

IN THE FEDERAL HIGH COURT OF NIGERIA

HOLDEN AT FCT, ABUJA

SUIT NO: FHC/ABJ/CS/217/2020

IN THE MATTER OF AN APPLICATION BY THE INCORPORATED TRUSTEES OF LAWS  
AND RIGHTS AWARENESS INITIATIVE FOR THE ENFORCEMENT OF THEIR  
FUNDAMENTAL RIGHTS TO PRIVATE AND FAMILY LIFE.

BETWEEN:

INCORPORATED TRUSTEES OF LAWS  
AND RIGHTS AWARENESS INITIATIVE

(Suing for and on behalf of their members  
and all other telephone line subscribers in Nigeria)

APPLICANT

3403 8101 9643

AND

NIGERIAN COMMUNICATION COMMISSION

FEDERAL HIGH COURT  
2 5 FEB 2020  
RESPONDENT  
ABUJA

ORIGINATING SUMMONS

Brought Pursuant to Order 2 Rule 1, 2, 3, 4 & 5 of the Fundamental Rights  
(Enforcement Procedure) Rules 2009; sections 37 and 46 of the Constitution of the  
Federal Republic of Nigeria, 1999 (as amended), and under the inherent jurisdiction  
of this Honourable Court.

LET the Nigerian Communications Commission of Plot 423 Aguiyi Ironsi way,  
Maitama, Abuja in the Abuja Judicial division within Five (5) days after service of this  
summons on them, inclusive of the day of such service, cause an appearance to be  
entered for them to this summons which is issued upon the application of the  
Applicant of 29, Mambilla street, Maitama, Abuja who claims:

- i. A DECLARATION that regulation 8(2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 violates and is likely to further violate the Applicant's members right to private and family life guaranteed under section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- ii. A ORDER setting aside the provision of regulation 8(2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulation 2019 for interfering with section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

IN THE ALTERNATIVE:

Regulation 2019 for interfering with section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

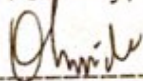
IN THE ALTERNATIVE:

- iii. **A DECLARATION** that under regulation 8(2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019, the Respondent and/or every relevant authority contemplated thereunder, must first obtain a court order before accessing subscribers' information whether basic or otherwise.
- iv. **PERPETUAL INJUNCTION** restraining the Respondent, its agents and anyone claiming through them from requesting/accessing subscribers basic or other information under regulation 8(2) (a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 without first seeking and obtaining a court order.
- v. **AND SUCH OTHER ORDER (S)** as this Honourable Court may deem fit to grant in the circumstance.

For the determination of the following questions:

Whether or not the provision of "Regulation 8(2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019" is likely to violate the Applicant's members' fundamental rights to private and family life guaranteed under section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)?

Dated this 24<sup>th</sup> day of February, 2020.



This summons was taken out by **Olumide Babalola, Esq.**, of Olumide Babalola LP, 49, Lawson Street, Lawson Street, Lagos Island, Lagos. [info@olumidebabalola.com](mailto:info@olumidebabalola.com), [oolumidebabalola@nigeriabar.org](mailto:oolumidebabalola@nigeriabar.org), 08123567055. legal practitioners to the above-named Applicant whose address within jurisdiction is C/o Ventures Park, 29 Mabila Crescent, Maitama, Abuja, Abuja. The Defendant may appear hereunto by entering appearance personally or by a legal practitioner either by filing the appropriate processes in response at the Registry of the Court where the summons was issued or by sending them to that office by any of the methods allowed by these Rules. Note: if the Respondent do not respond within the time at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

**FOR SERVICE ON:**  
Respondent  
Nigerian Communication Commission  
Plot 423, Aguiyi Ironsi Street,  
Maitama, Abuja



IN THE FEDERAL HIGH COURT OF NIGERIA

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RESPONDENT

STATEMENT

NAME AND DESCRIPTION OF THE APPLICANT

1. The Applicant's name is **INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE**, a non-governmental association registered under the Companies and Allied Matters Act with the mission of promoting rights and freedoms in Nigeria.

RELIEFS SOUGHT BY THE APPLICANT

- i. A **DECLARATION** that Regulation 8(2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 violates and is likely to further violate the Applicant's members' right to private and family life guaranteed under Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and thereby unconstitutional, null and void.
- ii. A **ORDER** setting aside the provision of Regulation 8(2)(a) and(c) of the Nigerian Communications (Enforcement Process etc) Regulation 2019 for interfering with Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

IN THE ALTERNATIVE:

iii. **A DECLARATION** that under Regulation 8(2) (a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019, the Respondent and/or every relevant authority contemplated thereunder, must first obtain a court order before accessing data call records whether basic or otherwise.

