IN THE HIGH COURT OF JUSTICE

ONDO STATE OF NIGERIA

IN THE AKURE JUDICIAL DIVISION

HOLDEN AT AKURE

BEFORE HIS LORDSHIP: - HON. JUSTICE W. A. AKINTOROYE – JUDGE

THIS TUESDAY THE 18TH DAY OF JULY, 2016.

BETWEEN: -

SUIT NO: - AK/5M/2016

MARTINS ALO >>>>>>>>>APPLICANT

AND

1. SPEAKER, ONDO STATE HOUSE OF ASSEMBLY (HON. JUMOKE AKINDELE)
2. AUDITOR- GENERAL, ONDO STATE

>>>>>>>>>>RESPONDENTS

JUDGMENT.

Following an order of this Court that was made in an Ex- Parte Application that was brought by this applicant, which gave him leave to apply for Judicial Review, the said applicant came in a Notice of Motion for an order of Mandamus to order the respondents to make available to the applicant the approved audited account of Ondo State for the period between 2012 and 2014. The applicant based his application on four (4) Grounds, which were clearly spelt out by him in the Body of his Motion. In support of the Motion was an Affidavit of thirteen (13)

S.F OLUWOLE-AKOMOLAFE
SNR-ASST REG-(SAR II)
CERTIFIED TRUE COPY

1

HIGH COURT REGISTRY
21 JUL 2016

paragraphs and three (3) Exhibits namely – *a letter of request by counsel for the audited account; Reply given to the request by the State Auditor General; and Enrolment of Order of this court of 1st March, 2016.* Besides, applicant filed his Statement in support of Motion on Notice; and an Affidavit of Verification of Facts. Counsel relied on the averments in the Affidavit and the three (3) Exhibits filed along with the application. Counsel filed a written address, which he adopted as his submission in court. I hope to revisit this issue of processes of court before this Judgment is concluded.

In his said written address, Emodamori Esq. of counsel for the applicant said his application was brought pursuant to the provisions of Section 20 of the Freedom of Information Act, 2011; Order 40 Rules 1 and 5 (1) – (4) of Ondo State High Court (Civil Procedure) Rules, 2012 and the Inherent Jurisdiction of Court. Learned Counsel distilled just an Issue for determination to *wit*: - *"Whether the Applicant is not entitled to the order of mandamus sought against the Respondents in the circumstances of this case."*

Learned counsel reminded the court the purpose of an order of Prerogative Order of Mandamus, and when it lies i.e. to compel the performance of a public duty (usually ministerial) at the instance of a person who has sufficient interest in the performance of that public duty. Counsel cited the case of IKECHUKWU vs. NWOYE (2015) 3 NWLR (Pt. 1446) 367 @ 397, and AYIDA vs, TOWN PLANNING AUTHORITY (2013) 10 NWLR (Pt. 1362) 226 @ 274 in support of his stand. Mr. Emodamori listed the two conditions or factors that the applicants must satisfy for him to succeed to wit: -

(a). That the respondent has a duty of a public nature to perform; and

(b). That the respondent refused on demand, to perform the duty.

S. F OLUMILE-ALOMOLA
SNR ASST REG II
CERTIFIED TRUE COPY

Besides, counsel said the applicant had the duty of showing that he had a sufficient legal interest in the performance of the public duty. It was the belief of Mr. Emodamaori that this applicant has. Learned counsel for the Applicant said his client had the right to request for public information from any public institution, and that the applicant needed not show any specific interest in the information requested. Counsel placed reliance on Section 1(1) & (2) of the Freedom of Information Act, 2011 (hereinafter called 'the Act'). Counsel also relied on Section 4 (a – b) of the Act, which counsel believed imposed an obligation or duty on the respondent to make available the information requested by him. Learned counsel referred the court to Sections 2 (6) and 20 of the Act, which he said gave the applicant the right to approach the Court for a review of the denial of any information requested under the Information Act, 2011. Emodamori Esq. added that the burden of proof was on the respondent as regards the legal justification for denying the applicant the information sought. Counsel urged the court to grant the application.

