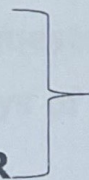


**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
ON TUESDAY THE 23<sup>RD</sup> OF SEPTEMBER, 2025  
BEFORE HIS LORDSHIP, HON. JUSTICE G.K. OLOTU  
JUDGE  
SUIT NO: FHC/ABJ/CS/244/2023**

**BETWEEN:**

- 1. FESTUS SANMI ONIFADE**  
(Suing for Himself and on behalf of)
- 2. COALITION OF NIGERIA CONSUMER**



**APPLICANTS**

**AND**

**ABUJA ELECTRICITY DISTRIBUTION COMPANY ...RESPONDENT**

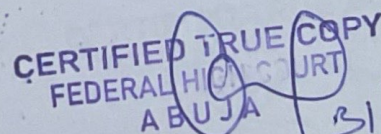
**JUDGEMENT**

**A. INTRODUCTION**

This Judgement is in respect of the Applicants' suit filed by way of Motion on Notice 22<sup>nd</sup> February 2023, pursuant to Sections 1,2,5,7 and 20 of the Freedom of Information Act, Order 34, Rule (1) of the Federal High Court (Civil Procedure) Rules 2019, Section 76(12) of Electric Power Sector Reform Act and under the inherent jurisdiction of this Honourable Court.



*C. Olotu*



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Festus Onifade  
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## B. RELIEFS SOUGHT BY THE APPLICANT

The reliefs sought by the Applicants are as follows:

- "1. A DECLARATION that by Section 2(7) of the Freedom of Information Act 2011, the Respondent is a Public Institution within the meaning and intendment of the Freedom of Information Act 2011.**
- 2. A DECLARATION that the Refusal by the Respondent to furnish the Applicants with the information in its custody is wrongful, unlawful and unconstitutional.**
- 3. AN ORDER Compelling, Mandating the Respondent to furnish the Applicants with the information requested for in their letter dated 18<sup>th</sup> January, 2023 within seven (7) days of the Order of this Honourable Court.**
- 4. AN ORDER Compelling, mandating the Respondent to pay the fine of N500, 000.00 (Five Hundred Thousand Naira) only as penalty for non-compliance with the Provisions of Freedom of Information Act, 2011.**
- 5. SUCH FURTHER ORDER/S as this Honourable Court may deem fit to make in the circumstances of this case."**

## C. GROUNDS FOR THE APPLICATION

The grounds for the Application are as follows:

- "1. The Applicant made a request for information from the Respondent under the Freedom of Information Act, 2011.**
- 2. The Respondent in its letter dated 24<sup>th</sup> January, 2023 refused the request that it is not bound by the Freedom of Information Act, 2011.**

*C. W. D. B. T. U.*

3. **The Applicant has approached the Honourable Court for a judiciary review.**
4. **The rules of this Court provides for this application.**
5. **The Honourable Court has the powers to grant this application.**
6. **It is in the interest of justice to grant this application."**

**D. PROCESSES FILED BY THE APPLICANTS IN SUPPORT OF THE MOTION ON NOTICE**

In support of their Motion on Notice, the Applicants filed the following:

1. An Affidavit of 13 paragraphs dated 22<sup>nd</sup> February 2023 and deposed to by Festus Sanmi Onifade, a Legal Practitioner and the 1<sup>st</sup> Applicant. Two exhibits we attached thereto as follows:
  - (a) **EXHIBIT AEDC 1** – A copy of the Letter of Request from the Applicants' Lawyer to the Respondent dated 18<sup>th</sup> January, 2023 and titled; **"REQUEST FOR CURRENT TARIFF CHARGE ON YOUR CONSUMERS WITHIN YOUR AREA OF OPERATIONS PURSUANT TO THE FREEDOM OF INFORMATION ACT, 2011 AND SECTION 76 (12) OF THE ELECTRIC POWER SECTOR REFORM ACT, 2005."**
  - (b) **EXHIBIT AEDC 2** - A copy of the reply letter from the Respondent to the Applicant dated 24<sup>th</sup> January, 2023 and titled:- **"REQUEST FOR CURRENT TARRIF CHARGE ON CONSUMERS WITHIN YOUR AREA OF OPERATIONS PURSUANT TO THE FREEDOM OF**

