

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 10TH DAY OF MAY, 2023
BEFORE HIS LORDSHIP HON. JUSTICE J.K OMOTOSHO
(JUDGE)
SUIT NO:FHC/ABJ/CS/1386/2021

BETWEEN

INCORPORATED TRUSTEES OF MEDIA -
RIGHTS AGENDA

APPLICANT

AND

NATIONAL BROADCASTING COMMISSION-

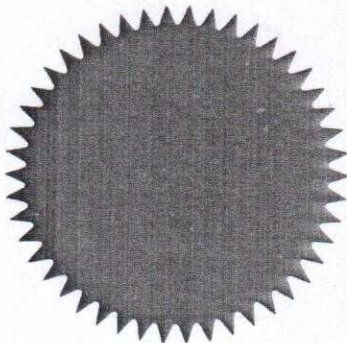
RESPONDENT

JUDGMENT ORDER

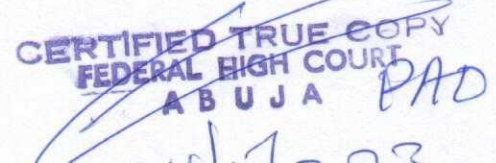
UPON this matter coming up today
the 10th day of May, 2023 for
Judgment.

AND AFTER hearing **Sunday**
Ikwulono Esq.- for the Applicant
Court having delivered its Judgment.

IT IS HEREBY ORDERED AS FOLLOWS:



HON. JUSTICE J.K. OMOTOSHO
JUDGE



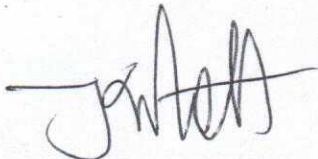
1. **THAT** all actions taken by the Respondent regarding this matter are hereby declared null and void.
2. **THAT** the sanctions procedure applied by the National Broadcasting Commission in imposing N500,000.00(Five Hundred thousand Naira) fines on each of the 45 broadcast stations (listed in the schedule to the statement of the Applicant on Friday, March 1, 2019 is a violation of the rules of natural justice and the right to fair hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004 in that the Nigerian Broadcasting Code, which created the alleged offences of which the broadcast stations were accused was written and adopted by the National Broadcasting Commission, and also gives powers to the said Commission to receive complaints of alleged breaches, investigate and adjudicate the



HON. JUSTICE J.K. OMOTOSHO
JUDGE

complaints, impose sanctions, including fines, and ultimately collect the fines, which the Commission uses for its own purposes.

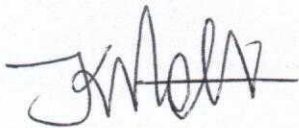
3. **THAT** the National Broadcasting Commission, not being a court of law, has no power or competence to impose fines on broadcast stations as punishment or penalties for the commission of an offence as the competence to establish that an offence has been committed and to impose criminal sanctions or penalties belongs to the courts.
4. **THAT** the Nigeria Broadcasting Code, being a subsidiary legislation that empowers an administrative body such as the National Broadcasting Commission, to enforce its provisions cannot confer judicial powers on the National Broadcasting Commission to impose criminal sanctions or penalties such as fines.
5. **THAT** the National Broadcasting Commission, not being the Nigerian Police or a law enforcement agency, has no power to conduct a criminal investigation or an investigation that could lead to the imposition of criminal



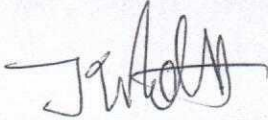
HON. JUSTICE J.K. OMOTOSHO
JUDGE

sanctions and accordingly, that the investigation purportedly conducted by the said Commission leading to the sanctioning of the 45 broadcast stations for alleged offences under the Nigeria Broadcasting Code is ultra vires, null and void.