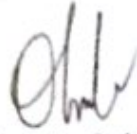
iv. **PERPETUAL INJUNCTION** restraining the Respondent, its agents and anyone claiming through them from requesting/accessing basic information under regulation 8(2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 without first seeking and obtaining court order.

v. **AND SUCH OTHER ORDER (S)** as this Honourable Court may deem fit to grant in the circumstance.

#### **GROUND FOR SEEKING RELIEFS**

- a. By virtue of Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Applicant's members are entitled to enjoy right to private and family which includes protection of their personal data.
- b. By virtue of section 46 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), every citizen who alleges the infringement or likelihood of infringement of his fundamental human rights as guaranteed by the constitution can approach the courts for redress.
- c. The Respondent's issuance of regulation 8(2)(a) and (c) of the Nigerian Communication (Enforcement Process etc) regulation 2019, is likely to violate the Applicant's members fundamental right to private and family life.
- d. The Applicant brought this suit herein to enforce their members' fundamental rights to private and family life guaranteed by sections 37 of the Nigerian Constitution 1999 (as amended).

Dated this 24<sup>th</sup> day of February, 2019.



**Olumide Babalola, Esq.**

Applicant's Counsel  
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Address within jurisdiction:  
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Maitama, Abuja

**FOR SERVICE ON:**  
Respondent  
Nigerian Communication Commission  
Plot 423, Aguiyi Ironsi Street,  
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AND

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RESPONDENT

AFFIDAVIT IN SUPPORT

I, Oliva Audu, Female, Nigerian citizen of 29 Mambilla Street, Off Aso Drive, Maitama,  
Abuja do hereby make oath and state as follows:

1. That I am the member of the Applicant and therefore very conversant with the facts leading to these depositions.
2. All the facts deposed to herein are facts within my personal knowledge except otherwise stated.
3. That I have the consent and authority of the Applicant and that of all its members to depose to this affidavit.
4. The Applicant is a Non-Government Organization/Association of lawyers and non-lawyers registered under the Companies and Allied Matters Act. Pleaded and marked "Exhibit 1" is their certificate of incorporation.
5. All the Applicant's members are all telephone line subscribers with huge interest in this case and my own telephone lines are 08113438801 and 08034482183.

6. The Respondent is a statutory body established by Nigeria Communication Commission Act 2003 as an independent regulatory authority for the telecommunication industry in Nigeria.
7. On January 11, 2019, the Respondent issued a regulation titled Nigerian Communications (Enforcement Process etc) Regulation 2019. Pleaded, attached and marked "Exh. 2" is the said Regulation.
8. I have read through the said regulations and from the provision of Regulation 8 therein which allows the Respondent and relevant authorities to access call data without court order and knowing the antecedents of government agencies in Nigeria, I believe that it is likely for the provision to be used to interfere with Applicant's members' right to private and family life guaranteed under section 37 of the 1999 Constitution (as amended).
9. I believe that from the contents of the said Regulation 8 of the Nigerian Communications (Enforcement Process etc) Regulations 2019 the Applicant's members' right to private and family life will likely be interfered with if they are accessed by the Respondent and relevant authorities contemplated in the Regulation without first seeking and obtaining court order.
10. I am aware of the fact that the said Regulation 8 has been used to track, arrest and harass journalists and from that fact, I believe this makes it likely that same would be used to interfere with the Applicant's members' right to private and family life. Pleaded, attached and marked "Exhibits 3 and 4" are a research and investigative report detailing how the said regulation was used to harass, detain and arrest journalists.
11. My belief in the foregoing facts is draw from the provision of the Respondent's Nigerian Communications (Enforcement Process etc) Regulations 2019 which is expansive vis a vis the antecedents of the Respondent and relevant authorities defined in the regulation to infringe on subscribers right to private and family life by accessing their records and/or personal data without court order in the past.