The respondents reacted to the Notice of Motion by filing a Notice of Preliminary Objection, which was based on two (2) grounds *videlicet*: - *1. That the Freedom of Information Act, 2011 being a Federal Legislation is inapplicable to Ondo State Government same having not been enacted by the Ondo State House of Assembly. 2. That the suit is an abuse of court process."*

With the leave of court, respondents also filed a thirteen (13) - paragraph Counter – Affidavit out of time. Both the Preliminary Objection and the Counter – Affidavit were argued together by C. K Akinrinsola Esq. – Director of Civil Litigation, Ministry of Justice, Ondo State. As regards the Preliminary Objection, learned Director of Civil Litigation formulated two Issues for determination to wit: -

1. 'Whether the Freedom of Information Act, 2011 being a Federal Legislation is

S. F OLUWOLE-AKOMOLA
SMR ASST REGT II
CERTIFIED TRUE COPY

applicable to Ondo State Government same having not been enacted by the Ondo State House of Assembly.

2. Whether the suit is an abuse of court process.'

On Issue 1, learned Counsel referred the court to Relief 1, and Grounds a – d as endorsed on the Applicant/Respondent's Statement in support of the application. Learned Director of Civil Litigation submitted that the Information or Freedom of Information was not in the Exclusive Legislative List of the 1999 Constitution, (as amended), in respect of which the National Assembly had legislative powers to make laws. Counsel added that Information or Freedom of Information was neither on the Concurrent Legislative List that the National Assembly and the State Houses of Assembly had concurrent powers to make laws for the peace, order and good government of the Federation and the respective States. Akinrinsola Esq. submitted or concluded further that it must therefore be a residual matter, which the respective State House of Assembly could make laws in respect. Learned counsel therefore described the Freedom of Information Act, 2011 as a Federal law, made by the National Assembly, which could not be used to compel the States or State Government or its agencies to release information, except the law as concern the Act had been enacted into law by the State House of Assembly. Akinrinsola Esq. said the Ondo State House of Assembly had not enacted a law in that regard. Learned counsel cited the case of ATTORNEY – GENERAL OF LAGOS STATE vs. ATTORNEY – GENERAL OF THE FEDERATION (2003) 12 NWLR (Pt. 833) 163 in support of his submission, and added that this Court lacks jurisdiction to compel the Respondents to release the information requested for by the Applicant.

On Issue 2, Akinrinsola Esq. believed that the matter was brought to Court *mala fide* and improperly. He referred the Court to the case of ASHLEY AGWASIM &

S. F OLUWOLE – AKINOLA
SNR ASST. REGR
CERTIFIED TRUE COPY

ANOR. vs. DAVID OJICHIE & ORS. (2004) 10 NWLR (Pt. 882) 613 @ 633, 624 – 625 with respect to the meaning of the phrase – abuse of judicial process. Akinrinsola Esq. added that the option left for the Court where its process had been abused was to dismiss the suit. Counsel relied on the case of C.B.N. vs. AHMED (2001) 11 NWLR (Pt. 724) 369 @ 390; 408 – 410; MINISTER OF WORKS vs. TOMAS (NIG.) LTD (2002) 2 NWLR (Pt. 752) 740 @ 781; NWEKE vs. UDOBI (2001) 5 NWLR (Pt. 706) 445.

Learned counsel for the Respondents relied on the 13 – paragraph Counter – Affidavit. He adopted the written address that was filed with the Counter – Affidavit. An Issue was formulated by counsel for determination to wit – *"Whether the Applicants are entitled to the Order sought by this Application in view of the circumstances of this case"*.