*C. W. O. B. T. U.*

**INFORMATION ACT, 2011 AND SECTION 76(12) OF THE  
ELECTRIC POWER SECTOR REFORM ACT, 2005."**

2. A Written Address in compliance with the Rules of this Court.
3. A Reply on Point of Law to the Respondent's Counter Affidavit

**E. DEFENCE OF THE RESPONDENT**

In opposition to the Applicant's Motion on Notice, the Respondent filed the following:

1. A Counter Affidavit of 6 paragraphs dated 24<sup>th</sup> May, 2024 and deposed to by one Hakeem O. Salihu, Associate of Shehu wade & Co. Solicitors to the Respondent. No exhibits were attached.
2. A Written Address in compliance with the Rules of this court.

**F. FACTS OF THE CASE**

By an Originating motion dated 5<sup>th</sup> day of December 2023, the Applicant approached this Court pursuant to the provisions of the Freedom of Information Act, 2011, seeking an order to compel the Respondent, Abuja Electricity Distribution Plc (AEDC) to furnish it with certain tariff-related information.

The Applicants had, by a letter dated 25<sup>th</sup> October 2023, requested from the Respondent details of its current electricity tariff structure being charged. The said request was duly received and acknowledged by the Respondent. The Respondent responded by a letter dated 24<sup>th</sup> January, 2023, stating that it is not subject to the Freedom of Information Act. He stated further that by the provision of Section 76(12) of the Electric Power Sector Reform Act, 2005, the Applicant can visit its Legal Services Department for their Request to be addressed. Consequently, the Applicant commenced the present suit,

*C. W. O. Salihu*

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contending that the Respondent is a public institution within the meaning of the Freedom of Information Act, being a Company partly owned by the Federal Government and performing public utility functions in power sector.

#### **G. ISSUES FOR DETERMINATION**

The Applicant submitted two issues for determination as follows:

***"a. Whether the Respondent is not subject to the provisions of the Freedom of Information Act 2011, and by implication liable for denying the Applicant the information requested.***

***B. Whether by the provisions of Sections 1,2,5 and 21 of the Freedom of Information Act, 2011, and section 76 (12) of the Electric Power Reform Act, 2005 the Applicants are not entitled to be furnished with the information in the custody of the Respondent."***

The Respondent formulated a sole issue for determination as follows:

***"Whether the Applicant has placed sufficient materials before this Honourable Court evidencing refusal on the part of the Respondent to supply the information requested for"***

I have carefully examined the issues for determination as framed by the learned counsel on both sides. It is my humble view, that each issue although related addresses a distinct point material to the resolution of this suit and their collective consideration will aid this court in the just determination of this suit. I hereby adopt the issues formulated by the Applicants and Respondent for the determination of this suit.

**Counsel to the Applicants submitted as follows:**

#### **4.1 ARGUMENT ON ISSUES ONE AND TWO.**

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4.2 It is the law that every Nigeria Citizen shall have and be entitled to public information when request have been made in respect of such information. Section 1 of Freedom of Information Act, 2011 states thus;

**"Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.**

4.3 The underlying philosophy of Freedom of Information is that public servants and public institutions are custodians of a public trust on behalf of a population who have a right to know what they do. In particular, the Freedom of Information Act, 2011 removes the aura of mystery and exclusion in respect of dealings of public servants cloak the ordinary operations of government and public institutions.

4.4 My Lord, the Act builds on the presumption of openness, by placing on those who wish to keep public information away from the people, the onus of justifying why they have to do so and reason behind their many actions which invariably affect the lives of general public.