12. From the particulars stated in the foregoing paragraphs and in the research and investigative reports in Exhibits 3 and 4, I believe that the Respondent is likely to infringe on the Applicant's members' right to private life as provided by Regulation 8 of the Nigerian Communications (Enforcement Process etc) Regulations 2019 if they are not subject to court's supervision.
13. I am personally aware that some government agencies have, in the past, taken advantage of the Respondent's regulation to access subscribers' call data without court order and in violation of their rights to private and family life as guaranteed by section 37 of the Constitution.
14. Since the definition of basic information in the Respondent's regulation, includes subscribers information and call data, I believe that from such definition, it is democratically justifiable for the Respondent and relevant agencies to first obtain a court order to gain access since the information will always remain in the Licencee's custody for minimum of two years as provided by the Cybercrime (Prohibition and Prevention etc) Act.
15. I make this declaration in good faith believing its contents to be true and in accordance with Oaths Act.

  
.....  
DEPONENT

SWORN TO at Federal High Court Registry, Abuja  
This .....<sup>25<sup>th</sup></sup> day of .....<sup>Feb.</sup>..... 2020

BEFORE ME

  
COMMISSIONER FOR OATHS  
FEDERAL HIGH COURT  
ABUJA  
COMMISSIONER FOR OATHS

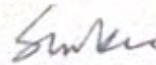


**CERTIFICATE OF COMPLIANCE WITH SECTION 84 OF THE  
EVIDENCE ACT**

**I, Sunkanmi Bello**, Male, Adult, Litigation Secretary, Nigerian Citizen of 49, Lawson Street, Lagos Island, Lagos State do certify and state as follows:

1. All the documents attached hereto was printed by me via our office macbook air computer and HP printer (the devices) during a period over which the devices were used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether f-or profit or not by me.
2. Over that period there was regularly supplied to the devices in the ordinary course of those activities information of the kind contained in the attached document or of the kind from which the information so contained is derived.
3. Throughout the material part of that period the devices were operating properly and the information contained in the document attached reproduced is derived from information supplied to the devices in the ordinary course of those activities.
4. I make this certificate believing its contents to be true and in accordance with the Evidence Act.

Dated this 24<sup>th</sup> day of February 2020



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**Sunkanmi Bello**

IN THE FEDERAL HIGH COURT OF NIGERIA  
HOLDEN AT FCT, ABUJA

SUIT NO: FHC/ABJ/CS/ /2020

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APPLICANT

AND

NIGERIAN COMMUNICATION COMMISSION

RESPONDENT

WRITTEN ADDRESS IN SUPORT OF THE ORIGINATING MOTION  
INTRODUCTION

1. My Lord, this is an originating summons brought pursuant to Order 2 Rules 1, 2, 3, 4, 5, and 6 of the Fundamental Rights (Enforcement Procedure), Rules, 2009, Sections 37 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the inherent jurisdiction of this Honourable Court.
2. The application is supported by a statement and a 15-paragraphed affidavit of Oliva Audu, a member of the Applicant. The Applicant seeks to rely on all the said depositions. The application seeks the following reliefs:
  - i. A DECLARATION that Regulation 8(2)(a) and(c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 violates and is likely to further violate the Applicant's members' right to private and family life guaranteed under Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and thereby unconstitutional, null and void.

(as amended) and thereby unconstitutional, null and void.

- ii. **A ORDER** setting aside the provision of Regulation 8 (2)(a) and (c) of the Nigerian Communications (Enforcement Process etc) Regulation 2019 for being unconstitutional, null and void.

**IN THE ALTERNATIVE:**

- iii. **A DECLARATION** that under Regulation 8(2)(a)and(c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019, the Respondent and/or every relevant authority contemplated thereunder, must first obtain a court order before accessing data call records whether basic or otherwise.
- iv. **PERPETUAL INJUNCTION** restraining the Respondent, its agents and anyone claiming through them from requesting/accessing basic information under Regulation 8 of the Nigerian Communications (Enforcement Process etc) Regulations 2019 without first seeking and obtaining court order.
- v. **AND SUCH OTHER ORDER (S)** as this Honourable Court may deem fit to grant in the circumstance.

**BACKGROUND FACTS**

3. The facts to be relied on are as stated in the affidavit in support.

**ISSUES FOR DETERMINATION**

4. Sequel to the reliefs sought in this application, we submit with respect that, an issue has been distilled for the determination of this honourable court as follows:

Whether or not the provision of "Regulation 8 of the Nigerian Communications (Enforcement Process etc) Regulations 2019" is likely to violate the Applicant's members' fundamental rights to private and family life

guaranteed under section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)?