6. **THAT** the sum of N500,000 (Five Hundred thousand Naira) fines purportedly imposed by the National Broadcasting Commission on each of the 45 broadcast stations on Friday, March 1, 2019 as punishment or sanctions for the alleged commission of various offences by each of the broadcast stations is unconstitutional, ultra vires, null and void.
7. **THAT AN ORDER** is hereby made setting aside the N500,000.00 (Five Hundred thousand Naira) fines purportedly imposed by the National Broadcasting Commission on each of the 45 broadcast stations on Friday, March 1, 2019.
8. **THAT AN ORDER** of Perpetual Injunction is hereby made restraining the Respondent, its servants, agents, privies, representatives or



HON. JUSTICE J.K. OMOTOSHO
JUDGE



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JUDGE

anyone acting for or on its behalf, from imposing fines on any of the broadcast stations or any other broadcast station in Nigeria for any alleged offence committed under the Nigerian Broadcasting Code.

ISSUED AT ABUJA under the seal of the Court and the hand of the presiding Judge this 10th day of May, 2023.

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BLESSING CHIBUZO-UGWU
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ABUJA P.A.O.

24/5/2023

Priscilla N.A

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 10TH DAY OF MAY, 2023
BEFORE HIS LORDSHIP HON. JUSTICE J.K OMOTOSHO
(JUDGE)
SUIT NO:FHC/ABJ/CS/1386/2021

BETWEEN

INCORPORATED TRUSTEES OF MEDIA - APPLICANT
RIGHTS AGENDA

AND

NATIONAL BROADCASTING COMMISSION- RESPONDENT

FEDERAL HIGH COURT
 ABUJA
 24 MAY 2023
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JUDGMENT

By an Originating Motion dated 9th November, 2021 but filed 10th November, 2021 the Applicant seeks the following reliefs:

1. A DECLARATION that the sanctions procedure applied by the National Broadcasting Commission in imposing N500,000.00(Five Hundred thousand Naira) fines on each of the 45 broadcast stations (listed in the schedule to the statement of the Applicant on Friday, March 1, 2019 is a violation of the rules of natural justice and the right to fair hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 7 of the African

Priscilla N.A
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Notes

Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004 in that the Nigerian Broadcasting Code, which created the alleged offences of which the broadcast stations were accused was written and adopted by the National Broadcasting Commission, and also gives powers to the said Commission to receive complaints of alleged breaches, investigate and adjudicate the complaints, impose sanctions, including fines, and ultimately collect the fines, which the Commission uses for its own purposes.

- 2. A DECLARATION that the National Broadcasting Commission, not being a court of law, has no power or competence to impose fines on broadcast stations as punishment or penalties for the commission of an offence as the competence to establish that an offence has been committed and to impose criminal sanctions or penalties belongs to the courts.
- 3. A DECLARATION that the Nigeria Broadcasting Code, being a subsidiary legislation that empowers an administrative body such as the National Broadcasting Commission, to enforce its provisions cannot confer judicial powers on the National Broadcasting Commission to impose criminal sanctions or penalties such as fines.

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4. A DECLARATION that the National Broadcasting Commission, not being the Nigerian Police or a law enforcement agency, has no power to conduct a criminal investigation or an investigation that could lead to the imposition of criminal sanctions and accordingly, that the investigation purportedly conducted by the said Commission leading to the sanctioning of the 45 broadcast stations for alleged offences under the Nigeria Broadcasting Code is ultra vires, null and void.
5. A DECLARATION that the N500,000 (Five Hundred thousand Naira) fines purportedly imposed by the National Broadcasting Commission on each of the 45 broadcast stations on Friday, March 1, 2019 as punishment or sanctions for the alleged commission of various offences by each of the broadcast stations is unconstitutional, ultra vires, null and void.
6. AN ORDER setting aside the N500,000.00 (Five Hundred thousand Naira) fines purportedly imposed by the National Broadcasting Commission on each of the 45 broadcast stations on Friday, March 1, 2019.
7. AN ORDER of Perpetual Injunction restraining the Respondent, its servants, agents, privies, representatives or anyone acting for or on its behalf, from imposing fines on any of the broadcast stations or any other broadcast station in

- Nigeria for any alleged offence committed under the Nigerian Broadcasting Code.