Akinrinsola Esq. listed the four (4) conditions that must co – exist for an applicant to be entitled to an order of Mandamus. The four (4) conditions learned counsel said must conjunctively present for an order of Mandamus to be granted. Counsel relied on some cases including CBN vs. SYSTEM APPLICATION PRODUCTS (NIG) LTD (2005) 3 NWLR (Pt. 911) 511 @ 181. With respect to Condition No. 1, i.e. the existence of public duty in which the applicant has sufficient legal interest, learned counsel submitted that only persons that had actually suffered a wrong to their civil rights and obligation could approach the court . Counsel cited the case of BADEJO vs. MINISTRY OF Education (1994) 4 NWLR (Pt. 143) 254 in support of his contention that the court would be wary of busybodies and interlopers, whose presence in court would not be sanctioned. Counsel believed the Applicant had not shown through his Affidavit that he has sufficient interest in the public duty he wanted to compel the Respondents to perform. Learned counsel

S. F OLUKOLE-ALCONDLARS
SNR REGT REGT [illegible]
CERTIFIED TRUE COPY

believed the case of AYIDA vs. TOWN PLANNING AUTHORITY (2013) 10 NWLR (Pt. 1362) 226 relied upon by the Applicant would not avail him.

On the 2nd condition to wit – that the duty to be performed must be of a public nature or in the public interest, learned counsel relied on the case of FAWEHINMI vs. I. G. P & ORS. (2002) 7 NWLR (Pt. 767) @ 41 in saying that the Applicant, whose goal was to collect the information being sought for the execution of a project for a foundation, which counsel said was a private organization, was not entitled to the order being sought in this matter.

On Issue 3, i. e. on the issue of having no order remedy than an order of mandamus, Akinrinsola Esq. cited again the case of C. B. N. vs. SYSTEM APPLICATION PRODUCTS (NIG.) LTD (supra) and submitted that the Applicant had not shown or disclosed the effort he made to explore the other remedies to procure the documents in issue before he came by way of the instant application. Counsel concluded that the Applicant was not entitled to the Order being sought. He therefore prayed the Court to refuse to grant the application.

The Applicant reacted sharply to the Notice of Preliminary Objection that was filed by the Respondents, by filing a reply on points of law. In the said reply, Applicant raised two Issues for determination *videlicet*: -

(a). Whether public records is not an item on the concurrent legislative list in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in respect of which the National Assembly has power to make laws, particularly the Freedom of Information Act, 2011.

(b). Whether, in consideration of Issue 1 above, the Freedom of Information Act, 2011 is not applicable to all States, Public Institutions and or Public Officers in the Federation."

S. F OLUWOLE-AKOMOLAFE
SNR ASST REGR IT
CERTIFIED TRUE COPY

On Issue 1, Emodamori Esq. made reference to Section 1(1) and (3) of the aforementioned Constitution, which *inter alia* stipulates that the Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout Nigeria. Besides, learned counsel referred to other sections of the Constitution with a view to stating the structure of Nigeria as a Federation with component States and the Federal Capital Territory. Emodamori Esq. submitted that Section 4(1), (2) and (3) of the Constitution vested power to make laws for the entire Federal Republic of Nigeria on the Senate and House of Representatives, on matters in the Exclusive Legislative Lists in Part 1 of the Second Schedule to the Constitution. Counsel added that section 4(6) of the Constitution vested power to make laws for each State on the House of Assembly of each State. With respect to the Concurrent Legislative List in the First Column of Part II of the Second Schedule of the Constitution, learned counsel said both the National Assembly and the Houses of Assembly of the States had concurrent powers to make laws thereon. Emodamori Esq. concluded the point he was making by referring to Section 4 (5) of the Constitution, with a view to pointing out that any law made by the House of Assembly of any State, which is inconsistent with the law passed by National Assembly, shall become void to the extent of its inconsistency.