**4.5 CITIZENS RIGHTS TO INFORMATION UNDER THE ACT CAN BE SUMMARIZED THUS:**

*a. The right to access or request any information or record that is in the custody or possession of any public institution or private bodies providing public services, performing public functions or utilizing public funds.*

*b. The right to be told whether the information or record exists.*

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- c. *The right to have the requested information or record released, if the information or record is in the custody or possession of a public institution.*
- d. *The right not to demonstrate any specific interest or purpose in the requested information or record.*
- e. *The right to receive information that public institutions are obliged to proactively disclose under the Act.*
- f. *The right to take legal action in Court to compel any public institution to comply with the provisions of the Act, including discharging their proactive disclosure obligations under the Act.*

4.6 The preposition expanded above in Freedom of Information Act, 2011 was actually drawn from **Section 39 of the Constitution of the Federal Republic of Nigeria 1999 (Amended)** which provides thus:

**Every person shall be entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference.**

4.7 Access to Information is a Constitutional guaranteed right, every citizen has Right to receive and impart ideas has been long recognized as inalienable Right, in as much such information do not fall within the impermissible exceptions.

5.0 In the instant case, the Applicant requested for information from the Respondent in a letter dated 18 January, 2023. The Respondent in its reply stated that they are not subject to the provisions of the Freedom of Information Act, 2011. The Respondent misconstrued and misinterpreted the provisions of Freedom of Information Act, 2011, to exclude themselves in its applicability.

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**We refer My Lord to Exhibit AEDC1 and AEDC2 attached to the supporting affidavit.**

5.01 For avoidance of doubt, **Section 2 (7) OF THE FREEDOM OF INFORMATION ACT, 2011** provides

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

**Underline are mine for emphasis**

6.02 The Applicant in its affidavit in support of the Motion on Notice had stated that the Respondent though a private company is owned by KANN Utility Limited 60% equity partly and the Federal Government holds 40% equity in the company. The Respondent though registered as a private company, is NOT 100% a private institution. It is owned by both the Federal Government and a private company.

6.03 Also, in addition, the Respondent is the Company licensed by the Federal Government for the sales and distribution of electricity to Consumers and Customers within its area of coverage of Federal Capital Territory, Niger, Kogi and Nasarawa State. Sales and distribution of electricity are essential public services (utility) that required special licensing before any company could

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engage in such ventures. Electricity sale and distribution are not in the realm of ordinary day to day services. It is an essential public utility within the contemplation of Freedom of Information Act. In fact, until recent privatization of Power sector these area are in the exclusively monopoly of government and classified as public institutions.

6.04 The case of **OWEI AYIBATONYE & ORS V. NIGERIAN STOCK EXCHANGE**, perfectly illustrate the instant case. The Federal High Court in Lagos in the judgment of Honorable Justice A.O Faji delivered on the 1<sup>st</sup> of May 2018 in which judicial impetus was given to the applicability of the Freedom of Information Act to the Nigerian Stock Exchange as a public institution.

6.05 **FACTS** The Plaintiffs were investors who had lost substantial amounts of monies following an investment in an unregistered investment product. To fully understand the nature and extent of the rights/reliefs of the Plaintiffs vis-a-vis the liability of the Partnership Entities, the Plaintiffs had, relying on the Freedom of Information, requested for certain information/documents, relating to the affairs of the relevant Partnership Entity from the Nigerian Stock Exchange (the NSE). However, the NSE refused the Plaintiffs' request for information claiming the NSE is not subject to the FOI Act and therefore not under any obligation to honour the Plaintiffs' request for information.

