

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: FHC/L/CS/1511/2019

BETWEEN

1. THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT [SERAP]
2. THE INCORPORATED TRUSTEES OF BUDGIT FOUNDATION FOR PROMOTION OF INFORMATION TECHNOLOGY IN NIGERIA [BUDGIT] PLAINTIFFS
3. THE EIE PROJECT LTD/GTE [EIE]
4. THE REGISTERED TRUSTEES OF ACCOUNTABILITY LAB NIGERIA NETWORK
[Suing for themselves and on behalf of 6721 concerned Nigerians]

AND

1. THE SENATE PRESIDENT, SENATE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA
[For himself and on behalf of all members of the Senate of the Federal Republic of Nigeria] DEFENDANTS
2. NATIONAL ASSEMBLY SERVICE COMMISSION

ORIGINATING SUMMONS

LET the Defendants, **The Senate President, Senate of the National Assembly, Federal Republic of Nigeria** of Abuja, FCT AND **National Assembly Service Commission** of Plot 210, Tafawa Balewa Way, Abuja, FCT within thirty 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 Registered Trustees of the Socio-Economic Rights and Accountability Project [SERAP] of 2B, Oyetola Street, off Ajanaku Street, Salvation Bus-Stop, Opebi, Ikeja, Lagos and three others who claims the following reliefs set below and seeks the determination of the following questions:

QUESTION FOR DETERMINATION:

Whether the sum of ₦5.550 billion proposed, earmarked, budgeted and planned for purchase of vehicles for principal members of Senate is not in breach of Section 57[4] of the Public Procurement Act 2007, Paragraph 1 of Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and Oath of office [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999.

RELIEFS SOUGHT BY THE PLAINTIFFS:

1. A DECLARATION that the sum of ₦5.550 billion proposed and budgeted for purchase of vehicles for principal members of Senate [National Assembly] is in breach of Section 57[4] of the Public Procurement Act 2007, Paragraph 1, Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999 and Oath of Office [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999.

2. AN ORDER OF THE HONOURABLE COURT compelling the 1st Defendant to undertake a downward review of the amount proposed and budgeted for purchase of vehicles for principal members of the 1st Defendant in compliance with Section 57[4] of the Public Procurement Act 2007.
3. AN ORDER OF THE HONOURABLE COURT restraining, preventing and stopping the National Assembly Service Commission from paying out or releasing the sum of ₦5.550 billion proposed, earmarked and budgeted for purchase of vehicles for principal members of Senate [National Assembly] until the downward review of the amount proposed by the 1st Defendant.
4. AN ORDER OF THE HONOURABLE COURT restraining, preventing and stopping all members of the Senate from collecting or demanding the sum of ₦5.550 billion proposed and budgeted for purchase of vehicles for principal members of Senate until the downward review of the amount proposed for purchase of the vehicles.
5. ANY ORDER(S) that the Honourable Court may deem fit to make in the circumstance of this suit.

Dated the.....day of.....2019

**THIS ORIGINATING SUMMONS IS TO BE SERVED OUTSIDE LAGOS STATE
AND IN ABUJA, THE FEDERAL CAPITAL TERRITORY**

This summons was taken out by **Olúwádàrè A. Kóláwolé / Joke Fekumo Mrs.**, Legal Practitioners for the above-named Plaintiffs.

The Defendants may appear hereunto by entering appearance personally or by a legal practitioner either by filing the appropriate forms, duly completed, at the Federal High Court Registry of the state where the summons was issued or by sending them to that office by post.

Note:

If the Defendants do not enter appearance within the time and at the place above-mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

THIS ORIGINATING SUMMONS IS TO BE SERVED OUTSIDE LAGOS STATE AND IN ABUJA, THE FEDERAL CAPITAL TERRITORY

Dated this _____ day of _____, 2019

Olúwádàre A. Kóláwolé
Joke Fekumo Mrs.
Plaintiffs' Counsel
Socio-Economic Rights and Accountability Project [SERAP]
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Email: info@serap-nigeria.org
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FOR SERVICE ON:

1. **1st Defendant**
The Senate President
Senate of the National Assembly
Federal Republic of Nigeria
C/o, office of the Senate President,
National Assembly Complex,
Abuja, FCT.