The Originating Motion has a 19 paragraph affidavit deposed to by Chika Edumobi, Litigation Secretary in the law firm of Noah Ajare & Co (Victory Chambers). The affidavit has one exhibit. Originating Motion has a statement in support and written address.

According to the Applicant this suit is brought on behalf of public interest. That the Respondent is a public agency established under the National Broadcasting Commission Act. That on the 1st of March, 2019 the Director General of the Respondent, Mallam Ishaq Kawu by a statement announced a fine of N500,000 (Five Hundred Thousand Naira) on 45 different broadcast stations over the contraventions of the NBC Code. The Applicant stated that the DG also stated that the sanction was determined after the Respondent's Second Quarter Monitoring of Broadcast Stations Profile from April to June, 2019. The Applicant claims that the procedure used by the Respondent to arrive at the sanction is a breach of the fundamental right to fair hearing as the affected broadcast stations were not invited to state their case before the sanction was handed down. The Applicant also claims that the action breaches the right to freedom of expression and undermines press freedom in the country. The Applicant therefore urged the Court to intervene and quash the decision of the Respondent.

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Counsel to the Applicant, Sunday Ikwulono Esq. formulated three issues for determination thus:

1. Whether the sanctions procedure applied by the National Broadcasting Commission in imposing the fines on the 45 broadcast stations (mentioned in the schedule to the statement of the Applicant) is a violation of the rules of natural justice and the right to fair hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. Whether the Nigeria Broadcasting Code, being a subsidiary legislation that empowers an administrative body such as the National Broadcasting Commission, to enforce its provisions can confer judicial powers on the National Broadcasting Commission to impose criminal sanctions or penalties such as fines.
3. Whether the National Broadcasting Commission, not being the court of law or the Nigerian Police or a law enforcement agency, has power to conduct a criminal investigation or an investigation that could lead to the imposition of criminal sanctions.

Learned Counsel submitted that according to section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) a



Party cannot be a judge in his own case. That the Respondent created the alleged offence through its NBC Code, investigated and offence allegedly committed by the 45 broadcast stations and sanctioning them. Counsel relied on **MFA VS INONGHA (2014) 4 NWLR (PT. 1397) 343 AT 375**. Counsel also relied on section 36(2) of the Constitution to submit that the broadcast station ought to have been granted opportunity to defend themselves before the sanction was passed. Counsel submitted that according to section 36(4) of the Constitution, a proceeding that does not factor in natural justice pillars is a nullity. Counsel relied on **OGBOBE & ORS VS OLIJI & ORS (2011) LPELR-4530 (CA)**.

Learned Counsel submitted that the NBC Code is subservient to the NBC Act and the Code must conform with the Act. Counsel relied on **NNPC VS FAMFA OIL LTD (2009) 12 NWLR (PT. 1156) 462**. Counsel relied on **ABDULLAHI VS KANO STATE (2015) LPELR-25928** to submit that a fine as imposed by the Respondent is a criminal sanction. Counsel argued further that the NBC Act did not give the Respondent the powers to prescribe and impose sanctions on broadcast stations and as such the fine imposed under the NBC Code is an ultra-vires act. Counsel relied on **NOSDRA VS EXXON MOBIL (2018) LPELR-44210 (CA) PP 5-9 PARAS E-C**. Learned Counsel therefore urged the Court to hold that only courts

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Of law can impose sanctions and not an administrative body through a subsidiary legislation.

The Respondent was served with the Originating Summons on 24th February, 2022 and served with several hearing notices but failed to file any process.

The Court formulates one issue for determination thus:

WHETHER THE APPLICANT IS ENTITLED TO THE RELIEFS SOUGHT

The Applicant instituted this fundamental rights enforcement suit to challenge the decision of the Respondent in imposing fines on some erring broadcast stations in breach of the right to fair hearing of those sanctioned stations.

