

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 18TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/490/18

BETWEEN:

PROFESSOR ERNEST OJUKWU, SAN ...CLAIMANT/RESPONDENT

AND

- 1. THE REGISTERED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION**
- 2. JONATHAN GUNU TAIDI
(GENERAL SECRETARY OF THEDEFENDANTS/APPLICANTS
NIGERIAN BAR ASSOCIATION)**
- 3. PAUL USORO,SAN
(PRESIDENT, NIGERIAN BAR ASSOCIATION)**

JUDGMENT

On the 7/12/18 Professor Ernest Ojukwu, SAN instituted this action against the Registered Trustees of NBA, Jonathan Gunu Taidi and Paul Usoro. In the action the Professor seeks the following:

1. A Declaration that the failure of the Respondent to furnish him with the information and documents sought

vide his letter dated 29th October, 2018 amounts to wrongful denial of information under the Freedom of Information act.

2. An Order compelling the Respondents to, within 7 days furnish the Applicant with the said information and copies of the documents sought vide the said letter of 29/10/18 and which information and documents are set out in schedule herein stated as follows:
 - a. Report of the NBA 2018 Ad hoc Transition Committee.
 - b. The Budget approved by NBA National Executive Committee for the 57th Annual General Conference of the NBA 2017.
 - c. The Breakdown of the Account for the 57th Annual General Conference of the NBA 2017.
 - d. Details of the cost of NBA sponsorship of International conferences for all Lawyers including NBA National officers from 2016-2018.
 - e. Details of all Lawyers handling NBA matters in Courts and details of payment made to them from 2016-2018.
 - f. Details of NBA income and expenditure Account from 2016-2017.
 - g. Details of NBA income and expenditure Account from 2017-2018.
 - h. Account of all expenditure made from Mac Arthur foundation Criminal Justice Reform Fund and Bank statement of the Account from 2017-2018.
 - i. The Budget approved by the NBA National Executive Committee for NBA Criminal justice Reform Conference organized by the NBA Criminal Justice Reform committee held at Asaba Delta state from April 24-28,2018.

- j. Breakdown of account for NBA Criminal Justice Reforms conference organized by the NBA Criminal Justice Reform Committee held at asaba Delta state from April 24-28, 2018.
- k. The Breakdown of all the payments made to members of the legal Practitioners Disciplinary Committee from 2012 till date.
- l. The Breakdown of all the payments made to NBA Prosecutors at the legal practitioners disciplinary committee from 2012 till date.
- m. The Contract signed to engage the services of Price WaterhouseCooper (PWC) for the purpose of auditing and reviewing the NBA Account.
- n. The Budget approved by Nigerian Bar Association's National Executive Committee for the 58th NBA Annual General Conference 2018.

GROUNDS UPON WHICH THIS APPLICATION IS BROUGHT

1. The Applicant in this application is a lawyer, a senior advocate of the Nigerian Bar Association, a Nigerian and resides in Nigeria.
2. The 1st Respondent is the registered trustees of the Nigerian bar Association.
3. The Nigerian Bar Association is a regulatory organ of the legal profession in Nigeria.
4. The 2nd Respondent is the General Secretary of the Nigerian bar Association in charge of the National Secretariat and all record and returns of the Nigerian bar Association.
5. The 3rd Respondent is the President of the Nigerian Bar Association with the power to direct all other Officers of the Nigerian Bar Association in the performance of their duties, and coordinating the activities of all Branches of the Association.

6. The 3rd Respondent also has the function of ensuring, with the assistance of the General Secretary and the Treasurer, the efficient and economic use of the Association's assets and resources.
7. On August 24, 2018 the 3rd Respondent inaugurated the Nigerian Bar Association 2018 AD-hoc Transition Committee with the 2nd Respondent as its members. The Committee submitted a report to the 3rd Respondent.
8. On October 6, 2018 the 3rd Respondent contracted Pricewatercoopers(PWC) for the purpose of auditing and reviewing the Nigerian Bar Association's Account.
9. All lawyers in Nigeria pay mandatory tax called practicing fee, enforced and collected by the Registrar of the Supreme Court of Nigeria under the Legal Practitioners Act.
10. Nine tenths of the aggregate amount of the practicing fee received by the Registrar of the Supreme Court of Nigeria is remitted to the Nigerian Bar Association.
11. The practicing fee is a public fund paid into a separate fund under the Legal Practitioners Act and substantial part is used by the Nigerian Bar Association.
12. The Nigerian Bar Association is under a duty to keep proper accounts in respect of the fund and proper records in relation to the accounts.
13. The account is to be audited in each year by an auditor approved, as respects that year, by the Auditor-General of the Federation.
14. The 2017/2018 Budget Proposal prepared by the Nigerian Bar Association National Treasurer shows that in 2016-2017 financial year, the Nigerian Bar Association received Six Hundred and seventy-five Million, seven hundred and fifty thousand eight hundred and fifty naira (N675,750,850) of the practicing fee paid by lawyers.

