

IN THE HIGH COURT OF JUSTICE EKITI STATE OF NIGERIA
IN THE ADO EKITI JUDICIAL DIVISION
HOLDEN AT ADO-EKITI

BEFORE HIS LORDSHIP HONOURABLE JUSTICE A.A. ADELEYE - JUDGE
THIS WEDNESDAY THE 24TH DAY OF JUNE, 2026

BETWEEN:

SUIT NO: HAD/9/2026

MR. ADEKUNLE ESAN

APPLICANT

AND

1. HON. RICHARD APOLOLA
(Chairman Ekiti South West Local
Government Area)

2. HONOURABLE TONY KEHINDE ADARAMODU
(Member representing Ekiti Southwest Constituency 1
at the Ekiti State House of Assembly)

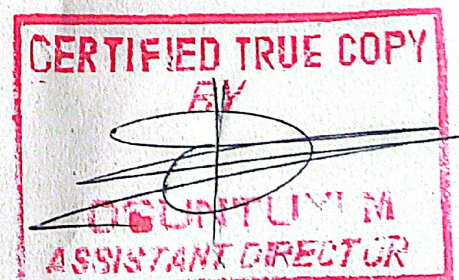
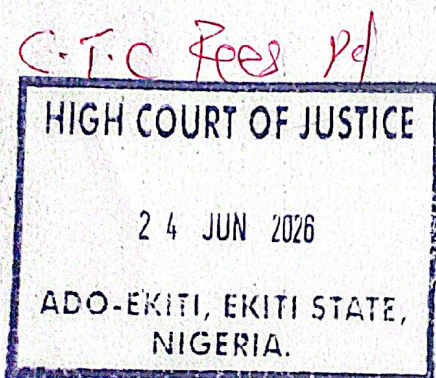
RESPONDENTS

JUDGEMENT

By an originating summons brought pursuant to Sections 36 and 39 of the constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 2, 4, 5, 8, and 22 of the Ekiti State Freedom of Information Law, and under the inherent jurisdiction of this honourable court, the applicant nominated the following questions for determination by the court.

To wit:

1. Having regard to the provisions of Sections 1,2,3,4,5,8, and 22 of the Freedom of Information Law of Ekiti State 2011, have the respondents not violated the right of the applicant to access public records when they refused, neglected and or failed to provide within the statutory period (a)



- their scorecards as public officers, (b) comprehensive reports of all budgetary sums allocated to their constituencies cum sums allocated and disbursed as constituency projects and administrative and other information as requested in the applicant's letters to the respondents.
2. If the answer to the first question is in the affirmative, are the respondents not under obligation to supply to the applicant, within fourteen (14) days of the delivery of judgement by this honourable court or any other period as may be determined by the court, (a) their scorecards as public officers, (b) Comprehensive report of all budgetary sums allocated to their constituencies cum sums allocated and disbursed as constituency projects and administrative and other information as requested in the applicant's letters to the respondents.
 3. Is applicant not entitled to damages and cost of retaining solicitors for the wrongful conduct of the respondents in refusing and or deemed as refusing requests in the applicant's letter dated 5th August 2025.

The applicant further sought the following reliefs jointly and severally against the respondents.

1. "A declaration that the applicant is entitled to access from the respondents, being respectively elected chairman of Ekiti South West local government area of Ekiti state and member of the House of Assembly for Ekiti South constituency 1. (a) their scorecards as elected public officers, (b) comprehensive reports of all budgetary

sums allocated to the Ekiti South West local government area and Ekiti South West constituency 1 cum sums allocated and disbursed as constituency projects and administrative and other information as requested in the applicant's letters to the 1st and 2nd respondents respectively dated 5th August 2025.

2. A declaration that the respondent's failure, refusal and or neglect to provide the requested information in the letters dated 5th August 2025 within the statutory period is unlawful, illegal and a violation of the applicant's right of access to public Information under the Freedom of Information Law 2011.
3. An order that the respondents being respectively chairman of Ekiti South west Local government area of Ekiti state and member of the House of Assembly, representing Ekiti South West constituency 1 SHALL provide (a) their scorecards as elected public officers, (b) comprehensive reports of all budgetary sums allocated and disbursed as constituency projects and administrative and other information as requested in the applicant's letters to the 1st and 2nd respondents respectively dated 5th August 2025 within fourteen (14) days of the judgment of this honorable court or any other period as may be ordered by the court on the pain of being committed for contempt if respondent fails or refuse and or neglect to so to within time limited.