6.06 The court held that **"...The Defendant was thus established to carry out its activities in the interest of investors and the public...On a literal interpretation of Section 2(7) Freedom of information Act**

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ABUJA

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**therefore, it seems to me and I hold that the Defendant is a public institution and therefore subject to the Freedom of Information Act"**

5.07 The underlining principles under the Freedom of Information Act, 2011, are to weigh the request for the information vis-a-vis the overriding public interest of disclosure of the information and the non-disclosure of such information. **SECTION 14 (3) FOIA states "*Where disclosure of any information referred to in this section would be in the public interest, and if the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom request for disclosure is made shall disclose such information subject to Section 14 (2) of this Act*"**

5.08 The information requested by the Applicant's is the amount the Respondent currently charges. Apart from the Rights that inure to the Applicant's under the Freedom of Information Act, 2011, it is also within the Applicant's Right as the Consumer and Customer of the Respondent to know what they charges. The Consumer Right has also been recognized under Section 76 (12) Electric Power Sector Reform Act, 2005.

5.09 This Act states thus Section 76 (12) Electric Power Sector Reform Act, 2005.

**"Every licensee shall keep at his office a current copy of the tariff methodology applicable to that licensee and shall make a copy available for inspection on request by any person free of any charge during the licensee's normal working hours"**

*C. W. B. T. U.*

6.0 From the forgoing, it is crystal clear that the Respondent is within the meaning and intendment of the provision of Section 2 (7) as a public institution who the law has imposed an obligation to be responsible to the Nigeria citizen. We therefore submit that the Respondent being involved in the sale and distribution of Electricity and an institution being an institution partly owned by Federal government is public Institution and is therefore bound by the Freedom of Information Act, 2011. We urge My Noble Lord to so hold.

6.01 My Noble sir, it is also the law that where a case of wrongful denial is established of the public institution, as the case of the Respondent in this case, such public institution will be liable to fine of **N500, 000.00 (Five Hundred Thousand Naira)** only upon conviction. See the provision of Section 7 () & (5) FOIA, 2011.

**SECTION 7 (4) OF FREEDOM OF INFORMATION ACT, 2011**

*" (4)Where the government or public institution fails to give access to information or record applied for under this Act or part thereof within the time limit set out in this Act, the institution shall, for the purposes of this Act, be deemed to have refused to give access"*

*(5)Where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of N500, 000"*

6.02 As seen in the above, the Respondent by its deliberate refusal to supply the information requested is liable for conviction and payment of the fine as

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stipulated under the law. We therefore most respectfully, urge My Noble Lord to grant all the Applicant reliefs sought as they are meritorious.

7.1. The provision of **Section 39** of the Constitution of the Federal Republic of Nigeria (As Amended) remains the organic law, the supreme law and ground norm from every law must be rooted and its provision must have binding force on all authorities, institutions and persons in Nigeria including the Respondents. SEE: Section 1(1) (3) of the Constitution of Federal Republic of Nigeria 1999 (As Amended) and **FRN VS IFEGWU (2003) NWLR (Pt. 798) and Section 2 (7) FREEDOM OF INFORMATION act, 2011.**

5.3 We urge your Lordship to give the Constitutional and statutory provisions above their ordinary meaning in the circumstances presented in this case by granting all the reliefs sought in the overall interest of the sanctity of the constitution and for posterity sake.

**In opposition to the Applicants submissions, the Counsel to the Respondent submitted as follows:**

#### **5.0 LEGAL ARGUMENT ON SOLE ISSUE**

5.1. My noble lord, it is trite law that applications such as this are predicated upon evidence of the Applicant, to justify the reliefs being sought. In applications such as this, the Applicant has the burden of proof and to adduce sufficient evidence in support of his claims. We rely on the case of **Adighije v Nwaogu (2010) 12NWLR (Pt. 1209)419 CA** where it was held that:

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***"The law of evidence is all about proof of a particular issue. Proof in its legal meaning is the process by which the existence or non-existence of fact is established to the satisfaction of the court."***

5.2. Our simple reaction is to respectfully invite your lordship to take a cursory look at the exhibits annexed to the Applicants' affidavit, especially Exhibit AEDC 2 which is the response of the Respondent to the information requested for by the Applicants.

5.3. Exhibit AEDC 2 reflects the minds of the Respondent and it is copiously stated that:

'However, further to Section 76(12) of the Electric Power Sector Reform Act, 2005, you are requested to visit the Legal Services Department, Abuja Electricity Distribution Plc, 1, Zingunchor Street, Wuse Zone 4, Abuja for your request to be addressed'.

