IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY THE 18TH DAY OF MAY, 2018,
BEFORE HIS LORDSHIP, THE HON. JUSTICE A. I. CHIKERE
JUDGE

SUIT NO: FHC/ABJ/CS/853/2017

BETWEEN:

CHIEF NKEREUWEM UDOFIA AKPAN ====== PLAINTIFF

AND

FEDERAL INLAND REVENUE SERVICE ======== DEFENDANT

RULING

The Learned Counsel to the plaintiff Christopher A. Eiche Esq. commenced this action by way of Originating Summons dated 15/09/17 and filed on the same day, asking the court the following questions:

1. Whether the plaintiff is entitled to make the demand for information relating to the all recruitment made from May, 2015 till date as well as the nominal roll of defendants pursuant to the provisions of the Freedom of Information Act, 2011.
2. Whether of the Defendants were duty bound to provide the information sought by plaintiff within 7 days vide a letter dated August 8, 2017 and served on defendants on 17th August, 2017.

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3. Whether this honourable court can compel the defendants to provide the information required by plaintiff and pay the plaintiff the sum of N500,000.00 (Five hundred thousand naira) for failure to provide the information with the time specified in the Freedom of Information Act, 2011.

The Plaintiff praying this court for 5 reliefs as follows:

1. A DECLARATION that the plaintiff is entitled to make the demand for information relating to all recruitments made by defendants from May, 2015 till date as well as the nominal roll of defendants pursuant of the provision of the Freedom of Information Act.
2. A DECLARATION the defendant were duty bound to provide the information sought by plaintiff within 7 days vide a letter dated August 8, 2017 and served on defendants 17th August, 2017.
3. AN ORDER directing the defendant to provide the information required by plaintiff and pay the plaintiff the sum of N500,000.00 (Five hundred thousand naira) for failure to provide the information within the time specified in the Freedom of Information Act, 2011.
4. COST OF THIS ACTION left at discretion of the honourable court
5. EXEMPLARY and or punitive left at discretion of the honourable court.

Accompanying the Originating Summons is a 7 paragraphs affidavit and a further and better affidavit deposed to by the plaintiff himself; and a written address, wherein the following issues for determination wherein distilled. To wit:

a. Whether the plaintiff is entitled to make the demand for information relating to all recruitments made by defendants from May 2015 till date as well as the nominal roll of defendants pursuant to the provisions of the Freedom of Information Act, 2011?
b. Whether the Defendant were duty bound to provide the information sought by the plaintiff within 7 days vide a letter dated August 8, 2017 and served on defendant on 17th August, 2017
c. Whether this honourable court can compel the defendants to provide the information required and pay the plaintiff the sum of N500,000.00 (Five hundred thousand naira) only for failure to provide the information within the time specified in the Freedom of Information Act, 2011?

On the service of the Originating Summons, the Learned Counsel to the defendant Deborah Tarfa filed a 22 paragraphs Counter Affidavit to the Originating Summons deposed to by one Yohanna Dikko and a written address dated 27/11/17 but filed on the 29/11/17. In the Written Address of the defendant, he adopted the issues for determination as formulated by the plaintiff.

The defendant filed on the 9/11/2017 a Notice of Preliminary Objection dated 8/11/17 where he sought an order of the court to strike out or dismiss this suit in its entirety for want of jurisdiction. Accompanying the said Notice of Preliminary Objection is a 7 paragraphs affidavit deposed to by one Ayuba Kwari and a written address wherein the sole issue for determination was:

> Whether the non-issuance of a Pre-action Notice to the defendant in this instant suit allows for a competent action to be instituted against the said defendant

Responding to the Notice of Preliminary Objection, the learned counsel to the plaintiff filed on 16/11/17 a Counter Affidavit deposed to by the plaintiff and a written address dated the same 16/11/17, wherein he adopted the sole issue for determination as formulated by the defendant.