2. **2nd Defendant**
National Assembly Service Commission
Plot 664 T.O.S Benson Crescent
Off Ngozi Okonjo-Iweala Way
Utako District
P.M.B 558, Abuja FCT

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1. THE SENATE PRESIDENT, SENATE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA
[For himself and on behalf of all members of the Senate of the Federal Republic of Nigeria] DEFENDANTS
2. NATIONAL ASSEMBLY SERVICE COMMISSION

AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

I, **AHMED OSHODI**, Male, Nigerian, Muslim and Litigation Clerk of Socio-Economic Rights and Accountability Project [SERAP] of No. 2b, Oyetola Street, off Ajanaku Street, Salvation Bus-stop, Opebi Street, Ikeja, Lagos, do hereby make oath and state as follows:

1. That I am a Litigation Clerk at the Socio-Economic Rights and Accountability Project [SERAP], the 1st Plaintiff in this suit.
2. That I have the consent and authority of all the Plaintiffs herein to depose to this affidavit on behalf of all the Plaintiffs.
3. That by virtue of my position in the 1st Plaintiff, I am conversant with the facts of this case and with the facts deposed herein.
4. That the Plaintiffs are non-governmental and civil society organizations established in Nigeria with the mandate to promote human rights, transparency and accountability and anti-corruption in Nigeria. Copies of the Certificate of incorporation of the 1st to 4th Plaintiffs are attached and annexed as **Exhibits AO1, A02, A03 and A04** respectively.
5. That the Plaintiffs in this suit are suing for themselves and on behalf of 6721 concerned Nigerians who indicated their interest to jointly sue the Defendants, and whose names and details are attached and annexed as **Exhibit AO5**.
6. That the 1st Defendant is the head and representative of the upper federal legislative body in Nigeria with a total of 109 members while the 2nd Defendant is body corporate created by law that disburses funds for salaries, allowances and welfare of the members of the 1st Defendant.

7. That I was informed by Kolawole Oluwadare, Counsel to the Plaintiffs in this suit, while reviewing this case at 10:42am in our office on the 29th August, 2019, and I verily believe him as follows:
- [i] That it was widely reported in the media that the Senate has budgeted and proposed to spend Five Billion Five Hundred and Fifty Million Naira [N5,550,000,000:00] to buy vehicles for the leadership of Committees of the Senate. That the Senate has 69 Committees and a total of 109 members.
 - [ii] That the amount proposed for purchase of vehicles by the 1st Defendant is outrageous and unlawful in view of the current economic reality of Nigeria.
 - [iii] That about One Billion Three Million Naira [N1,300,000,000:00] was expended on procuring vehicles for members of the 1st Defendant in 2012, at the rate of costing N11. 07 million for each Senator in spite of public criticism against it at the time.
 - [iv] That the 8th Senate spent about Four Billion Naira [N4,000,000,000:00] to purchase vehicles at a cost of N36 million per Senator.
 - [v] That the 2019 national budget passed by National Assembly in April 2019 is N8.92 Trillion.
 - [vi] That the sum of N128billion was budgeted and allocated to the National Assembly in the approved 2019 national budget.

- [vii] That it is public knowledge and practice that members of the 1st Defendant earn huge amounts of money as salaries, allowances and also severance pay on conclusion of their terms at the National Assembly.
- [viii] That all members of the 1st Defendant are elected by the Nigerian constituents to serve and all members of the 1st Defendant swore to uphold the oath of office contained in [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999 on 11th June, 2019.
- [ix] That all members of the 1st Defendant are public officers bound to, and subject to obey the Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999[as amended]
- [x] That some State Governments in Nigeria owe their workers several months of salaries and pension. That poverty and economic hardship is rife in Nigeria.
- [xi] That there has been outcry by many Nigerians calling for a downward review of the cost proposed and budgeted to buy vehicles for members of the 1st Defendant.
- [xii] That the Plaintiffs had advocated for members of the public willing to join in the suit against the 1st Defendant on various platforms wherein 6721 people gave their consent and details to the Plaintiffs to sue the Defendants for the proposed amount budgeted to buy vehicles. A copy sample of the google form filled by the 6721 Nigerian citizens, print-out of the 1st Plaintiff's Twitter page and Certificate issued pursuant to Section 84 of the Evidence Act are attached and marked as **Exhibits AO6, AO7 and AO8** respectively.