Emodamori Esq believed that it was in respect of Public Records that the Freedom of Information Act, 2011 was promulgated by the National Assembly, and that it (Public Records) was an item clearly listed in the Concurrent Legislative List in the 1999 Constitution. Counsel gave the definitions of the words – 'public', 'record', and 'Federation', and concluded that public record was synonymous with public document, which the Evidence Act, 2011in its Section 102 defined. Learned counsel submitted that the Freedom of Information Act, 2011 was enacted to regulate access to public records, and went further to state the intention of the

S. F OLUWOLE-ALIONU
SNR ASST REGT
CERTIFIED TRUE COPY

National Assembly in that regard. Counsel therefore concluded that the 'public records' was an item on the concurrent legislative list in the Constitution of the Federal Republic of Nigeria.

On Issue 2, Emodamori Esq. was of the view that the Freedom of Information Act, 2011 was applicable to all States, Public Institutions and or Public Officers in the Federation. Counsel adopted his arguments under Issue No. 1. Counsel submitted that the intention to make Freedom of Information Act, 2011 applicable to all parts of the Federation was clearly stated in Section 1(1) of the Act, and that the words 'Act' and 'Law' as used in that Section of the Freedom of Information Act meant legislations made by the National Assembly or States respectively. Relying on the provisions of Section 318 of the Constitution as regards the meanings of the words – 'Act' and 'Law'. Counsel went further to refer to some other section of the Freedom of Information Act, and urged the Court to interpret the provisions by adopting and using the interpretation that would not defeat the intention of the lawmakers.

The issue of want of jurisdiction of Court has been raised and well conversed by counsel for parties. Because of the importance of that issue, which goes to the root of any matter before the court, it has and must be determined first. I intend to consider that issue of jurisdiction of court from two points. The first of the two points is whether this court is competent at all, to consider this matter, or any issue or issues raised in it by counsel. It has been held in a long line of cases that a court is competent when -

(1). It is properly constituted as regards numbers and qualifications of the bench, no member is disqualified for one reason or another; and

(2). The subject – matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and

S.F OLUKOLE-AKOMOLA
SNR ASST REGR II
CERTIFIED TRUE COPY

(3). The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.
In the popular case of GABRIEL MADUKOLU & ORS. vs. JOHNSON NKEMDILIM 1. ACLC 221 @ 228, it was held by the Supreme Court, per BAIRAMIAN, F.JJ that any defect in competence is fatal, for the proceedings are a nullity how-ever well conducted and decided, the defect being extrinsic to the adjudication.

In the course of this Judgment, I have listed all the court processes that were filed and served by the Applicant after leave was granted to apply for judicial review vide an order of Mandamus. For the purpose of clarity, let me restate them here. They are – (i). An Affidavit of thirteen (13) paragraphs; (ii) Three (3) Exhibits namely – a letter of request by counsel for the audited account; Reply given to the request by the State Auditor General; and Enrolment of Order of this court of 1st March, 2016; (iii). Applicant's Statement in support of Motion on Notice; (iv). An Affidavit of Verification of Facts; (v). Counsel's written address, which he adopted as his submission in court. After the Respondents filed their court processes in reaction to the Applicant's court processes served on them sequel to the leave granted him, he (Applicant) filed a process that was called or named *"APPLICANT'S/RESPONDENT'S REPLY ON POINTS OF LAW TO THE RESPONDENTS'/APPLICANTS' NOTICE OF PRELIMINARY OBJECTION FILED ON 9/3/2016"*. The said court process was an address that was comprehensively prepared and adopted by learned counsel for the Applicant. It may be necessary to say it in other words that besides these court processes that I have mentioned in this Ruling, no other court process was filed by the Applicant before the matter was heard in court.