Fundamental human rights as the name implies are a special kind of rights which is guaranteed every person by reason of being a human being. They are sacred rights which must be judiciously safeguarded by the Courts and government agencies as it relates to citizens of Nigeria. Fundamental human right was defined by the Court of Appeal in **NWEKE & ORS V. THE INSPECTOR GENERAL OF POLICE & ORS (2013) LPELR-21173(CA)** where it was defined thus:

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"Fundamental Rights are rights that are not only basic to the citizens; they are rights that have been entrenched in Chapter IV of the 1999 Constitution of Federal Republic of Nigeria. These rights are sacrosanct and very important to everyone within the borders of Nigeria. These rights are moulded into freedom blocks that fence the citizen from forces of unbridled aggression, oppression, repression, and authoritarianism. Where these rights are to be enforced in Court the Court within reasonable limits must do all that is necessary to cause a flourishing of these rights."

Kindly see also AG & COMMISSIONER OF JUSTICE, KEBBI STATE v. JOKOLO & ORS (2013) LPELR-22349(CA); SALIHU v. GANA & ORS (2014) LPELR-23069(CA); FULANI V. RAFAWA & ORS (2013) LPELR-20384(CA); NWEKE & ORS V. THE IG OF POLICE & ORS (2013) LPELR-21173(CA)

The 2nd edition of the Blacks law dictionary defines fundamental human rights as:

"Certain basic constitutional protections provided to citizens such as the right to due process, equal protection. Rights which cannot be limited through regulation unless it passed a test of strict scrutiny that ensures that it is necessary."

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Fundamental human rights in themselves are liberties guaranteed citizens of a free and democratic society such as Nigeria. As a defining feature of sovereign states, its provision and enforcement is sacrosanct to the well being of citizens and inhabitants of a society as it strikes at the very core of human existence. In **MBAEYI v. EFCC & ORS (2022) LPELR-57515(CA)** fundamental human rights were defined as:

"Fundamental human rights are rights which stand above the ordinary laws of the land. The factum of their enshrinement in the Constitution of the Federal Republic of Nigeria, 1999 ("CFRN") which is the supreme law of the land, confers on them a preeminent status over and above other human rights. See UZOUKWU & ORS v EZEONU II & ORS. [1991] 6 NWLR (PT. 200) 700 at 761. Although the origin of fundamental rights is said to date back to the Magna Carta of 19th June 1215, these rights are in fact antecedent to the political society itself: they are "inherent in man because they are part of man". See F.R.N. v IFEGWU (2003) 8 MJSC 36 at 701-102 (per Niki Tobi, JSC). In the words of Lord Cooke of Thorndon, they are "rights that are inherent and fundamental to democratic civilised society, (and) conventions, constitutions, bills of rights and the like merely respond by recognising rather than creating them". See REGINA v SECRETARY OF STATE FOR THE HOME DEPT, EX PARTE

DALY (2007) 3 All ER 433, (2007) 1 AC 532. Thus, fundamental rights constitute 'the basic minimum standard for civilised humanity' enshrined in the Constitution so that they could be inalienable and immutable to the extent of the non-immutability of the Constitution itself."

Kindly see also **NWEKE & ORS v THE IGP & ORS (2013) LPELR - 21173 (CA); EMODI v. REGD TRUSTEES OF ASABA SPORTS CLUB & ORS (2020) LPELR-52681(CA).**

The guarantee of fundamental rights is a vital symbol of a free and democratic society. These rights include the right to life, dignity of human person, personal liberty, freedom of thought and expression, privacy, movement among other rights. In Nigeria, the sections 33 – 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) enshrines the fundamental human rights guaranteed every citizen of Nigeria as well as the enforcement of these rights. The African Charter on Human and Peoples Rights also make provisions for fundamental human rights.

However as fundamental and sacrosanct as these rights are, they are not absolute. There may be instances where it would be legally permissible to breach these rights as it concerns a person. A cursory glance at the provisions of sections 33 – 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) would reveal a

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Number of exceptions to these rights. Where a breach occur under any of the permissible exceptions, it would not amount to a breach of fundamental human rights.