[xiii] That the Plaintiffs' cause of action in this suit borders on issues of national interest, public concern, social justice, good governance, transparency and accountability.

8. That I know as a fact that this matter is presently generating a lot of public concern and it is a subject of national discourse that is germane to Nigerians.
9. That I make this declaration in good faith, believing it's content to be true to the best of my ability and in accordance with the Oaths Act.

DEPONENT

Sworn to at the Federal High Court Registry, Lagos,

This ____ day of _____ 2019

BEFORE ME

COMMISSIONER FOR OATHS

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2. NATIONAL ASSEMBLY SERVICE COMMISSION

WRITTEN ADDRESS IN SUPPORT OF ORIGINATING SUMMONS

1.0 INTRODUCTION

- 1.1 The Plaintiffs commenced this action by way of originating summons, praying the Honourable Court to determine the following sole issue of law:

“Whether the sum of ₦5.550 billion proposed, earmarked, budgeted and planned for purchase of vehicles for principal members of Senate [National Assembly] is not in breach of Section 57[4] of the Public Procurement Act 2007, Paragraph 1 Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and Oath of office [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999”

- 1.2 The Written Address is filed on behalf of the Plaintiffs and in support of this application.

2.0 BACKGROUND FACTS

- 2.1 The background facts in respect of this suit are well set out in the affidavit of Ahmed Oshodi accompanying the originating summons. We humbly refer Your Lordship to the said affidavit, and the accompanying exhibits.

3.0 ISSUE FOR DETERMINATION

- 3.1 The Plaintiffs submit the following sole issue for determination in this suit:

3.2 *“Whether the sum of ₦5.550 billion proposed, earmarked, budgeted and planned for purchase of vehicles for principal members of Senate [National Assembly] is not in breach of Section 57[4] of the Public Procurement Act 2007, paragraph 1 of Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and Oath of office [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999”*

4.0 LEGAL ARGUMENT

4.1 *“Whether the sum of ₦5.550 billion proposed, earmarked, budgeted and planned for purchase of vehicles for principal members of Senate [National Assembly] is not in breach of Section 57[4] of the Public Procurement Act 2007, Paragraph 1 of Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and Oath of office [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999”*

4.2 My Lord, by virtue of *Section 6 of the Constitution of the Federal Republic of Nigeria 1999* and *Order 3 Rule 7 of the Federal High Court [Civil Procedure] Rules 2019* actions bordering on interpretation of statutes vis a vis acts considered to be ultra vires is the exclusive preserve of the Court [Federal High Court]. Thus, the commencement of this suit by way of originating summons. The Plaintiffs have brought this action before the Court in fulfillment of their social responsibility to promote transparency and accountability in Nigeria through human rights.

4.3 We submit that the sum of ₦5.550 billion proposed, earmarked and budgeted for purchase of vehicles for principal members of Senate and House of Representatives is in breach of Section 57[4] of the Public Procurement Act 2007. My Lord, section 57[4] of the Public Procurement Act 2007 provides thus:

“All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious”

4.4 There is no doubt that members of the Senate are public officers within the meaning of *Paragraph 19 Part II [Fifth Schedule] of the Constitution of the Federal Republic of Nigeria 1999* [as amended]. It is also established and judicially noticed/presumed that the members of the 1st Defendant are elected to serve their constituents and Nigeria in their respective legislative capacities in the National Assembly.

