or licensee by any government or public institution cooperating with or engaged in professional or occupational registration, licensure or discipline;
- d. Information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise requested by the statute; and
- e. Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.

The information in NSE 1 as regards clients of PSL do not fall within the contemplation of Section 14 of the Freedom of Information Act.

There is further reference to Section 15(1)(a) of the freedom of Information Act for justification. Section 15(1)(a) reads:

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

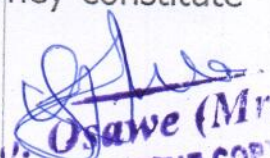
  
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- a. Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause harm to the interests of the third party provided that nothing contained in this subsection shall be construed as preventing a person or business from consenting to disclosure;

I do not see any trade secrets or commercial or financial information obtained from a person in business that is proprietary, privileged or confidential the disclosure of which may cause harm to third party interests. I actually think that disclosure of the information will protect not only third parties (ie clients of PSL) but also other people who are not aware of the steps taken with respect to PSL by NSE and Securities and Exchange Commission. Disclosure will protect the interest of the general public. In any event, having said the information is publicly available, the NSE is bound under Section 14(2)(b) of the freedom of Information Act to disclose same. After all, it is no longer a secret.

In any event, it is in the public interest to disclose the affairs of an entity that has done business with the public and is alleged to have acted against the interest of the public. I think the public interest herein outweighs the interest of PSL's clients. In any event, the information is not exempted under Section 14(1) of the Freedom of Information Act. I am also of the view that the disclosure is in the interest of those clients of PSL who have not been given value for their losses. They constitute 48.9% of unpaid clients as per NSE 1.

  
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In any event, Plaintiffs are also clients of PSL whose interest was not even noted before NSE 1 was done.

I do not therefore see anything academic in this matter. There is also no bad faith. The Plaintiffs clearly have a grievance even if not as much as claimed.

The instant action succeeds. Relief 1 is granted.

As regards relief 2, the court hereby directs Defendant to deliver a copy of NSE1 to the Plaintiffs through their counsel within 7 days from the date of this judgment.

HON. JUSTICE A.O. FAJANA  
JUDGE  
01/06/18

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