S. F OLUWOLE-ALONGE
SNR ASST REGR II
CERTIFIED TRUE COPY
21/7/2016

The Ondo State High Court (Civil Procedure) Rules, 2012, in its Order 40 Rules 1 - 11 provides the procedure that must be followed in applications for judicial review. In its Rule 5 (6) of that Order, it is clearly provided thus: - *"An affidavit giving the names and addresses of and the places and dates of service on all persons who have been served with the notice of motion or summons* ***shall be filed before the motion or summons is entered for hearing*** *and if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it* ***and the affidavit shall be before the Judge on the hearing of the motion or summons.***" From the wordings of the aforementioned provisions of the Rules of this Court, it is mandatory that an affidavit giving the names and addresses of and the places of service on all persons who have been served with the notice of motion or summons be filed. The Rules of court make it imperative for the affidavit to be before the Judge on the hearing of the motion or summons. In the case of INEC & ORS. vs. INIAMA & ORS (2008) 8 NWLR (Pt. 1088) 182, it was held by the Court of Appeal, per OWOADE, J.C.A thus: - *"There is no doubt that both in law and in the English language, the expression "shall" connotes a command, a directory"*. The Supreme Court, *per* FABIYI, J.S.C, in the case of DR. KEMDI OPARA & ANOR. vs. HON. BETHEL AMADI & ANOR. (2013) LPELR – 20747 cited with approval the decision of the Supreme Court it the case of BAMAIYI vs. A. G. FEDERATION & ORS. (2001) 12 NWLR (Pt. 727) 468 @ 497, where it was held that the word 'shall' as employed in the stated section of the Constitution denotes obligation or a command and gives room for discretion. It imposes a duty. A peremptory mandate is enjoined. From these authorities and very many others not cited herein, I am of the view, humble view it is, that the word shall as used in Order 40 rule 5 (6) of the Ondo State High Court (Civil Procedure) Rules, 2012 connotes a command. It is not optional at all.

10

S. F OLUKOLE-ALEONOLA
SNR ASST REG I
CERTIFIED TRUE COPY

I have observed that the said mandatory affidavit was never ever filed and or placed before this court on the day of hearing this motion. If I may add, it is not filed in court up till this moment. In the case of HON. JUSTICE C. C. NWAOGWUGWU vs. THE PRESIDENT OF THE FEDERL REPUBLIC OF NIGERIA & 6 ORS. (2007) 6 N.W.L.R (Pt. 1030) 237 @ 269 – 270, the Court of Appeal, Abuja Division, *per* ADEKEYE, J.C.A (as she then was) held thus: - "By virtue of Order 47 rule 5(6) of the Federal High Court (Civil Procedure) Rules, 2000, An affidavit of service must be filed before an application for judicial review is entered for hearing. Furthermore, the affidavit must state:

"*(a). Names and addresses of all persons who have been served with the notice of the motion or summons;*

(b). Place and dates of service on all those served;

(c). The fact of non-service on any person who ought to be served under the rule who has not been served, and the reason for such non-service.

The operative word in the rule is "shall", which makes compliance imperative. Thus any application which fails to fulfill the conditions imposed by the rule is incompetent. And the defect in competence spells absence of jurisdiction to entertain the matter."

Also in the case of CHIEF IKEDI OHAKIM vs. CHIEF MARTINS AGBASO & 3 ORS. (2010) 19 N.W.L.R (Pt. 1226) 172 @ 230, the Supreme Court, per ONNOGHEN, J.S.C. held *inter alai* that a claim for an order of mandatory injunction in an application for judicial review in which there is no claim for mandamus amounts, in law, to a claim for an order of mandamus and must comply with all the pre-conditions necessary for the invocation of the jurisdiction of the court for the order of mandamus. His Lordship added that failure to do so would render the initiation of the proceeding and the competence of the court to entertain the same, fundamentally defective.

S. F OLUNOLE-ALOMOLAFE
CHIEF REGISTRAR
CERTIFIED TRUE COPY

The situation in the case of HON. JUSTICE C. C. NWAOGWUGWU (supra) was even better than what the situation is in the instant case. I that case of NWAOGWUGWU, two affidavits were filed as proof of service. The said affidavit only deposed to the knowledge that all the respondents were served with originating summons. No other information as required by Order 47 rule 5(6) of the Federal High Court (Civil Procedure) Rules, 2000 was disclosed. The court held it against the Applicant in that case that they failed to comply with the mandatory Rules of Court. That provision of the Federal High Court (Civil Procedure) Rules that was considered in that case is *in pari materia* with the provisions of Order 40 Rules 5(6) of the Ondo State High Court (Civil Procedure) Rules of 2012 now being considered.