4.5 In their capacity as legislative officers, members of the 1st Defendant are entrusted with public funds and they directly exercise power in allocation of public resources outside their respective salaries and allowances – either in consideration of Appropriation Bill or on funds allocated to the National Assembly, as in the instance case. Can it be said that the 1st and 2nd Defendants were aware of their duty to judiciously allocate public funds by proposing to spend ₦5.50 Billion on vehicles for its officials? I think not. More importantly, in view of the current economic realities of Nigeria.

- 4.6 The actions of the 1st Defendant invoke pertinent questions from citizens: What is the economic value and contribution of the vehicles sought to be purchased to the grand scheme of Nigeria's economy? What are the parameters used to arrive at cost efficiency and value for money in the decision to purchase the vehicles? Where are the vehicles purchased by the 8th National Assembly?
- 4.7 It is also our position that the plan to purchase vehicles for principal members of Senate [National Assembly] at the total cost of ₦5.550 billion negates the *Oath of Office [Seventh Schedule of the 1999 Constitution]* taken by members of the National Assembly to perform their functions in the interest of well-being and prosperity of the Federal Republic of Nigeria. My Lord, for clarity, the oath of office by members of the National Assembly is hereby set out below:

"I, do solemnly swear/affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as a Member of the Senate/House of Representatives/ House of Assembly, I will perform my functions honestly to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, and the rules of the Senate/House of Representatives/ House of Assembly and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria; that I will strive to preserve the Fundamental Objectives and Directive Principles of State Policy contained in the Constitution of the Federal Republic of Nigeria; and that I will preserve, protect and defend the Constitution of the Federal Republic of Nigeria; and

that I will abide by the Code of Conduct contained in the Fifth Schedule of the Constitution of the Federal Republic of Nigeria. So help me God.”

4.8 The well-being and prosperity of the Federal Republic of Nigeria requires commitment and sacrifice for by all and sundry – a position we have consistently emphasised in our advocacy as responsible patriotic citizens of Nigeria. However, the actions of the 1st Defendant do not depict their commitment to pursuit of the interest, well-being and prosperity of Nigeria. In a country with galloping inflation at over 11%, N5.550 Billion [amounting to 6.4% of Nassarawa State budget] could be better allocated to more important sectors of the National Assembly expenditure – like constituency projects and National Assembly-endowed educational scholarships.

4.9 We further submit that the action of the members of the Senate in proposing, planning and budgeting the sum of N5.550 billion for purchase of vehicles for principal members of Senate is in clear breach of Code of Conduct for Public Officers, particularly *Paragraph 1 Code of Conduct for Public Officers* which provides:

“A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities”

4.10 It can be inferred that in proposing, planning and budgeting the sum of N5.550 billion for purchase of vehicles for principal members of the 1st 2nd Defendant, the members of 1st Defendant have unwittingly brought about a conflict of their personal interests with national interest of fiscal efficiency - a conflict eventually resolved in favour of personal interest. At any rate, the purported plan to by vehicles for leaders of Committees in the 1st Defendant can only be interpreted as selfish interest.

My Lord, there are 109 members in the Senate – and the Senate 69 Committees. If the proposed vehicles are for Chairmen and Vice Chairmen of the Committees, as stated by the 1st Defendant, it simply means that all members of the Senate will invariably be a leader in at least one Committee and entitled to one vehicle.

4.11 Your Lordship, the National Assembly comprises of 469 members – with 109 in the Senate and 360 in the House of Representatives. These public officers form a very tiny percentage of about 200 million Nigerians. It is public knowledge and judicially noticed that members of the 1st Defendant are still eligible to collect huge sums of money as monthly allowances and severance pay on conclusion of their respective terms at the National Assembly. It is thus rational that this matter is presently generating a lot of public concern and there has been outcry by many Nigerians calling for a review of the sum proposed to buy vehicles for members of the National Assembly.