The tenet of fair hearing is to the effect that both sides in a dispute must be heard expressed in the Latin maxim Audi alterem partem and that a party cannot be a judge in its own case expressed as Nemo iudex in causa sua. Fair hearing is enshrined in section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended which provides thus:

“(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”

The Supreme Court in MFA v. INONGHA (2014) 4 NWLR (Pt.1397) 343 at 375 held as follows:

"Fair hearing within the meaning of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 means a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to the parties. It requires the observance of the twin pillars of the rules of natural justice, namely: audi

alteram partem and nemo judex in causa sua" Nemo judex in causa sua simply means that no Judge should preside over a matter in which he has personal interest or involvement."

As late Niki Tobi JSC of blessed memory stated in **INEC v. MUSA (2003) LPELR-24927(SC)**:

"Fair hearing, in essence, means giving equal opportunity to the parties to be heard in the litigation before the court. Where parties are given opportunity to be heard, they cannot complain of breach of the fair hearing principles."

Kindly see also **UGBA & ORS v. SUSWAM & ORS (2012) LPELR-9726(SC)**; **USMAN v. STATE (2017) LPELR-51595(CA)**; **OKOREAFFIA & ANOR. v. AGWU & ANOR (2008) LPELR-4724(CA)**; **AKURA v. AKPOM (2021) LPELR-55495(CA)**

The Applicant has shown through its supporting affidavit that Respondent breached the right to fair hearing of the sanctioned broadcast stations by imposing fines on them without giving them the opportunity to address the allegations made against them. The right to fair hearing of the sanctioned broadcast stations were obviously breached as they were never informed of the charges against them nor given the opportunity to defend themselves before sanctions were passed on them. Section 36 (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 as amended provides thus:

- (2) *Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -*
 - (a) *provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and*
 - (b) *contains no provision making the determination of the administering authority final and conclusive.*

The purport of the above is that even where an administrative body is to make a decision concerning a person, such person must be given the opportunity to make representations to the administering authority before a decision is made. The entire facts constituting this matter no doubt show that the Respondent was in grievous breach of this provision.

Another issue raised by the Applicant is that the Respondent as an administrative body cannot impose fines as sanctions on a body. Now Fines are a form of punishment for breaking a law. That is, fines are sanctions imposed on a person who has been found guilty

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of a criminal offence. Under the law in Nigeria, only Courts of law are empowered to impose sanctions for criminal offences.

In **ABDULLAHI v. STATE (2015) LPELR-25928(CA)** it was held as follows:

"A fine is strictly restricted to crimes. By definition therefore, fine is a payment of money ordered by a Court from a person who has been found guilty of violating law. It may be specified as the punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a complement to other punishments specified for such crimes."

In light of the above, it is therefore an abnormality in law for an administrative body such as the Respondent to impose sanctions on broadcast stations when it is not vested with judicial powers to do so.

In **NOSDRA v. EXXONMOBIL (2018) LPELR-44210(CA)** the Court of Appeal in dealing with the issue of an Administrative body imposing sanctions held:

"Granted that a demand was made, but the demand was for a sum of money defined as penalty for infraction of the regulation. This finding was made without giving the Respondent an opportunity to be heard. By so doing, the Appellant constituted itself into a Court with judicial or quasi-Judicial powers, when in fact the law creating

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it did not donate such jurisdiction to it. By the imposition of the fine, the Appellant acted in a judicial capacity which they are not imbued with under the Constitution. By so doing, the Appellant became a Judge in its own cause, the Complainant as well as the Judge, contrary to the maxim "nemo judex in causa sua". The Courts will not allow any authority to act ultra vires its powers under the Constitution. To this end, Sections 1 and 6 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) empowers the Courts to declare any Act of the National Assembly inconsistent with the provisions of the Constitution, null and void..... On the facts and circumstances of this case, I am of the firm but humble view that the imposition of penalties by the Appellant was ultra vires its powers, especially where no platform was established to observe the principles of natural justice. Penalties or fines are imposed as punishment for an offence or violation of the law. The power as well as competence to come to that finding belong to the Courts and the Appellant is not clothed with the power to properly exercise that function in view of the law creating the Appellant (NOSDRA). There is therefore a Lacuna in that law creating the Appellant."