5.4. My lord, the response of the Respondent was not a refusal to oblige the Applicant of his request. It is rather in consonance with the demands of the extant law, under which the Applicant brought his application under.

5.5. This particular response of the Respondent acknowledges the provisions of the law relating to information request on Tariffs. For reiteration, the quoted section 76(12) of the Electric Power Sector Reform Act, 2005 provides thus: ***"Every licensee shall keep at his office a current copy of the tariff methodology applicable to that licensee and shall make a copy available for inspection on request by any person free of any charge***

*C. W. D. B. T. U.*

***during the inspection on request by any person free of charge during the licensee's normal working hours."***

5.6 It is therefore absolutely incorrect for the Applicant to conclude that his request (which he has not gone to receive) has been denied; as it is not the place of the Respondent to fetch whatever information demanded for and take it cap in hand to the location of the Applicant.

5.7. It would have been different had the Applicant visited the Respondent in demand for his request and he was denied; or if the Applicant has forwarded an address for delivery of his request and it was no sent.

5.8. The interest of justice will not be better served with the grant of this application; as the Respondent has not wronged the Applicant in any way and we urge the court to so hold.

5.9. The cost of five hundred thousand (N500,000.00) naira being sought against the Respondent is un warranted as the Freedom of Information Act has not been breached by the Respondent. For the avoidance of doubt, Section 7 (5) of the Freedom of Information Act, 2011 provides thus:

***"Where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of five hundred thousand.***

5.10. Obviously sir, the prerequisite to fine is where a case of wrongful denial of access is established. In this instant suit, the Applicant has not established a prima facie case of wrongful denial of access and would

*C. W. D. B. T. U.*

automatically not be entitled in receipt of a fine of five hundred thousand naira; we urge your lordship to so hold. 5.11. In light of the foregoing, we urge the court to refuse the Applicant's application for being premature and for want of merit.

6.1. We find solace in the maxims of equity to wit; *one who seeks equity must do equity and equity does not aid the indolent.*

6.2. Therefore considering the circumstances of this case, the Applicant has not made out any case against the Respondent and we urge your lordship to so hold.

6.3. We urge this Honourable Court to refuse this application.

6.4. We are most obliged.

#### **Applicant Reply on Points of Law to the Respondent's Counter Affidavit**

- 1.1 The Applicant initiated this suit via a Motion on Notice dated 21<sup>st</sup> February 2023 and filed 22<sup>nd</sup> February, 2023 for JUDICIAL REVIEW of the Respondent's action for refusal to oblige the Applicant the information requested claiming that they are NOT bound by the Freedom of Information of Act, 2011. The Respondent has filed a counter affidavit dated and filed 24<sup>TH</sup> May, 2024.
- 1.2 Hence, this is a reply on point of law to the Respondent's Counter Affidavit. THE RESPONDENT WAS SUED FOR JUDICIARY REVIEW UNDER THE FREEDOM OF INFORMATION ACT 2011, AND NOT ELECTRIC POWER SECTOR ACT, 2005.
- 2.0 My Noble Lord, in specific reply to the Respondent's claim that it has made the information requested available to the Applicant, we submit respectfully that

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the Freedom of Information Act 2011 had a copious provision on request for information. A Public institution whose information is in its custody has seven (7) days under the law within which to make such information available to the Applicant. And the information requested must be made available in writing as prescribed by the law.