The other point with respect to want of jurisdiction of court, which counsel on both sides extensively canvassed was the applicability or otherwise, of the Freedom of Information Act in Ondo State. I have given the summary of the submissions of both counsel with respect to the provisions of the Constitution of the Federation, 1999 on the power to make laws by the Federation for the Federation, and the States for themselves. Emodamori Esq., of counsel for the Applicant mentioned Section 4(2) of the Constitution, which he said gave power to the National Assembly to legislate for the Federation. That was what he called Exclusive Legislative List. Section 4 (4)(a) of the Constitution counsel said empowered the National Assembly to make laws with respect matters on the Concurrent Legislative List. The Legislative Power belonging to the States in the Federation counsel said was derived from Section 4(6) of the Constitution. Learned counsel added that ***'public record'***, in respect of which the Freedom of Information Act, 2011 was promulgated by the National Assembly, was an item clearly listed in the

S. F OLUWOLE-AKOMOLAFE
SNR ASST REGT IT
CERTIFIED TRUE COPY
FWO

concurrent legislative list in the said 1999 Constitution. C. K Akinrinsola Esq. of counsel, submitted that **'Freedom'** or **'Freedom of Information'** was not listed either in the Exclusive or Concurrent Legislative List of the 1999 Constitution. He described it then as residual matter, which only the States Houses of Assembly could legislate on.

Femi Emodamori Esq. submitted and I agree with him that Section 2 (2) of the 1999 Constitution made it clear that Nigeria shall be a Federation consisting of (36) States, and a Federal Capital Territory. Learned counsel also said and I agree with him that the power to make laws for the Federation and each State of the Federation has been shared and articulated in the Constitution. Be that as it may, it is then imperative to ask – who controls information in a Federation like Nigeria, the Federal, or the State, or both? I am of the belief that the control of information in a Federation like Nigeria, is not within the exclusive power of the Federation. Each Government (Federal, State, and even the Local) has a share in the control. The Federation controls the national information. That is why the office of the Minister for Information, who is a member of the Federal Executive arm of government, is created. In the same manner, the States also are empowered to control the States' information. No wonder each State has the office of Commissioner for Information created. In the case of A. G. LAGOS STATE vs. A. G. FEDERATION & 35 ORS. (2003) 12 N.W.L.R (Pt. 833) 1 @ 120, the Supreme Court, per UWAIS, C.J.N held thus: -

"By virtue of Section 2(2) of the 1999 Constitution Nigeria shall be a Federation and by the doctrine of Federalism, which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other governments including the Federal government, is essential to federal arrangement. Therefore, each government exists not as an

S.F OLUWOLE-ALLOMOLAFE
SNR REST REGT
CERTIFIED TRUE COPY

appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government."

Let me appreciate the ingenuity of Emmanuel Emodamori Esq. of counsel for the Applicant. His resourcefulness must be acknowledged as regards the relevant sections of the Constitution that he interpreted in his reply to the objection raised. I in particular want to mention his interpretation of item No. 4 of the concurrent legislative list, which provides thus: -

"4. The National may make laws for the Federation or any part thereof with respect to the archives and public records of the Federation."

Emodamori Esq. submitted and said that 'public records' was listed in the concurrent legislative list, and that '*public record*' was **synonymous** (emphasis mine) with *'public document'*, which the Evidence Act, 2011 defines in section 102. I refuse to agree with learned counsel on this. In my humble opinion, that would amount to expanding the law. The duty of courts is to expound the law, and not to expand it. In the case of THE HON. JUSTICE E. O ARAKA vs. THE HON. JUSTICE DON EGBUE (2003) 17 NWLR (Pt. 848) 1 @ 21, the Supreme Court, per TOBI, J.S.C held that the duty of court is to interpret the words contained in the statute and not go outside the words in search of an interpretation which is convenient to the court or to the parties or one of the parties. His Lordship added that it is not the duty of the court to remove the chaff from the grain in the process of interpretation of a statute to arrive at favourable terms for the parties outside the contemplation of the lawmakers.