Let me first deal with the issue of jurisdiction as challenged by the defendant. This is in line with the decision of the court in the case of **Nwosu v. FRN (2014) 6 WRN 151 AT 165** where the court held:

> **"..., it is the firm opinion of this court and the apex court that as soon as the issue of jurisdiction is raised by the parties or by the court *suo motu*, that issue must be the first duty of the court to determined as a matter of priority..."**

It is the argument of the learned counsel to the defendant that this court lacks the jurisdiction to entertain this suit on the grounds that the plaintiff failed to comply with the provisions of Section 55(3) and (4) of the Federal Inland Revenue Service (Establishment) Act, 2007 which provides for the service Pre-action Notice before the commencement of an action against the defendant.

The learned counsel stated that the defendant got wind of the suit on the 8/11/2017 a day before the matter was slated for hearing and even at that the plaintiff has defaulted in serving the defendant a Pre-action Notice.

He further contended that the suit of the defendant is not only incompetent but shows bad faith as no pre-action Notice was served. He cited the cases of Dominic E. Ntiero v. Nigerian Ports Authority (2008) 10 NWLR (Pt. 1024) 129 S.C., Eze v. Okechukwu and Ors (2002) 12 S.C. (Pt 11) 103 and Niger Care Dev. Co, Ltd v. A.S.W.B. (2008) 9 NWLR (Pt. 1093) 48.

The learned counsel finally submitted that this court should strike out the suit for failing to comply with the statutory requirement of serving the Pre-action Notice.

On the part of the plaintiff, the learned counsel argued that this court has jurisdiction to entertain this suit. He anchored his submission on the ground that there is nothing in the Freedom of

Information Act that requires him to give additional 30 days notice of intention to go to court and enforce his right.

The learned counsel further stated that if anything, the letter of request could be interpreted to mean that failure to grant the application entitled the plaintiff to the relief sought and nothing more. He stated that the mischief sought to be cured by the Freedom of Information Act was the usual long delays and outright refusal by government department and agencies in granting the request for information from members of the public.

The learned counsel is also of the view that the Freedom of Information Act, 2007 being a latter legislation came to repeal the FIRS Act in situations where it is in conflict with it. That it will defeat the purpose of the Freedom of Information to further extend the period of the request from 7 days to 30days or add another 30days to the 7 days as envisage by the Act. That if the National Assembly intended to subject the Freedom of Information Act with respect to the issuance of Pre-action Notice, they operative date would have to increase to 37 days not 7 days. He cited the case of Nafiu v. The State (1980) 11 S.C. P130

Replying on point of law, the learned counsel to the defendant stated that the reliance made by the plaintiff with respect to the case of Nafiu v. The State (Supra) is wrong in the sense that the plaintiff's submission is leaning towards a narrow interpretation and not appreciating the entire provisions of the law.

The learned counsel added that by the provisions of Section 20 Freedom of Information Act, that the word "may" means discretionally on when the applicant can seek for judicial review. He cited the case of O.R.L. V. NCC (2007) 18 WRN 87 AT 116. As such there in so conflict between Section 20 of the FOI Act and Section 55 of the FIRSEA.

On the issue of the FO1 Act repealing Section 55 FIRSEA with respect to issuance of Pre-Action Notice on the defendant, the learned counsel contended that the FOI Act did not repeal or provided a provision negating the provisions of Section 55 of the FIRSEA which requires the issuance of the Pre-action Notice on the defendant before being sued as there is no express provision that repealed that provision as the person standing trial is the FIRS and not the FOI. He cited Section 1 and 2 of the FIRSEA.

In conclusion, the learned counsel stated that taking the matter to Court of Appeal on a Case Stated is unnecessary and it will amount to an academic exercise because Section 6 of the FO1 Act has already provided for extension of time when parties are unable to deliver the information with 7 days.

I have carefully reviewed the submissions and the arguments for and against the issue of jurisdiction of this court to entertain this suit. Let me begin with the issue of the FOI Act repealing the FIRSEA with respect to the issuance of Pre-action Notice to the defendant.