- 2.1 In the instant case, the Applicant request for information was made pursuant to relevant Section of the Freedom of Information Act, 2011. Even though the Respondent had made effort to misconstrued this fact. We humbly refer to Section 2 (7), 4, and 1 (3) FREEDOM OF INFORMATION ACT, 2011. Particularly, SECTION 2 (7) of the Act defines Public institution as thus:

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

SECTION 4 of the Act provides thus:

***"Where information is applied for under this Act, the public institution to which the application is made shall subject to section 6 and 8 of this Act within days after the application is received***

- (a) make the information available to the applicant:***  
***(b) where the public consider that the application should be denied, the institution shall give written notice to the Applicant that access to all or part of the information will not of be granted, stating reasons.***

*Ce w d b t u*

*For the denial, and the section of this Act under which the denial is made.*

### SECTION 1(3)

*"Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with provisions of this Act"*

2.2 My Noble Lord sir, the above provisions are explicitly clear on who a PUBLIC INSTITUTIONS is; the TIME LIMIT in which information requested for should be supplied; and in event of denial of the information, the remedy available to the Applicant under the Freedom of Information Act, 2011.

THE RESPONDENT IS BOUND BY THE FREEDOM OF INFORMATION ACT, 2011

2.3 The Respondent's attempt to misdirect and misconstrue the facts before the court that it has complied with the provisions of FOI Act, 2011 and Not Section 76 (12) Electric Power Reform Act, 2005 merely by asking the Applicant to visit its office; is an attempt to placate and put a wool in eye of the court from the stake truth. The principal Act the Applicant relied upon in his application is the Freedom of Information Act, 2011. The question **is that is the Respondent bound by Freedom of Information Act, 2011?** The Respondent had stated emphatically in their response to the Applicant's letter that they are not bound by the Act. My Lord we refer to excerpt of **EXHIBIT AEDC 2**, Paragraph 2 of **Exhibit AEDC 2** reads thus;

**"ABUJA ELECTRICITY DISTRIBUTION PLC. (AEDC) IS NOT SUBJECT TO THE PROVISIONS OF FREEDOM OF**

*C. N. D. O. T. U.*

## **INFORMATION ACT, 2011..."**

The Applicant's grouse is the Respondent refusal on the basis that they are not bound by the provision of the Act.

My Lord Sir, the question is **Whether the Respondent is NOT subject to Freedom of Information Act, 2011 and whether having regards to the facts and circumstances of this case she has have complied with the provisions of Act.**

2.4 From the above provisions of FOI Act, particularly Section 2 (7) it is not in doubt that the Respondent is a public Institution within the definition of the Act. Also, the above provisions are clear on the responsibilities of the Applicant's and institutions in custody of information requested.

2.5 My Noble Lord, there is a presumption that where such information are not made available within the time limit specify under the law, it will be deem that the Applicant has been denial the information. SECTION 7(4) "Where the government or public institution fails to give access to the information or record applied for under this Act or part thereof within the time limit set out in this Act the institution shall for the purposes of this Act be deemed to have refused to give access"

2.6 Furthermore, the FOI Act made provision for an aggrieved Applicant to approach court for judiciary review and remedy in event of denial of the information. **SECTION 7(1), 5 and 3 (4)** provides;

***7 (1) "Where the government or public institution refuses to give access for the record or information applied for under this Act,***

*C. W. D. O. T. U.*

or part thereof, the institution shall state in the notice given to the applicant the ground for the refusal, the specific provision of this Act that it relates to and that the applicant has a right to challenge the decision refusing access and it reviewed by a Court"

**(5) Where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of 500,000.**

2.7 We submit humbly, that the Respondent has refused the Applicant the information in its custody on account that it is not bound by Freedom of Information Act, 2011. The non-compliance with the provision of FOI Act, 2011 is a deliberate denial and breach of the Applicant's rights as enshrine in the FOI Act, 2011. We therefore urge your noble Lordship to hold that the Respondent has breach the Applicant Rights. 3.01 From the foregoing, it is abundantly clear, particularly from EXHIBIT AEDC 2 in evidence that a case of deliberate denial of the information has been established against the Respondent. It is our humble submission that the Respondent is in breach of Freedom of Information Act, 2011. We urge your Lordship to so hold.