4. Damages against the respondents jointly and severally in the sum of #10,000,000:00 (Ten million Naira).
5. Five million Naira (5,000,000:00) being the cost of retaining solicitors in this suit filed against the respondents.

The originating summons is accompanied by twenty paragraphed affidavit, deposed to by the applicant, exhibits A & B and written address in support of the originating summons.

In reaction to the originating summons, the respondent filed a memorandum of appearance on protest.

The respondents also filed a notice of preliminary objection, a nine paragraphed affidavit in support of the motion on notice, and written address in support of the notice of preliminary objection.

A sixteen paragraphed counter affidavit in opposition to the respondent's notice of preliminary objection was filed. It is accompanied by a written address in its support.

On the preliminary objection, the respondents raised jurisdictional issues, predicated on four grounds.

- (a) That the applicant brought his action outside the time provided by law.
- (b) The applicant has no cause of action against the respondents.

- (c) The action is grossly incompetent before the court.
- (d) The court lack the jurisdiction to entertain this action.

The gravamen of the respondent's objection praying the court to dismiss the applicant's suit are well highlighted in the supporting affidavit to the notice of preliminary objection in motion no: HAD/77^M/2026, dated and filed on 21st January 2026, wherein the respondents stated thus:

"paragraph 5

- (a) That the 1st and 2nd respondents became aware of this suit on Friday, the 16th day of January 2026 when same was served on the respondents.
- (b) That upon the facts made available therein, it was revealed that the information and facts contained in the Originating summons are incorrect and it is an attempt to mislead this honourable court in granting the prayers therein.
- (c) That more importantly the applicant Mr. Adekunle Esan wrote a letter requesting for information from the respondents on the 5th August 2025.
- (d) The respondents/applicants have 14 days within which to respond to the applicant/respondent's letter i.e from the 5th day of August 2026 till 19th August 2025.
- (e) That upon the refusal and / or neglect of the respondent/applicants to release the requested documents and/or answer the applicant/

respondent, the applicant/respondent, only have thirty (30) days within which to file this action in court from the expiration of the day / time the respondents/applicants have to release these documents.

- (f) That the application/respondent filed his originating summons on the 15th day of January 2026.
- (g) That by mathematical calculations time running from the 20th day of August 2025 till the 16th day of January 2026 is more than thirty days and same is quiet outside the time allowed to file this action by the provisions of the law.
- (h) That I know as a fact that government documents and/or information ought not to be indiscriminately released anyhow but with due caution and diligence”.

The respondents also filed a written address in support of the preliminary objection.

The respondents prayed the court to strike out or dismiss the applicant's case in limine.

The respondents nominated three issues for determination by the court.

- “1. Whether this honourable court is clothed with jurisdiction to entertain this matter.

2. Whether or not the originating summons dated 10th day of January 2026 and filed on the 15th day of January 2026 is not statute barred and competent before this honourable court.
3. Whether or not the applicant respondent has cause of action and / or locus standi against the respondents/applicants to institute this action.

In arguing the three issues together, learned counsel for the respondents submit that the issue of jurisdiction is fundamental. It is a threshold issue.

The court must be competent before it can proceed to adjudicate on a matter. On what jurisdiction connote, counsel cited the dictum of Onnoghen JSC (as he then was) in the case of **Chief Ikedi Ohakim v. Chief Martin Agbaso & 3 ors (2011) All FWLR (pt 553) 1806**, to the effect that for a court of law or tribunal to have jurisdiction to hear and determine any matter before it, it must be properly constituted as to the number or qualification of its membership; any condition precedent to its exercise must be within its jurisdiction must have been fulfilled; the subject matter of the case must be within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; the case or matter must have been brought to it by the due process of the law. See: **Madukolu v. Nkemdilim (1962) 1 All NLR 587 @ 590.**

Counsel invited attention of the court to the case of **Nisan (Nig) Ltd v. Yaganathan (2020) 4 NWLR (pt 1183) 149 @ 154** in stating that to determine



whether a court has jurisdiction to adjudicate on a matter, it is the originating process filed that should be looked into. In the instant case, the originating process is the originating summons affidavit in support and the written address filed.