It must be stated that the issue of repealing an Act is a very serious issue in law and as a matter of law, it's a constitutional one and therefore must be done within the ambit of the law. It must be equally stated that the National Assembly and the House of Assembly as the case may be are the lawfully recognized body that make laws for the good and progress of the Nation, Nigeria.

In the instant case, the FO1 Act is an enactment made by the National Assembly and where the National Assembly seeks to a repeal this Act with another, it must be clearly stated. In the instant case, there is nowhere in the law, that states that the National Assembly by express seeks to repeal the provisions of the FIRSEA with respect to issuance of Pre-action notice. Be that as it may, there are situations where the various laws so enacted by the National Assembly may conflict with another. This situation has given rise to various decisions such in the case of **IBRU-STANKOV v. STANKOV CITATION: (2016) LPELR-40981** where the court held:

> **After all, the law is trite that where there are two enactments on a matter one making general provisions and the other making specific provisions, the specific provisions shall prevail. See per Fatayi-Williams CJN in The Governor of Kaduna State & Ors. V. Lawal Kagoma (1982) 6 S.C. 87 at 107 AT 108**

This is the position of the law also in the case of **ADEDAYO V. PDP (2014) 4 WRN 1 AT 86**

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"The law is well settled that a specific provision prevails over and above that which is general"

The above decisions recognize the fact that there could be conflict between an enactment though not intended by the law making body with another enactment. The courts have found the need to resolve this issue by examining what the cause of action is centered on. This is totally in my opinion different from the process of repealing an Act which must be expressly done.

Bearing these decisions in mind, it will appear to the court that the plaintiff anchored his grievances on the failure of the defendant to comply with his request in view of the provisions of the FOI Act. It therefore means that all actions connected to the request of information must be founded in accordance with FOI Act.

Having state this, let me reproduces the **Section 20 of the FOI Act.** It states:

"Any applicant who has been denied access to information, or a part thereof, may apply to the Court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow."

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This provision is very clear and there is no ambiguity, and the courts have been enjoined always to give a provision its literal meaning where it is clear and unambiguous.

This provision clearly provides when an Applicant is meant to commence an action against a public institution who is found to have denied an information or deemed to have denied an information upon request. And it clearly states that it must be within 30 days. What this means is that where a party is denied or deemed to have been denied an information and fails to commence the action in court within 30 days he or she is barred from challenging the action.

The phrase "**within such further time as the Court may either before or after the expiration of the 30 days fix or allow"** as contained in Section 20 of the FIRSEA is subject to the discretion of the court which is not granted as a matter of course. See the case of **Ali v. State (2012) 22 WRN 1 AT 115-116** where court held:

> **"...it is clear that for discretion to be judicial and judicious, it must meet with certain legal principles or criteria. In other words, each discretion is not subject to the whims and caprices of the Judge; so also should it be not be arbitrary based on sentiments or extraneous consideration. Judicial and judicious discretion should be dictated by sound judgment, honesty, pure reason and good conscience of the Judge unfettered by the dictates**

of others but predicated on the surrounding circumstances of the case and the competing rights of the parties."

An applicant who chose to commence the action within 30 days in my view does so within the ambit of the FOI Act which is a specific law. On the other hand the FIRSEA is a general law which cannot be used to whittle down the right of an Applicant and in the instant case the plaintiff to seek judicial review. See the case of **Belgore v. Ahmed (2014) 27 WRN 68 AT 85** where the court held thus:

"The law is that general legislation must give way to specific legislation in respect of those specific matters dealt with therein".

It therefore means that since the FOI Act is specifically meant to address issues on freedom of information, it is that law that the court will look into to determine whether it has jurisdiction in this matter before it.

The issuances of pre-action notice are applicable to other general issues but not applicable when the provisions of the FOI Act is used. An applicant who commences an action within 30 days does so within the ambit of the law and therefore does not need to wait after 30days after his must have served the pre-action notice.