#### **H. RESOLUTION OF ISSUES**

##### **Applicant's Issue One:**

***Whether the Respondent is not subject to the provisions of the Freedom of Information Act, 2011, and by implication liable for denying the Applicant***

*C. W. O. B. T. U.*

*the information requested.*

The resolution of this issue hinges on the interpretation of **Section 2(7) of the Freedom of Information Act, 2011**, which provides that:

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

From the affidavit evidence before this Court and as admitted by the Applicants and not controverted by the Respondent, it is clear that the Federal Government holds 40% equity in the Respondent company, while 60% is held by a private entity. It is also not in dispute that the Respondent is licensed by the Federal Government to distribute electricity to the public and operates as a utility company across several states including the Federal Capital Territory.

It is true as contented by the Respondent that the Applicants did not support their averments in their affidavit in support with documentary evidence. I am however of the view that this lacuna is not fatal to the Applicants' case because the facts about the Federal Government's ownership of 40% stake in the Respondent and also that the Respondent is licensed by the Federal Government to distribute electricity to Nigerians is notorious in the public domain. I therefore take judicial notice of these facts and hold that the Applicants case will not be affected negatively by the omission in their case.

*C. W. O. B. T. U.*

*3/1/2015*

The question, then, is whether the Respondent falls within the purview of a "public institution" under the Freedom of Information Act. This Court answers in the affirmative. From the provision of section 2(7) of the Freedom of Information Act a company like the Respondent partly owned by the Government and performing a public function such as the sale and distribution of electricity, a critical public service, squarely falls within the scope of **Section 2(7)** of the Freedom of Information Act. The Respondent's contention that it is not subject to the Act is clearly misconceived.

In interpreting the reach of the Freedom of Information Act, the Court of Appeal in **Coscharis Motors Ltd. V. The E.I.E Project Ltd/GTE & Anor (2022) 2. CLRN 68** clarified that even a private company, wholly outside public ownership or funding, may fall within the purview of the Act if it engages in a public function or utilizes public funds, even for a single transaction. By contrast, the Respondent in this case, Abuja Electricity Distribution Plc, is not only partly owned by the Federal Government, but is also fully engaged in the provision of electricity, which is a core public utility service under license from statutory regulator. This places it squarely within the contemplation of **Section 2(7) of the Freedom of Information Act**. Accordingly, the obligation to provide access to information under the Act applies more compellingly to the Respondent than it did to the Company in the Coscharis case.

Accordingly, I find and hold that the Respondent is subject to the provisions of the Freedom of Information Act, 2011, and its refusal to provide the requested information on the basis that it is not bound by the Act is unlawful. I hereby resolve this issue in favour of the Applicants and against the Respondent.

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**Applicants' Issue Two:**

***Whether by the provisions of Sections 1, 2, 5 and 21 of the Freedom of Information Act, 2011, and Section 76(12) of the Electric Power Sector Reform Act, 2005, the Applicants are not entitled to be furnished with the information in the custody of the Respondent.***

The evidence before the Court shows that the Applicants, by a letter dated 18th January 2023 (**Exhibit AEDC 1**), formally requested information from the Respondent on the current electricity tariffs applicable in its operational area. The Respondent, by a reply dated 24<sup>th</sup> January 2023 (**Exhibit AEDC 2**), expressly stated that it is not subject to the Freedom of Information Act.

**Section 1** of the **Freedom of Information Act** guarantees every Nigerian citizen the right of access to public information. Section 4 mandates that such request be granted or denied in writing within 7 days, stating reasons for denial. **Section 7(4)** of the Act provides that a failure to supply the information within the stipulated time amounts to a constructive refusal.

The information requested the applicable electricity tariffs is information that **Section 76(12)** of the **Electric Power Sector Reform Act, 2005**, expressly mandates every licensee to make available to the public. That provision states:

***"Every licensee shall keep at his office a current copy of the tariff methodology applicable to that licensee and shall make a copy available for inspection on request by any person free of any charge during the licensee's normal working hours."***

While the Respondent directed the Applicants to visit its office to inspect the

*C. W. O. B. T. U.*

information, it failed to comply with the formal request made pursuant to the Freedom of Information Act. The law requires a written response under the Act, and the Applicants are entitled under Section 5 to receive the information in a form accessible to them, not merely an invitation to visit.

