

Public & Private Development Centre LTD\GT -Applicant
And
Power Holding Company of Nigeria -1st Respondent
Hon. Attorney General of the Federation- -2nd Respondent

The applicant by a letter dated 30th August 2013, requested information from the respondents detailing inter alia, procurement plan; NEEDS assessment documents; documentation on design and specification requirement which are not contained in the standard bidding documents; documentation on the scope of the procurement et cetera. of a contract for the installation of 300 11 KVA 500A on Load Sectionalizers at Karu, LUTH, Ogba, Agege and Challenge – Ibadan High Voltage Distribution System(HVDS) 4 Network.

Upon deemed denial and having sought and obtained leave of the court, the applicants vide a Motion on Notice approached the court for a declaration that the failure of the respondents to furnish it with the information sought amounts to a wrongful denial of information and an order compelling the respondents to forthwith furnish the applicant with the information and copies of the documents set out in the schedule there to.

The 1st Respondent in response to the application for the procurement information on the installation of 300 11KVA 500A on Load Sectionalizers at the said locations wrote a letter dated 9/11/2012 annexing this documents/information required to the applicant except a copy of the bid evaluation report of Technical Sub-committee of the Tenders Board for the procurement. He submitted that based on Sec 15(1)(b) of the Act, the information withheld from disclosure to the applicant is a third party information setting out the contract between the 1st Respondent and Crown Resource Development CO. LTD (the contractor). He stated that the applicant who is not privy to the contract cannot validly request for such information.

In his analysis of the Act, the Judge, Hon. Justice A.F.A Ademola stated that “a scrutiny of Section 15(1)(b) of the Freedom of Information Act 2011 states that the circumstances [in which] a public institution should deny an application for information to a person [include] that the transaction must still be at the negotiation stage; a third party must be involved and the disclosure of the information could reasonably be expected to interfere with the contractual or other negotiations of a third party. The court relied on uncontroverted evidence that unequivocally states that “negotiations were concluded and the contract awarded since 30/11/2011 with the contract effective from 26/3/2012” as the major basis for its ruling.

He stressed that “...the negotiations have been concluded and that the contract awarded, the disclosure of information sought by the applicant cannot by any stretch of imagination reasonably be expected to interfere with any contractual or other negotiations of the contractor.”

He ruled that “as rightly argued by counselthe 1st Respondent has failed to satisfy conditions (a) and (c) of section 15(1)b of the Freedom of Information Act 2011 and is not entitled to the exemptions stated therein.” Accordingly, “Prayers 1 & 2 of the applicants Motion on Notice dated 14/12/2012 are hereby granted particularly in respect of item “g” in the schedule therein”.