### SUBMISSIONS

5. My Lord, this application is brought by the Applicant on the allegation that the provision of regulation 8(2)(a)and(c) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 is likely to violate their members' right to private and family life guaranteed under section 37 of the Constitution.
6. It must be preliminarily noted that, section 46 of the same Constitution empowers anyone who alleges the likelihood of his fundamental rights to approach the court for redress. This section has been repeatedly interpreted by the court in several cases. See **Umoren v Udokpong (2019) LPELR - 46849 (CA)**, where the Court held that:

"By virtue of Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Order 2 Rule of the Fundamental Rights (Enforcement procedure) Rules 2009, any person who alleges that any of the fundamental rights provided for in the Constitution of the Federal Republic of Nigeria, 1999 or the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or likely to occur, for redress. It was held in plethora of judicial decisions that once there is a threatened breach of the fundamental right of the citizen, a cause of action arises under the Fundamental Rights Enforcement Procedure Rules and the citizen need not tarry or wait until the actual breach before seeking for redress. (Emphasis mine)

admittedly, although, this suit is premised on the Applicant's allegation of likelihood of breach of fundamental rights, this court has been invited to look into same and rule on such likelihood or otherwise.

8. For the avoidance of doubt, the said Regulation 8(2) of the Nigerian Communications (Enforcement Process etc) Regulations 2019 provides as thus:

"8. (2) Every licensee shall—

(a) make available basic information that may be required by any relevant authority pursuant to section 146 of the Act upon presentation to the licensee a written request from such Relevant Authority and without any further assurance, duly signed by a police officer not below the rank of Assistant Commissioner of Police or its equivalent in any of the Relevant Authorities;

.....

(c) The provisions of sub-regulations (1) and (2) of this regulation, shall not apply to the Commission with respect to the exercise of its powers under or pursuant to section 146 of the Act." (Emphasis mine)

9. In the same regulation, "basic information" is defined at regulation 20 as:

"Basic information" means subscriber account information or details; call data which, in the context of this definition, shall include the data of any communication service subscribed to or used by a consumer; and such other information as the Commission may, from time to time, determine; and excludes biometric information as defined under the Registration of Telephone Subscribers Regulations issued by the Commission" (Emphasis mine)

10. The meaning of basic information above shows that the Respondent and its relevant agencies can gain access to subscribers' account information and call data without a court order. It is our respectful submission that this provision has all the likelihood to interfere with the right to private and family life guaranteed by section 37 of the Constitution which provides that:

"The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected." (Emphasis mine)

11. Commenting on the amplitude of privacy under our Constitution, the Court of Appeal, held in **Hon. Peter Nwali v. Ebonyi State Independent Electoral Commission (EBSIEC) & Ors. (2014) LPELR - 23682 (CA)** that:

"S. 37 of the 1999 Constitution states that "the privacy of citizens, their homes, correspondence, conversations and telegraphic communication telephone guaranteed and protected". It is clear from the text of the provision that it specifically mentioned the types of privacy that it protects. Five of them are listed therein as follows- 1. The privacy of citizens 2. The privacy of their homes 3. The privacy of their correspondence 4. The privacy of their telephone conversations 5. The privacy of their telegraphic communication. These are clearly restated by this Court in **Federal Republic of Nigeria V. Daniel (2011) 4 ELR 4152** thus- "Undoubtedly, by virtue of the Provision of Section 37 of the 1999 Constitution, the privacy of every Nigerian citizen, the home, correspondence, telephonic and telegraphic communications are cherishingly guaranteed and protected. .... It is glaring that the phrase "Privacy of Citizens" is general and is not limited to any aspect of the person or life of a citizen. It is not expressly defined by the Constitution and there is nothing in the Constitution or any other statute from which it's exact meaning or scope can be gleaned." (Emphasis mine)

12. The Constitution clearly guarantees the privacy of citizens' telephone conversation which the Respondent seeks to interfere with by the provisions of regulation 8(a) and (c) that empowers them to access the basic information of telephone subscribers without first seeking and obtaining court order contrary to settled principles of law and expectations of a democratic setting.

13. The Applicant has given evidence that, the provision of the Respondent's regulation 8(2)(a) and (b) will be likely used to interfere with their members' right to privacy under section 37 if the Respondent and their relevant agencies are allowed to access subscribers' information without court order or supervision.