15. The Nigerian Bar Association statement of financial position as at 31st August 2018 shows that in 2017 -2018 financial year, the 1st Respondent received Seven Hundred and twenty-one million, two hundred and sixty-two thousand, three hundred and forty-five naira (N721,262,345) of the practicing fee paid by lawyers.
16. The purpose, aim and objectives of the Nigerian Bar Association include maintenance and defence of the integrity and independence of the Bar and the Judiciary in Nigeria; Promotion and support of law reform; Improvement of the system of administration of Justice, its procedures and the arrangement of Court business among other public oriented aims and objectives.
17. It is compulsory under the law for every legal practitioner to pay practicing fee each year.
18. It is compulsory under the law for every lawyer to pay for stamp and seal each year.
19. The Respondents receive the fees for stamp and seal. In the accounting year 2016/2017, Nigerian Bar Association received One hundred and fifty-nine million, two hundred and fifty-five thousand, seven hundred naira only (N159,255,700) as stamp and seal fee and in accounting year 2017/2018 the Respondent received the sum of One hundred and seventy-seven million ,six hundred and twenty-two thousand, three hundred and fifty naira (N177,622,355) as stamp and seal fee.
20. The Nigerian Bar Association funds the cost of activities of the Legal Practitioners Disciplinary Committee set up under the Legal practitioners Act. It is the Nigerian Bar Association that determines whether a prima facie case of professional misconduct has been established against any lawyer or legal practitioner in Nigeria, whether the lawyer is a member of the Nigerian Bar Association or not.

21. The Nigerian bar Association performs public functions and utilizes public funds.
22. On 30th of October 2018, the Applicant served a letter dated 29th October 2018 on the 2nd Respondent seeking information on the Report of the Nigerian Bar Association 2018 Ad-hoc Transition Committee. The letter is attached to this Affidavit as exhibit A.
23. On 30th of October 2018, the Applicant served a letter dated 29th October 2018 on the 2nd Respondent seeking information on the following:
 - i. The Budget approved by the NBA National Executive Committee for the 57th Annual General Conference of the Nigerian Bar Association 2017.
 - ii. The breakdown of the account for the 57th Annual General Conference of the Nigerian Bar Association 2017. The letter is attached to this Affidavit as exhibit B
24. On 30th of October, 2018, the Applicant served a letter dated 29th October, 2018 on the 2nd Respondent seeking information on the details of cost of Nigerian Bar Association sponsorship of international conference for all lawyers including Nigerian Bar Association National Officers from 2016-2018. The letter is attached to this affidavit as exhibit C.
25. On 30th of October 2018, I delivered a letter dated 29th of October 2018 to the Nigerian Bar Association through the 2nd Respondent seeking information on the details of all lawyers handling NBA matters in Courts and details of payments made to them from 2016-2018. The letter is attached to this affidavit as exhibit D.
26. On 30th of October, 2018, the Applicant served a letter dated 29th October, 2018 on the 2nd Respondent seeking information on the following:
 - i. Details of the Nigerian Bar Association income and expenditure account from 2016-2017