Learned counsel submit that the summary of the respondent's objection to the competence of this suit is that the applicant failed to comply with the provisions of the law before instituting this action by not instituting the matter within the time provided by the law.

Elucidating on the facts of the case, learned counsel submit that on record, the applicant wrote letters dated the 5th day of August 2025 to the respondents requesting for information vide the Ekiti State Freedom of Information Law. Under the provisions of section 5 (1) of this law, the respondents had fourteen (14) days within which to make information available to the applicant, or to give him written notice stating whether or not access to the record or a part thereof will be given.

By computation of time, the time within which to respond to the applicant's application ended on the 19th day of August 2025.

Consequently, the applicant had (30) days from the 19th day of August 2025 to institute action in court if he desired to so do. Counsel relied on the case of *Adejumo v. Olawaiye (2014) 8 SCM 70* to state that the originating summons was filed on the 15th day of January 2006, which is out of time provided by the law.

Counsel submit that the period of limitation is determined by looking at the originating process alleging when the wrong was committed , which gave the applicant the cause of action and by comparing that date with the date on which the originating summons was filed.

Counsel submit that if the time on the originating summons is beyond the period allowed by law, the action is incompetent. It is elementary that when a statute of limitation prescribe a period within which an action must be commenced, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Counsel cited *Ethiopian Airlines v. Afribank Nig Plc* (2006) 17 NWLR (pt 1008) 245.

Counsel relied on the case of *Chief Festus Yusuf v. Cooperative Bank Ltd* (1994) 7 NWLR (pt 359) 676 @ 692 that generally, a cause of action accrues on the date on which the incident giving rise to the cause of action occurs. A statute of Limitation begins to run from the moment the cause of action arose". In the instant case since the applicant failed to file his action within the thirty (30) days of the failure to provide the information sought for, the action is state barred.

Learned counsel submit that the provisions of section 22 (1) of the Ekiti state Freedom of Information Law No 4 of 2013 are very clear, and unambiguous. It should be given their ordinary meaning.

Counsel relied on the case of *Bronik Motors v. Wema Bank* (1983) 1 SCN LR 296.

It is the learned counsel's view that in the instant case, the time stipulated is thirty (30) days starting from the expiration of the fourteen (14) days provided by the law. Filing of the matter on the 15th day of January 2026 is far outside the time prescribed by the law.

In rounding off his submission, learned counsel submit that the claimant failed to comply with the law in instituting the action have robbed the court the power to adjudicate on the matter.

The applicant filed a sixteen (16) paragraphed counter affidavit. I now reproduce the relevant depositions that affect the jurisdictional issue in this matter.

Paragraph 7

"Specifically, it is untrue that the applicant has only thirty days to file the originating summons after the denial and refusal of the respondents to release information sought.

8. The documents and information demanded are not information and document that cannot be released to the applicant and or any member of the public and are documents which must be released in a democratic government where elected officials are accountable to the electorate.

9. Contrary to the deposition in paragraphs 6 and 7 of the affidavit in support of the preliminary objection, this suit is competent and has a valid cause of action.
10. Contrary to the respondent's contention the refusal to disclose information under the freedom of information regime constitutes a continuing injury which does not become statute barred by the effluxion of time.
11. The Ekiti State Freedom of Information Law was enacted to promote transparency, accountability and openness in governance and like all such laws which guarantee open access to information should be interpreted liberally in favour of access to information.
12. I state as a matter of fact that it is not true that there is any provision relating to time within which an applicant should approach the court under the Ekiti State Freedom of Information Law. Rather, an applicant's duty to approach the court is directory and procedural, not mandatory and only stipulate a minimum time within which an applicant can exercise his discretion to go to court.
13. The respondents' preliminary objection is an attempt to defeat substantive justice by undue reliance on unstable technicalities.
14. The honourable court has the requisite jurisdiction to entertain this suit".

In his final submission learned counsel for the applicant /respondent formulated a lone issue for determination by the court. Viz:

"Whether having regard to the originating motion, the affidavit evidence and the provisions of the Ekiti State Freedom of Information Law 2011, this honourable court lack jurisdiction to entertain this suit on the ground that it is statute barred and discloses no reasonable Cause of action".