Also in AHMED & ORS v. ODUTOLA (2019) LPELR-51022(CA) it was held:

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"...The question that must therefore be asked is whether it is proper for a law to empower an administrative body to have power to not only enforce its provisions, but perform acts which seem to input guilt and punish for same, thus usurping the functions of the judiciary and the answer is in my view in the negative."

Kindly see also **SHELL (NIG) EXPLORATION AND PRODUCTION CO. LTD v. NOSDRA (2021) LPELR-53068(CA)**.

The Respondent is neither a Court nor a judicial tribunal to make pronouncements on the guilt of broadcast stations notwithstanding what the NBC code say. Every statute or subsidiary legislation must be in accordance with the Constitution and where there is any inconsistency will be declared void to the extent of its inconsistency. The NBC Code which gives the Respondent the powers to impose fines on erring broadcast stations is inconsistent with section 6 of the Constitution that vests judicial powers in Courts of law. In consequence, the actions of the Respondent in imposing fines on the 45 broadcast stations without affording them fair hearing is a nullity without any legs to stand on.

This Court is concerned by the impunity displayed by the Respondent in imposing fines on broadcast stations in a democratic



society such as Nigeria. Under our laws the Press is granted freedom as a pillar of democracy under section 22 which provides:

“the press, radio and television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the government to the people”

This is also in line with section 39 of the Constitution which provides for the right to freedom of expression. The said section provides:

“(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions”

The press all over the world is seen as a beacon and defender of democracy. In the dark years of military rule, the press held firm and reported the gruesome happenings in the country. Sadly this led to the demise of journalists like Dele Giwa who dared the military hierarchy. This Court will not sit idly and watch as a government agency arbitrarily imposes fines on a broadcast station which is

capable of curtailing the freedom of the press and media. The media must be free at all times and imposing fines on them without fair hearing will be met with stiff resistance by this Court.

This Court is not saying that broadcast stations and the media should not be regulated, however the regulation must be within the confines of the law. Judicial powers are exclusively vested in the Judiciary by virtue of section 6 of the Constitution of the Federal Republic of Nigeria. By virtue of that power, only the Court can impose fines or punishment on any person or body accused of breaching a law. The Respondent did not conform with the Constitution when it sat in the position of complainant, judge and execution in a matter which it is interested in. it ought to have invited the erring broadcast stations to make their defence on the charges against them instead of imposing fines in breach of fair hearing of the broadcast stations. Allowing this kind of arbitrary action of the Respondent will defeat the doctrine of separation of powers operational in our democracy.

The Supreme Court in **A.G. ABIA STATE & ORS v. A.G. OF THE FEDERATION (2022) LPELR-57010(SC)** held thus:

"The doctrine of separation of powers is inchoate in the absence of the twin principle of checks and balances. A complete separation of powers, in the sense of a distribution of the three functions of government among three independent sets of organs with no

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overlapping or co-ordination, will be contrary to the objectives of separation of powers. What the doctrine seeks to achieve is the prevention of tyranny by not conferring too much power on anyone person or body, and the check of one power by another, See, O. H. Philips, et O. Hood Philips' Constitutional and Administrative Law (6th ed). (London: Sweet and Maxwell, 1978) 14. In essence, the concept of separation of powers is incomplete without the concept of checks and balances. The latter supplements the former; both concepts constitute a dual principle, Any system of government based on the principle of separation of powers that fails to incorporate some elements of the twin principle of checks and balances will lack co-ordination of the three branches of government and risk the possibility of partial tyranny in the form of isolated legislative, executive or judicial abuse. In the words of James Madison: Unless these departments of government be so far connected and blended as to give each a constitutional control over others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be maintained. See, The Federalist, No 48, 321 Similarly, M.J.C. Viles maintained that "the need for separating governmental powers by constitutional fiat comes from an assumption that if unrestrained by external checks, any given individual or groups of individuals would tyrannize over others," see, M.J.C. Viles, Constitutionalism and the

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Separation of Powers (London: Oxford University press, 1967)
Montesquieu himself was not oblivious of this fact. He asserted that to prevent abuse of power, it is necessary that, by the nature of things, one power should check another. He is quite right. It is difficult, if not impracticable, for an individual, no matter how rich, powerful or influential, to constitute a check on a power of government. One power should rather be a counterpoise to other powers. In other words, the theory of separation of powers never envisaged three autonomous governments or three autonomous branches of one government. What is envisaged is one government with three branches. The Constitution, specifically, assigned powers, duties and functions to each branch generally but also constitutes each branch a check on the other branches.