- ii. Details of the Nigerian Bar Association income and expenditure account from 2017-2018. The letter is attached to this affidavit as exhibit E.
27. On 30th of October,2018, the Applicant served a letter dated 29th October,2018 on the 2nd Respondent seeking information on the account of all expenditures made from the Mac Arthur Foundation Criminal Justice Reform funds and bank statement of the account from 2017-2018. The letter is attached to this affidavit as exhibit F.
 28. On 30th of October,2018, the Applicant served a letter dated 29th October,2018 on the 2nd Respondent seeking the following information:
 - i. The Budget approved by NBA National Executive Committee for the NBA Criminal Justice Reform Conference organized by the NBA Criminal Justice Reforms Committee held at Asaba, Delta state from April 24 to 28 2018.
 - ii. The breakdown of account for the NBA Criminal Justice Reforms Conference organized by the NBA Criminal Justice Reforms Committee held at Asaba, Delta Stae from April 24 to 28, 2018. The letter is attached to this affidavit as exhibit G.
 29. On 30th of October,2018, the Applicant served a letter dated 29th October,2018 on the 2nd Respondent seeking information on the following:
 - i. The breakdown of all the payments made to members of the Legal Practitioners disciplinary Committee from 2012 till date.
 - ii. The breakdown of all the payments made to NBA Prosecutors at the Legal Practitioners Disciplinary Committee from 2012 till date. The letter is attached to this affidavit as exhibit H.

30. On 30th of October, 2018, the Applicant served a letter dated 29th October, 2018 on the 2nd Respondent seeking information on the contract signed to engage the services of PriceWaterhouseCooper (PWC) for the purpose of auditing and reviewing the NBA Account. The letter is attached to this affidavit as exhibit I.

31. On 30th of October, 2018, the Applicant served a letter dated 29th October, 2018 on the 2nd Respondent seeking information on the Budget approved by Nigerian Bar Association's National Executive committee for the 58th NBA Annual General Conference 2018. The letter is attached to this affidavit as Exhibit J.

32. The Respondents have failed to respond to the Applicant's request and letters, and refused to grant him access to all the information and documents sought.

He supported the application with an Affidavit of 25 paragraphs deposed to by Benjamin Nwosu. He attached 10 letters written on 29th /10/18 and received on the 30th/10/18 by the NBA marked as Exhibit A-J. he equally filed an address in support of the Review of the Request for the Access of information.

In the said address he raised an issue for determination which is:

"Whether the Respondents denial of access to information requested by the Applicant is not wrong under the freedom of information Act".

Referring and relying on the facts as contained in the affidavit in support of this application the Applicant argued and submitted that he is entitled to the Orders sought in this application.

That by Section 1 of Freedom of Information Act entitled to the Orders sought in this application. That he is entitled to the access to information from the Respondents representing

the NBA, which is the regulatory organ of the legal practitioners in Nigeria that perform the public public functions and utilizes public funds.

That by Section 31 of the Freedom of Information Act (FOI) defines as a public Institution because it utilizes public funds. That all lawyers pay mandatory tax- practicing fee; enforced and collected by the Registrar of the Supreme Court of Nigeria from all (Lawyers)-persons who are legal practitioners whether as members of the NBA or not All lawyers pay this fees by virtue of Rule 9 Rules of professional Conduct. Statutory instrument No.6 of 2007 made in exercise of the powers conferred under Section 12(4) Legal Practitioners Act. That 9/10 of the public fund collected is given to the 2nd & 3rd Respondents by virtue of Section 8 Legal Practitioners Act. That the public funds is paid into a separate Account which is used for the purposes of the NBA by virtue of Section 23 of the Legal Practitioners Act CAP L.11 LFN 2004. That NBA is duty bound to keep proper account in respect of the funds and keep proper records in relation to the Accounts. Also by virtue of Section 23(2) (b) of the Legal Practitioners Act. It is the duty of Auditor –general of the Federation to appoint an Auditor to audit the Account for fund.

That by the affidavit in 2016-2017 financial year the NBA received N675,750,850.00 of practicing fee tax paid by lawyers. Again that in 2017-2018 financial year, the 1st Respondent received N721,262,345.00 from practicing fee tax paid by lawyers to the Registrar of the Supreme Court of Nigeria. Also that it is compulsory for every lawyer to pay for stamp and (NBA) seal each year. That Respondents received fees for stamp and seal that in accounting year of 2016/2017, NBA received N151,255,700.00 as stamp and

seal fee. And that the 2017/2018 they received the sum of N177,622,355.00 as stamp and seal fees.

That as shown in the Affidavit in support of this application they wrote letters which are attached as exhibit A-J received by the NBA on the 30/10/18, the applicant requested the Respondents for access to information and documents set out in the schedule to this Originating Summons motion. That Respondent failed to respond to the said letter/request after 7 days of receipt of the request. They are deemed to have denied Applicant the access to the information and request. He referred to Section 7 (4) Freedom of Information Act CAP F 43 LFN 2004 provides for a fine of N500,000.00 to be paid by the defaulters of denial of access to information. That by these facts and grounds set out here, the applicant has shown sufficient grounds for the resolution of this Issue in his favour.