In reaction to the provisions of section 22 (1) of the Freedom of Information Law relied upon by the respondents, counsel submit that upon a careful reading of the provision of the law, the word used is "may" and not "shall". The section does not state that failure to apply within 30 days extinguishes the right of action. The section does not state that the court's jurisdiction is ousted after 30 days, and the section does not declare any action filed outside 30 days to be incompetent.

Counsel submit that the word "may" used in the law is permissive. Consequently, it gives discretionary power. Counsel cited *Mokelu v. Fed. Com. Works & Housing (1976) NSCC 187; B.A.T. (Invest) Ltd v. A.G. Lagos State (2014) 18 NWLR (pt 1433) 260*.

Counsel submit that the applicant is not mandated to bring this suit within thirty days of refusal by the respondents to furnish him with the information requested for. Counsel urged the court to hold that the cause of action is not statute barred. It is the submission of counsel that the wrong complained of, is the continued withholding of information which persists daily

until the information is disclosed. Counsel submit that time does not begin to run until the wrongful act ceases. The case of *Ablodun v. A.G. Federation* (2007) 15 NWLR (pt 1057) 359, was relied upon by counsel.

Counsel submit that the applicants suit discloses a reasonable cause of action. The applicant's right is expressly created by section 2 of the Freedom of Information Law.

The breach of the right is the respondent's refusal to disclose the information and documents requested for.

The remedy is enforcement by judicial review. Nothing more is required to disclose a cause of action. Consequently, this court has the jurisdiction to determine this suit.

Learned counsel argued forcefully that where an applicant commences a suit by originating summons, the respondents are required by the rules of court to file a counter affidavit in opposition, and where such is not done, the respondent shall be deemed to have conceded to all the points raised in the originating summons. Counsel relied on the dictum of *Nikki Tobi JSC* in *Inakoju v. Adeleke* 4 NWLR (pt 1025) 427.

Counsel submit that upon service of the originating summons and the accompanying initiating processes, the respondents were to react by their counter affidavit, notwithstanding their preliminary objection. The

respondents instead chose to demure contrary to the rules of court. Order 22 rule 1 of the High Court Rules of Ekiti state abolished demurer.

Having regard the illegality in filing a demurer, counsel submit that right approach is to discountenance the notice of preliminary objection and take it as the respondent's defence to the originating summons. In support of his position, counsel cited *Mato v. Hember (2018) 6 NWLR (pt 1612) 258*. Counsel submit that in the circumstance, the respondents have admitted and conceded to all the points raised in the applicant's affidavit. Counsel prayed the court to dismiss the preliminary objection for being a demurer.

This suit was commenced by way of originating summons, which was supported by an affidavit.

It follows that the adversary's response must be by way of affidavit evidence. In this instance, by a counter affidavit.

In this instant suit, the respondent did not file a counter affidavit in opposition to the stated facts in the affidavit in support of the originating summons.

Instead of filing a counter affidavit and written address, the respondents elected to demur.

By the provisions of Order 22 (1) of the High Court of Ekiti state (civil procedure) Rules 2020, no demurer shall be allowed in civil proceedings.

Consequently, the preliminary objection filed cannot take the place of a counter affidavit expected to be filed, to controvert where necessary, the stated facts in the supporting affidavit.

In the result, the respondents did not file a counter affidavit in reaction to the provable facts deposed to in the supporting affidavit to the originating summons.

The preliminary objection filed is tantamount to a demurer. The preliminary objection filed is hereby struck out for being a demurer.

Where an affidavit is filed deposing to certain material facts, and the other party does not file a counter affidavit to dispute the facts, the facts deposed to in the affidavit would be deemed unchallenged and undisputed. See: **Mabamije v, Otto (2016) LPELR – 26055 (SC)**.

In the absence of a counter affidavit, the allegations in the supporting affidavit are not denied. They are deemed conceded. See: **Famese & anor v. Kayode & ors (2017) LPELR – 43233 (CA); Mato v. Hember & ors (2017) LPELR – 42765 (SC)**.

The court is at liberty to accept it as true. See: **Jumbo Nwanganga & 5 ors. v. Military Governor of Imo State & 2 ors (1987) 3 NWLR (pt 59) 182 @ 193**.