The position in law is that where a constitutional provision is clear and unambiguous, the courts cannot read into the provision an implied term because by the clear and unambiguous provision, an implied term is impliedly forbidden to be

S.F OLUWOLE-AKOMOLAFE
SNR ASST REG IT
CERTIFIED TRUE COPY
21/7/2016

part of the Constitution. In the case of FEDERAL REPUBLIC OF NIGERIA vs. ALHAJI MIKA ANACHE & 3 ORS. (2004) 1 SCM 36 @ 73, the Supreme Court, per NIKI TOBI, J.S.C. held that a Constitution is not a transient agreement, like contract where implied terms could be read into the wordings in the interest of the commercial transaction of the parties. His Lordship said: – *"Where a Constitutional provision is clear and unambiguous and the courts read into them so-called implied terms, the courts will be going outside their interpretative jurisdiction and will be branded as making the law in a bad way. Let that day not come in the history of our legal system."* Also in the case of CHIEF GANI FAWEHINMI & 2 ORS. vs. GENERAL IBRAHIM BABANGIDA (RTD.) & 2 ORS. (2003) 3 NWLR (Pt. 808) 604 @ 664 – 665, where the Supreme Court, per UWAIFO, J.S.C held thus: - *"The power given to Parliament to make laws in regard to Tribunals of inquiry as reflected in the Legislative Lists contained in the relevant provisions of the Schedule to the 1963 Constitution (Item 39 of the Executive Legislative List and Item 25 of the concurrent Legislative List) was, for whatever reason, denied the National Assembly in both the 1979 and 1999 Constitutions of the Federal Republic of Nigeria. Without such constitutional provisions, no valid law can be made, or can exist, standing on its own and of a general nature, to apply throughout the Federation of Nigeria on the strength of which the President may set up a tribunal or commission of inquiry. This is because no law not specifically authorized or backed up in our Constitution can be lawfully passed for the Federation of Nigeria by the Federal legislature. It is the limits set under the relevant provisions of the constitution that define and determine the frontiers of the laws that can be enacted. That is the hallmark of constitutional democratic governance which is seen as a reflection of the power granted by the people to meet their aspirations, and none else. In essence, that means that the National*

S.F OLUWOLE-AKOMOLAFE
SNR ASST REGT II
CERTIFIED TRUE COPY
FWD

Assembly cannot enact a general Law for the establishment of tribunals of inquiry for, and applicable in, the Federation of Nigeria. The power to enact such a Law has become a residual matter for the States in respect of which the Houses of Assembly can legislate for their respective States by virtue of section 4(7)(a) of the 1999 Constitution."

Information or Freedom of Information having not been expressly or specifically listed or provided for, either in the exclusive or concurrent legislative list, it has become residual matter, which falls within the purview of the States, and in respect of which the State Assemblies could legislate upon. The National Assembly has no power to legislate on it with a view making it binding on States in the Federation. In view of this, I hold that this court has no jurisdiction to compel the Ondo State Government or any of its agencies/agents to release information requested for by this applicant. I refuse to look into the Notice of Motion on the merit. It is therefore struck out with Five Thousand Naira (N5, 000. 00) costs in favour of each of the Respondents.

HON. JUSTICE W. A. AKINTOROYE

JUDGE

19 – 07 – 16.

COUNSEL

Femi Emmanuel Emodamori Esq. – for Applicant

C. K. Akinrinsola Esq. – D. C. L, Ministry of Justice, Ondo State for Respondents.

S.F OLUWOLE-AKOMOLAFE
SNR ASST REGR II
CERTIFIED TRUE COPY
FWO

HIGH COURT REGISTRY
21 JUL 2016