They urge Court to hold that the denial of the applicant's request for access to information under the Freedom of Information Act F43 LFN. They urged the Court to grant the reliefs as prayed in this Suit.

Upon receipt of this application the Respondents jointly filed a Counter Affidavit and a Preliminary Objection; all challenging the suit. The Counter Affidavit was deposed to by Oluwadamilare Busayo.

In the written address in support of the Counter Affidavit, the Respondents jointly raised on issue for determination which is:

“Whether the Applicant has placed before this Court sufficient fact warranting the grant of his Reliefs”.

They submitted that the filing of this application is unnecessary and uncalled for that in Paragraph 3(e)-(i) of the Counter Affidavit when read side by side with the Paragraphs 14, 15 and 19 of the Affidavit in support of this application it

will be concluded that the applicant already had the documents he was requesting for and that there no need to have filed this process. That the applicant had in paragraph 14, 15 & 19 admitted he had documents he was requesting for when he copied the figures contained in the document. He also stated years and the officers of NBA who had presented. They referred to the case of:

AISHA JUMMAI ALHASSAN Vs DARIUS DICKSON ISHAKU & 2 ORS (2016) 10 NWLR (PT.1520) 230

Where the Court held that ...

...admission is the strongest and highest proof of facts in issue”.

They submitted that applicant had made an admission against interest as provided for in Section 24 & 169 Evidence Act 2011 as amended. They also cited the case of:

A-G NASARAWA STATE Vs PLATEAU STATE (2012) 10 NWLR (PT.1309) 419 @ 470 PARA C-F

They submitted that the applicants lack a cause of Action to institute this case. They cited the case of:

MULIMA Vs USMAN (2014) 16 NWLR (PT.1432) 160@201

That whatever right the Applicant had is extinguished by this admission of the facts already as stated above. They urged Court to answer the sole question in the negative and dismiss the application for lacking in merit.

Upon receipt of the Counter affidavit filed by the Respondents challenging the application. The Applicant filed a further Affidavit of 13 paragraphs in support of the said application. The Applicant stated that NBA performs Public functions and utilizes public funds and as such is a public officer. They also denied paragraph 3 (e), (g) (h) of the Counter Affidavit and he stated that it is not true that the information he requested in the schedule to this application in (b)-(n) were published in February 2017NEC Bundle as

the Respondents claim. The information were not also published in any other bundle of documents tagged “financial statement” presented by the Treasurer for members at the AGM held in Abuja. Those information were not equally published or circulated in the AGM held in Abuja and Lagos in 2018 and 2019 respectively. The said information were never circulated or published till date.

The Applicant also denied the content of paragraph 3(1) of the Counter Affidavit and stated that the item in schedule “(m)” which is contract signed between NBA and price water home cooper is not published anywhere contrary to what the Respondents said or are claiming. Again that the NBA Account and statement of Account as requested by Applicant are not published or upload at the NBA website as claimed by Respondents. That the response to the statement made by the Respondents in paragraph 3(i) of the counter affidavit the Applicant stated that what was given to him on the 21/2/20 was a summarised report and not any bank statement of the account from 2017-2018. He attached the report served on him as an exhibit further I.

On paragraph 3(k) of the Counter affidavit, Applicant stated that the information given to him on 21/2/18 more than one year after he made the request on 30/10/18.

He also denied paragraph 3(l) and stated that the Respondents failed to respond to the Request made in “Schedule K” and they did not also transfer this request to the Body with this information. He urged the Court to grant the application. He relied and adopted the submission he made in his reply in the Preliminary Objection and urged the Court to grant his claim, Reliefs as sought.

COURT:

The Court hereby adopt its reasoning in its Ruling on Preliminary Objection delivered by reiterating that the Court

has the right to hear the matter but the Relief of the Claimant is not meritorious giving the reasoning in the Ruling of the Preliminary objection. The Court deems as if set here seriatim the said reasoning in the Preliminary objection. In the Preliminary Objection the Defendants are challenging the Suit of the Plaintiff in that the NBA is not a Public Institution going by the definition of the Public Information Act 2011. And as such the Suit of the Plaintiff is incompetent and that Court lacks the jurisdiction to entertain the Suit. They want the Court to dismiss the Suit.