4.12 My Lord, we respectfully and passionately pray for the statutory exercise of the Court's judicial power to resolve the sole issue formulated in favour of the Plaintiffs and consequently grant our reliefs, particularly, to compel the 1st Defendant to undertake a downward review of the sum proposed and budgeted for purchase of vehicles in compliance with Section 57[4] of the Public Procurement Act 2007. Unless the reliefs sought herein are granted, the 1st Defendant will continue to benefit from the breach of the law, and the expense of a lot of Nigerians living in poverty.

4.13 As indicated above, the issue at hand is that of national interest, public concern, social justice, good governance, transparency and accountability. As stated in the case of **Nwankwo v. Madu [2009] 1 NWLR [Part 1123] page 671 at 684** public interest litigation is a right given to the socially conscious member or a public spirited non-governmental organisation to enforce a public cause by seeking judicial redress of public injury.

4.14 We respectfully submit to Your Lordship that the duty conferred on members of the 1st Defendant in *Section 57[4] of the Public Procurement Act 2007, Section 1 of Code of Conduct for Public Officers [Fifth Schedule Part 1]* is mandatory and they cannot elect not to comply. Therefore, the 1st Defendant's failure or refusal to comply with the law is nothing but an act of arbitrariness. We respectfully refer Your Lordship to the case of **Ude v. Nwara [1993] 2 NWLR [Part 278] page 648 at 664**, where the Supreme Court held that:

“Except where the law gives a discretion to a public functionary he can only act in accordance with the express provisions of the law, as to do otherwise would enthrone arbitrariness.”

See also **Obioha v. Dafe [1994] 2 NWLR [Part 325] page 164 at 176** where it was held that:

“it is a necessary implication of the rule of law that, except where the law gives a discretion to a public functionary, he can only act in accordance with the law, as to do otherwise may enthrone arbitrariness”

4.15 In the face of glaring facts on Nigeria's dire economic position vis a vis the scant allocations to critical sectors of the nation, we can only pray the Court to do substantive justice by resolving the sole issue in favour of the Plaintiffs and granting our reliefs sought.

5.0 CONCLUSION:

5.1 We humbly urge Your Lordship to hold that the Plaintiffs have made out a meritorious case for the determination of the issue raised in favour of the Plaintiffs. We therefore urge Your Lordship to grant our prayers as prayed, to wit:

1. *A DECLARATION that the sum of ₦5.550 billion proposed and budgeted for purchase of vehicles for principal members of Senate [National Assembly] is in breach of Section 57[4] of the Public Procurement Act 2007, Paragraph 1, Code of Conduct for Public Officers [Fifth Schedule Part 1] of the Constitution of the Federal Republic of Nigeria 1999 and Oath of Office [Seventh Schedule] of the Constitution of the Federal Republic of Nigeria 1999.*
2. *AN ORDER OF THE HONOURABLE COURT compelling the 1st Defendant to undertake a downward review of the amount proposed and budgeted for purchase of vehicles for principal members of the 1st Defendant in compliance with Section 57[4] of the Public Procurement Act 2007.*

3. *AN ORDER OF THE HONOURABLE COURT restraining, preventing and stopping the National Assembly Service Commission from paying out or releasing the sum of ₦5.550 billion proposed, earmarked and budgeted for purchase of vehicles for principal members of Senate and House of Representatives [National Assembly] until the downward review of the amount proposed by the 1st Defendant.*

4. *AN ORDER OF THE HONOURABLE COURT restraining, preventing and stopping all members of the Senate from collecting or demanding the sum of ₦5.550 billion proposed and budgeted for purchase of vehicles for principal members of Senate [National Assembly] until the downward review of the amount proposed for purchase of the vehicles.*

5. *ANY ORDER(S) that the Honourable Court may deem fit to make in the circumstance of this suit.*

Dated this _____ day of _____, 2019

Olúwádàrè A. Kóláwolé
Joke Fekumo Mrs.
Bamisope Adeyanju
Plaintiff/Applicant's Counsel
Socio-Economic Rights and Accountability Project [SERAP]
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Off Ajanaku Street, Salvation Bus-Stop,
Opebi, Ikeja, Lagos State
Tel: 08160537202
Mobile: 09093215754

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