The doctrine of separation of powers is to prevent the abrogation of powers by one arm of government. This is in contrast to the military regime where powers were concentrated in one organ. In a democracy such as ours powers are separate and vested in different organs and to prevent one organ being tyrannical, the other organs check these tendencies through checks and balances. The Respondent belongs to the Executive arm and the Courts as the judicial arm is vested with powers to check excesses of executive powers. The actions of the Respondent qualifies as excessiveness as

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● it abrogated both executive and judicial powers to itself. This Court will not allow such to thrive in our democracy.

In final analysis, the suit of the Applicant is meritorious and the actions of the Respondent in imposing fines of N500,000.00 on 45 broadcast stations on 1st March, 2019 is a gross violation of the right to fair hearing and the rules of fair hearing of the 45 broadcast stations. Consequently, all actions taken by the Respondent regarding this matter are hereby declared null and void. To give force to this judgment, this Court hereby orders as follows:

1. That the sanctions procedure applied by the National Broadcasting Commission in imposing N500,000.00(Five Hundred thousand Naira) fines on each of the 45 broadcast stations (listed in the schedule to the statement of the Applicant on Friday, March 1, 2019 is a violation of the rules of natural justice and the right to fair hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004 in that the Nigerian Broadcasting Code, which created the alleged offences of which the broadcast stations were accused was written and adopted by the National Broadcasting Commission, and also gives powers to the said Commission to receive complaints of alleged

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- breaches, investigate and adjudicate the complaints, impose sanctions, including fines, and ultimately collect the fines, which the Commission uses for its own purposes.
2. That the National Broadcasting Commission, not being a court of law, has no power or competence to impose fines on broadcast stations as punishment or penalties for the commission of an offence as the competence to establish that an offence has been committed and to impose criminal sanctions or penalties belongs to the courts.
 3. That the Nigeria Broadcasting Code, being a subsidiary legislation that empowers an administrative body such as the National Broadcasting Commission, to enforce its provisions cannot confer judicial powers on the National Broadcasting Commission to impose criminal sanctions or penalties such as fines.
 4. That the National Broadcasting Commission, not being the Nigerian Police or a law enforcement agency, has no power to conduct a criminal investigation or an investigation that could lead to the imposition of criminal sanctions and accordingly, that the investigation purportedly conducted by the said Commission leading to the sanctioning of the 45 broadcast stations for alleged offences under the Nigeria Broadcasting Code is ultra vires, null and void.

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- 5. That the N500,000 (Five Hundred thousand Naira) fines purportedly imposed by the National Broadcasting Commission on each of the 45 broadcast stations on Friday, March 1, 2019 as punishment or sanctions for the alleged commission of various offences by each of the broadcast stations is unconstitutional, ultra vires, null and void.
- 6. AN ORDER is hereby made setting aside the N500,000.00 (Five Hundred thousand Naira) fines purportedly imposed by the National Broadcasting Commission on each of the 45 broadcast stations on Friday, March 1, 2019.
- 7. AN ORDER of Perpetual Injunction is hereby made restraining the Respondent, its servants, agents, privies, representatives or anyone acting for or on its behalf, from imposing fines on any of the broadcast stations or any other broadcast station in Nigeria for any alleged offence committed under the Nigerian Broadcasting Code.

J.K OMOTOSHO
Judge
10/5/2023

Appearances

Sunday Ikwulono Esq.- for the Applicant

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~~FEDERAL HIGH COURT~~
~~ABUJA~~ P.A.D
24/5/2023
Priscilla M.A