To determine whether this Court lacks the requisite jurisdiction to entertain the issue in dispute and the question raised by the Claimant in the main Suit it is imperative to determine the meaning of Public Institution in the Freedom of Information Act 2011. And who are subject to the provision of the said Act.

To start with the long title to the Act states:

“An Act to make Public records and information more freely available provide for Public Access to public records and information, protect public records and information to the extent consistent with the public interest and protection of personal privacy, protect serving officers from adverse consequences of disclosing certain kind of official information without authorization and established procedures for the achievement of those purpose and for related matters”.

It is equally imperative to state the provision of Section 2(7) of the Act which provides:

“Public Institutions are all authorities whether executive, legislature 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 controlling interest, and private companies utilizing public funds providing public services performing public functions.”

From the long title of the Act it is clear that it is an act that is geared to make public record and public information more freely accessible to the general public and not to a “professional public” like the NBA.

By Section 2(7) of the Act it is equally clear that the Public Institution meant by the Act are those Institutions that the authorities whether executive, legislatures and judicial agencies and all corporations and companies which are under the control of the government as well as private companies which provides and perform public services and public functions. From all indication the role of the NBA like other professional bodies is to take care of the interest of its members as a professional body ensuring that they perform and practice the profession within the boundaries as provided by the law and their Constitution. In as much as the members cater for the legal need of the persons/individuals that patronize them it does not culminate or metamorphose into the NBA being regarded as a Public Institution.

For all intent and purposes the NBA is not a Public Institution in as much as it carter for the welfare of its members. It is only a Public Institution as far as its members are concerned. It does not keep public record. Its record is not meant to the public. It is a private professional body or Institution like the Nigerian Economic Society and Nigerian Medical association. Its records are meant to be private and should be private.

The records cannot be made open to the public not even to its individual members or the public or any member of the public. This is singularly because it is not by the definition of the extant provision of the Freedom of Information Act a Public Institution.

It is clear that the Nigerian Bar Association is registered as a non-profit Organization, it is not a business venture, it does not fall within the scope of what the Act described as Public Institution going by the provision of section 2(7) as well as by the provision of Section 31(1) of the Act. By the interpretation Section of the Freedom of Information Act “Public Institution” means:

“Any Legislative, Executive, Judicial administrative or Advisory body of the government including Boards Bureau, committees or commissions of the state and any subsidiary body of those bodies including but not limited to committees and subcommittees which are supported in wholes in part by public funds and which expends public funds and private bodies providing public service, performing public functions or authorizing public funds”.

From the above it is clear that the NBA does not in any way fall within the category of the bodies mentioned above. To start with Court does not authorize public funds to be expended by anybody that is not a public office. NBA as already stated severally, is a private professional organization made up of members of the legal/law profession like other similar professional body, like Nigerian Medical Association,. It is not an advisory body of the government stricto senso or subsidiary of any such body. In as much as it can lend it’s voice to issue of legal nature.

The fund it has are mainly professional practicing fees paid by its members, the fees for stamp, and grants from private donor agencies and the like. The NBA is not included in the government budget and it is therefore not involved in expending public funds since it does not person as a body any public function its records are for the body and its members. The document it keeps are not in any way public document or fall within the definition of public record as

provided in the Act as well as Section 102 evidence Act 2011 as amended.

By Section 31(1) of the Act Public Record means:

“Any record in any form having been prepared been used or being used received, possessed or under the control of any public bodiesrelating to matters of public interest”.

The above provision seals the deal. It is very evident that the record of NBA is not a public record. It is not meant for public consumption. It is not affected by the provisions of the Freedom of Information Act 2011. As the Claimant is trying to portray.

From the above analogy can it be said that the Applicant going by the summary of this submission as captured above has been able to convince this Court that the Suit of the Plaintiff is competent and this Court has jurisdiction to entertain the Suit in that the Nigerian Bar Association is not Public Institution and does not keep public records? It can be said that going by the Reply of the Plaintiff that the Suit is competent and the Court has jurisdiction to entertain it. But the Court cannot grant the Reliefs as the Suit is not meritorious. The Plaintiff is not entitled to the Reliefs sought as the book of Account of the NBA is not for Public Consumption and plaintiff is not entitled to have access to them.

This is the Judgment of this Court delivered today.

Theday of September, 2020.

K.N.OGBONNAYA
HON.JUDGE
FCT-ABUJA