Aside the above holding of the court, let me address another important issue this court found. The learned counsel to the

defendant made reference to Section 55 (3) and (4) of the FIRSEA which states

> **(3) "No suit shall be commenced against the <u>Executive Chairman, a member of the Board, or any other officer or employee of the Service</u> before the expiration of a period of one month after written notice of the intention to commence the suit shall be have been served on the service by the intending plaintiff or his agent"**
>
> **(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the-**
> ***(a)* cause of action;**
> ***(b)* particulars of claim;**
> ***(c)* name and place of abode of the intending plaintiff; and**
> ***(d)* relief which he claims.**

Another important provision is **Section 1 of the Federal Inland Revenue Service (Establishment) Act, 2007** which provides:

> **"(1) There is established a body to be known as the Federal Inland Revenue Service (in this Act referred to as "the Service").**
>
> **(2) The Service-**

***(a)* shall be a body corporate with perpetual succession and a common seal;**

***(b)* may sue or be sued in its corporate name..."**

A careful perusal of the two sections, states that the FIRS is a body corporate with perpetual succession and may sue and be sued in its own name.

It is therefore at this very juncture to have a clear understanding what a body corporate means or entails. In the case of **Afolabi and 6 Ors v. Western Steel Work Ltd and 2 Ors (2012) 7 S.C (Pt III) 64 AT 90** where His Lordship, Hon Justice Adekeye, JSC (Retired) stated thus:

"...A Body Corporate is a juristic person. It has a legal personality and be an occupier of premises. It can sue and be sued in its corporate name. it also has the capacity to enter into any agreement in its corporate name"

The above decision clearly defines what a body corporate is. Therefore, where a party decides to sue the FIRS going by the provisions of **Section 1 Federal Inland Revenue Service (Establishment) Act, 2007** he or she does so within the ambit of the law. The issue before this court is whether the pre-action notice as stated in Section 55(3) Federal Inland Revenue Service (Establishment) Act, 2007 is required before a party can legally sue the FIRS?

Before answering this important question, it is imperative to state a very important cardinal principle of interpretation of statute. In the case of **Oladokun v The Military Governor of Oyo State &Ors (1996) LPELR-2551 (SC) @ Pg. 49 Para A-C**, the apex Court re-affirmed this principle of law thus:

> **"A court must not in the interpretation of a statute whose wordings are clear and unambiguous import into it something which is not contained in it. Further, where words in a statute, as in the instant case, are clear and unambiguous, they should be given their ordinary meanings and enforced accordingly". PER ONU, J.S.C. (P.49, Para A-C"**

The Court also in **Okafor v. Okafor (2015) 4 NWLR (pt. 1449)335 @ 369 Paras g-h** held as follows on the principle of interpretation:

> **"No one, not even the court in its duty of interpreting the law has a right to import words not used by the legislature into the same Statute. The duty of the court is to confine itself to the words used in the statute unless such words will lead to absurdity"**

The two decisions of the court are germane to this case before this court because the court is also mindful of its core duty to the society which is to interpret the law and in doing so must confine itself to the clear and an unambiguous provisions of the law so as not to be found to embark on a suicidal journey.

Having adumbrated the above, this Honourable Court have drawn its opinion to this issue by stating that the issuance of pre-action notice is only applicable to the Executive Chairman, a member of the Board, or any other officer or employee of the Service and does not in any way include the FIRS which is a separate and distinctive body corporate with the ability to sue and be sued in its name. The position of the court is in line with the age long legal maxim which states **Expressio Unius Est Exclusio Alterius** which means what is stated in statute expressly excludes that which is not stated in statute. Therefore one does not import into a statute that which it is not meant to govern. **Attorney-General of Federation v. Aideyan; Ogbuniya v. Okudo (1976) 6-9 SC 32; PDP v. INEC (Supra); Osahon v. FRN (2003) 16 NWLR (845) 89**

In conclusion, the plaintiff is not aggrieved with Executive Chairman, a member of the Board, or any other officer or employee of the Service. Therefore, the plaintiff is not required by law to served defendant with a Pre-action Notice.

I hold that this court has the jurisdiction to entertain this suit in its entirety.

HON. JUSTICE A. I. CHIKERE
JUDGE
18/05/18

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