The court has the jurisdiction to entertain this suit. The applicant is seeking for enforcement of a statutory right created by the Freedom of Information Law of Ekiti State. Section 33 of the law defines the High Court as the court with jurisdiction to adjudicate on this matter.

In my humble view, the provisions of section 22 (1) of the Freedom of Information Law Ekiti State does not make it a condition precedent that failure to apply for a review within 30 days extinguishes the right of action. The word "may" employed in the provision is a permissive word. It is not mandatory.

I find that the cause of action is not statute barred.

I am at one with applicant's counsel that section 22 (1) does not declare any action filed outside 30 days to be incompetent. It gives the court the latitude to fix further time before or after the expiration of 30 days.

The applicants depositions contained in the 20 paragraphed affidavit in support of the originating summons are cogent, unambiguous, and believable.

There is no evidence on the other side of the imaginary scale to weigh them with.

The allegations in the supporting affidavit are not denied. They are deemed conceded. See: *Famese & anor v. Kayode & ors (supra)*.

The facts in the supporting affidavit are deemed unchallenged and undisputed. See: *Mabamije v. Otto (supra)*

The court has the jurisdiction to entertain this suit. The applicant is seeking for enforcement of a statutory right created by the Freedom of Information Law of Ekiti State. Section 33 of the law defines the High Court as the court with jurisdiction to adjudicate on this matter.

In my humble view, the provisions of section 22 (1) of the Freedom of Information Law Ekiti State does not make it a condition precedent that failure to apply for a review within 30 days extinguishes the right of action. The word "may" employed in the provision is a permissive word. It is not mandatory.

I find that the cause of action is not statute barred.

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There is no evidence on the other side of the imaginary scale to weigh them with.

The allegations in the supporting affidavit are not denied. They are deemed conceded. See: *Famese & anor v. Kayode & ors (supra)*.

The facts in the supporting affidavit are deemed unchallenged and undisputed. See: *Mabamije v. Otto (supra)*

The court is at liberty to accept the depositions in the supporting affidavit as true.

In the circumstance, it is hereby declared that the applicant is entitled to access from the respondents being respectively elected chairman of Ekiti South West local government area of Ekiti state and member of the House of Assembly for Ekiti South West constituency 1 (a) their scorecards as elected public officers, (b) comprehensive reports of all budgetary sums allocated to the Ekiti South West local government area and Ekiti South West constituency 1 cum sums allocated and disbursed as constituency projects and administrative and other information as requested in the applicant's letters to the 1st and 2nd respondents respectively dated 5th August 2025.

It is hereby declared that the respondents failure, refusal and / or neglect to provide the requested information in the letters dated 5th August 2025 within the statutory period is unlawful, illegal, and a violation of the applicant's right of access to public information under the Freedom of Information Law, 2011.

It is ordered that the respondent's being respectively chairman of Ekiti South West local government area of Ekiti State and member of the House of Assembly representing Ekiti South West constituency 1 shall provide forthwith (a) their scorecards as elected public officers, (b) comprehensive reports of all budgetary sums allocated to the Ekiti South West local government area and Ekiti South West constituency 1 cum sums allocated and disbursed as

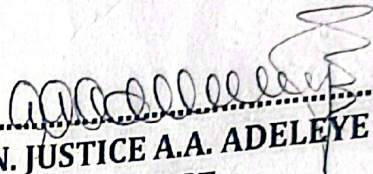
constituency projects and administrative and other information as requested in the applicant's letters to the 1st and 2nd respondents respectively dated 5th August 2025.

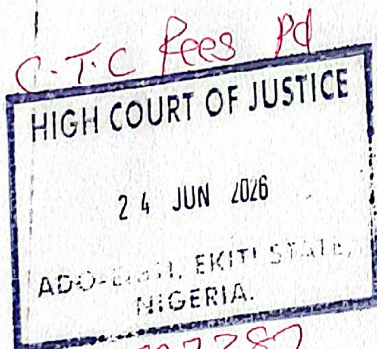
No damages awarded. Parties are to bear their respective cost.

Legal Representation

Olaniran Obele, Esq, Olawale Ikuomola Esq, for the Applicant.

Gbemiga Adaramola, Acting SG & PS Ministry of Justice, Olatunde Olayemi Esq, SLO, Adeola Awe Esq, SLO, for the Respondents.


HON. JUSTICE A.A. ADELEYE
JUDGE



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