14. In *Nursing and Midwifery Council of Nigeria v Esther Bose Adesina* (2016) LPELR - 40610(CA), the court held that:

"The Courts guard fundamental rights provisions very jealously. Therefore any law or action that is perpetrated against the provisions of the fundamental rights of any individual which is against the spirit of the Constitution would not be allowed to stand. The spirit of the Constitution must be upheld at all times, the fundamental rights of the citizen which are immutable and inalienable cannot be subsumed or swept aside by a side wind such as the Appellant's policies and procedures."

15. The Constitution guarantees privacy of citizens but the Respondent's regulation will interfere with such freedom except the court's intervention is sought before such an access. It is our respectful submission that, such a blanket provision on access to subscribers' information will be readily abused to interfere with privacy and due to the dearth of local authorities, we shall respectfully refer your lordship to similar foreign authorities thus:

16. In **D.L. v Bulgaria** delivered by the European Court of Human Rights, Suit No. 7472/14, delivered 19 May, 2016, social services placed the applicant in a secure educational institution pursuant to a court order. All written correspondence and telephone conversations were subject to blanket and indiscriminate surveillance by the institution. The court held that Article 8 of the European Charter on Human Rights had been violated, given that the measure in question was not necessary in a democratic society. This applied as much to telephone conversations. Furthermore, the surveillance did not make any distinction between communication with family members and NGOs representing children's rights or lawyers. Moreover, the decision to intercept the communication was not based on an individualised analysis of the risks in each particular case.

17. Further in **Dragojevic v Croatia**, another decision of the European Court of Human Rights with Suit No. 68955/11 delivered 15, January 2015 where the applicant was suspected of being involved in drug-trafficking. He was found guilty after an investigating judge authorised the use of secret surveillance measures to intercept the applicant's telephone calls. The court held that the measure, against which a complaint was raised, constituted an interference with the right to respect for private life and correspondence. The authorisation given by the investigating judge was based merely on the prosecuting authority's statement that "the investigation could not be conducted by other means". The court also noted that the criminal courts had limited their assessment regarding the use of the surveillance measures, and that the government did not put forward the remedies that are available. Consequently, Article 8 had been violated.

18. Ultimately, we respectfully refer the court to the local decision in **Joe Odey Agi, SAN v Peoples Democratic Party (2016) LPELR-425**, the Supreme Court held that:

"It is expedient to restate emphatically that, no law, legislation, be it regulation, rules or guidance of whatever nature can come into effect so as to undermine the effect of a constitutional provision." (Emphasis mine)



19. Also in *Amaechi v INEC (2007) LPELR-8253(CA)*, the Court of Appeal held that:

"While I come to the conclusion of this ruling, I wish to restate that the 1999 Constitution is the ground norm in Nigeria, it is the supreme law. Notwithstanding its complex nature, all other legal norms must conform to and not conflict with it. Therefore, any other law, rule or regulation operated by any government, body or organization including a political party Constitution aimed at buffeting citizens in the exercise of their constitutional rights is obviously unconstitutional." (Emphasis mine)

20. From the foregoing, we conclusively but respectfully submit that, the Respondent's regulation cannot and ought not override the provision of the constitution which guarantees privacy of citizens and we urge your lordship to resolve this issue in our favour.

#### CONCLUSION

21. On the strength of the foregoing submission and authorities, we urge the court to grant the Applicant's prayers as contained on the originating application.

Dated this 24<sup>th</sup> day of February, 2020.



**Olumide Babalola, Esq.**

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APPLICANT

AND

NIGERIAN COMMUNICATION COMMISSION

RESPONDENT

AFFIDAVIT OF NON-MULTIPLICITY OF SUITS

I, Oliva Audu, Female, Nigerian citizen of 29 Mambilla Street, Off Aso Drive, Maitama,  
Abuja do hereby make oath and state as follows:

1. I am the member of the Applicant and therefore very conversant with the facts leading to these depositions.
2. I have the consent and authority of the Applicant and that of my employer to depose to this affidavit.
3. I know as a fact that there is no other suit with same parties and/or subject matter in this suit.
4. I make this declaration in good faith believing its contents to be true and in accordance with oaths Act 2004.

  
.....  
DEPONENT

SWORN TO at Federal High Court Registry, Abuja  
This 25<sup>th</sup> day of Feb. 2020

BEFORE ME  
COMMISSIONER FOR OATHS  
FEDERAL HIGH COURT  
ABUJA  
COMMISSIONER FOR OATHS