In the instant case, the Respondent denied being subject to the Act and failed to provide the requested information in the manner prescribed. The Respondent's reply letter (**Exhibit AEDC 2**) is not only noncompliant but a clear violation of Section 1 of the Freedom of Information Act under which the Applicants made their request irrespective of the 2<sup>nd</sup> law i.e **Electric Power Sector Reform Act** under which they also made the same request.

Both laws give legitimate right to the Applicants to make their request and they have done so. It is not for the Respondent to pick and choose which law it will obey or direct the Applicants to their preferred law. All they must do in the circumstances is to obey the 2 laws and accede to the request by the Applicants in the manner prescribed in both laws.

Accordingly, I hold that the Applicants are entitled to the information requested, and the Respondent is under a legal duty to provide same in line with the provisions of both the Freedom of Information Act and **Section 76(12)** of the **Electric Power Sector Reform Act**. I therefore resolve this issue in the favour of the Applicants and against the Respondent.

### **Issue Three (Respondent's issue):**

*C. N. D. O. T. U.*

*whether the Applicants have placed sufficient materials before this Honourable Court evidencing refusal on the part of the Respondent to supply the information requested for.*

I have reviewed the affidavit evidence and **Exhibits AEDC 1** and **AEDC 2**. The Applicants' request explicitly sought information pursuant to the **Freedom of Information Act, 2011** and **Section 76(12) of the Electric Power Sector Reform Act, 2005**. The Respondent's reply, by stating that it is "**not subject to the provisions of the Freedom of Information Act, 2011,**" constitutes an unequivocal refusal to comply under the law. That refusal alone is sufficient evidence of noncompliance with the Act.

The Respondent's argument that it merely directed the Applicants to inspect the documents in person and thus did not "refuse" to comply, cannot stand in the face of clear statutory obligations. The law that Freedom of Information Act imposes an active duty on the Respondent to release the information or provide reasons for denial in writing, and noncompliance within seven days is deemed a refusal under **Section 7(4)** of the Act.

The burden of proof has been discharged by the Applicants. I therefore find that there is sufficient material before this Court to show that the Respondent refused to provide the information as required by the Freedom of Information Act. I therefore resolve this issue in the favour of the Applicant and against the Respondent.

## **CONCLUSION**

In view of the foregoing, I find merit in the Applicants' application. The Respondent,

*C. N. D. B. T. U.*

*3/1/25*

being partly government owned and performing a public function in the power sector, is subject to the provisions of the Freedom of Information Act, 2011. Consequently, it is hereby ordered as follows:

**1. Prayer 1**

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

**Ordered as prayed.**

**2. Prayer 2**

A DECLARATION that the Refusal by the Respondent to furnish the Applicants with the information in its custody is wrongful, unlawful and unconstitutional.

**Ordered as prayed.**

**3. Prayer 3**

**AN ORDER** Compelling, Mandating the Respondent to furnish the Applicants with the information requested for in their letter dated 18th January, 2023 within seven (7) days of the Order of this Honourable Court.

**Ordered as Prayed.**

**4. Prayer 4**

AN ORDER Compelling, mandating the Respondent to pay the fine of N500, 000.00 (Five Hundred Thousand Naira) only as penalty for non-

*C. W. O. O.*

compliance with the Provisions of Freedom of Information Act, 2011.

**GRANTED.** This is in line with the provisions of the Freedom of Information Act.

*G.K. Olotu*

**HON. JUSTICE G.K. OLOTU  
JUDGE**

**23<sup>RD</sup> SEPTEMBER, 2025**

**APPEARANCES:**

**Festus .S. Onifade** Applicant Appears in person.

**Opeyemi Ojekede** for the Respondent.

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

*31/9/25*  
*Ifeanacho,*  
*Damarachis*  
*SO*