APPRAISING THE INHIBITORY FACTORS TO ACCESS INFORMATION AND THE COURT UNDER THE NIGERIAN COMMUNICATIONS COMMISSION ACT

Yakubu Moses Ede*

Abstract

The right to access information and the court in Nigeria is constitutionally guaranteed. Accessing information and the court in Nigeria is faced with some inhibitory factors as enshrined in the Nigerian Communications Commission Act. The law laid down some herculean and restrictive administrative procedure that limits access to the court. The NCC Act provides that any person aggrieved by its decision may request the statement of the reason for the decision. This is contrary to the provisions of the Freedom of Information Act. The doctrinal method was adopted in this research by considering available statutes and literature on the subject matter. The paper recommended that the legislative arm of government should not enact laws that promote impunity and abuse of power by public officers, authorities and statutory corporations.

Keywords: Inhibitory factors, Information, Accessibility, Transparency, Good governance.

1.0 INTRODUCTION

The right to access information belongs to everyone without discrimination. Nigeria's Freedom of Information (FOI) Act was signed into law on May 28, 2011, after the longest legislative debate for over 12 years. The law was passed to enable the public to access

* LLB, LLM, PhD, BL, ACIArb., Lecturer, Nigerian Law School, Yenagoa Campus, Bayelsa – Nigeria. Email: mosesede18@yahoo.com.

government information, in order to ensure transparency and accountability.[1]

The telecommunications law in Nigeria was first and formerly enacted to regulate the telecommunications sector in Nigeria. The Nigerian Communications Commission (NCC) was created under Decree number 75 by the Federal Military Government of Nigeria on 24th November, 1992. The NCC was charged with the responsibility of regulating the supply of telecommunications services and facilities, promoting competition, and setting performance standards for telephone service in Nigeria.[2] The Nigeria Communication Commission was created with a view to handling matters relating to the activities of the licensed telecommunication companies in Nigeria. Before the advent of private telecommunications in Nigeria the Nigeria Telecommunications (NITEL) was the major communication outfit, save for Nigerian Postal Service (NIPOST). The extant law regulating telecommunications is the Nigerian Communications Act, No. 19, 2003. The law laid down some herculean and restrictive administrative procedure that limits access to the court. This is examined along with the provisions of the constitution.

Accessing information with ease encourages the citizens to actively participate in governance. This paper has its focus on the inhibitory legislative factors that limit citizens' access to information and the court in Nigeria. It examines the provisions of the Nigeria Communications Commission Act, which lays down procedures for accessing information and the court. It is the heart of this paper to help

[1] Ifeoma Ann Oluwasemilore, 'A Critical Analysis of Nigeria's Freedom of Information Act' (2018) <https://gravitasreview.com.ng/shop/nigerias-freedom-of-information-act> accessed 11 November 2022

[2] Nigerian Communication Commission (2020) <https://en.m.wikipedia.org/wiki/Nigerian_Communications_Commission> accessed 10 November 2022

readers understand some of the challenges posed by the NCC Act in accessing information and the court. The work took a step to suggest some recommendations to the findings. Between the Constitution and the NCC Act, which legislation clothes the court with a better jurisdiction? Can the NCC Act oust the provisions of the Constitution? Can the NCC Act confer jurisdiction where the Constitution provides otherwise? Why take what you can't give? Should the provisions of the NCC Act be allowed to thrive in the midst of hindered access to court? If Mr. A, being an aggrieved person, applies for the statement of the reasons for a decision by the Commission via the instrumentality of the Freedom of Information Act, would the Commission insist on its sixty-day timeframe or would it comply with the seven-day period stipulated under the Freedom of Information Act? The doctrinal method of research was adopted in resolving these questions. It is pertinent to state that enacting legislation that promotes openness and easy accessibility to information and the courts will bring about good governance in the best interest of the citizenry.

2.0 DEFINITION OF TERMS

It is pertinent to briefly provide the definition of some terms. This will help to guide us through the work, particularly in understanding the context of usage. Some of the terms to be defined are information and access.

2.1 Information

Information includes all records, documents, and information stored in whatever form, including written, electronic, visual images, sound, and audio recording.[3]. Information in this regard is not only documentary but also contemplates any data stored in a retrieval form, be it audio, visual, sound, or electronic. Document has been defined to include:

[3] Freedom of Information Act 2011, s 31

a. books, maps, plans, graphs, drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;
b. any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied to be capable (with or without the aid of some other equipment) of being reproduced from it, and
c. any film, negative, tape or other device in which one or more visual images are embodied to be capable (with or without the aid of some other equipment) of being reproduced from it; and
d. any device by means of which information is recorded, stored or retrievable including computer output[4].

So long as the details contain accurate information that is helpful falls within expectation. In other words, any material that the storage can be retrieved is qualified as information. Any information sought by a citizen is always contained in a document. Document here does not suggest that the information should only be contained in the hardcopy paper, but it could also be electronically contained in a soft copy form of paper. It further stated that a document could also mean any device by means of which information is recorded, stored, or retrievable[5]. Device could mean a lot in this technological era. A device is a unit of physical hardware or equipment that provides one or more computing functions within a computer system. It can provide input to the computer, accept output, or both. A device can be any electronic element with some computing ability that supports the installation of

[4] Evidence Act 2011, s 258 (1)
[5] Ibid

firmware or third-party software[6]. Any electronic gadget that has the potential of storing and retrieving information that is relevant to a citizen's request is qualified as a device for all intents and purpose.

2.2. Access

Access has been defined as a right, opportunity, or ability to enter, approach, pass to and from, or communicate with[7]. Access is a right or ability to enter and obtain available detail or information from a public institution without inhibition.

Access to the Court means approach or means of approach to the Court without constraint.[8]. Given the definition by the court, it then means that a person is expected to be granted unfettered approach or means of approaching the court and, by extension, any public institution. Public institution under contemplation includes the Nigerian Communications Commission. It is the citizen's ability to approach a public institution and demand relevant information stored in their custody.

Access is also defined as the ability, right, or permission to approach, enter, speak with, or use; admittance.[9]. It can be said that access is an authorization to files or information that a citizen will require from an institution.

Access to court is synonymous with access to justice. Access to justice is the ability within a society to use courts and other legal institutions effectively to protect one's rights and pursue claims.[10].

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[6] Rouse, M., 'What Does Device Mean' (2012) <https://www.techopedia.com>device> accessed 24 October 2023
[7] Bryan A. Garner, *Black's Law Dictionary*, 11th Edition
[8] *Amadi v NNPC* [2000] LPELR-445 SC, Pp. 49 [paras. F] (Karibi-Whyte, JSC)
[9] <https://www.dictionary.com>browse> accessed 19 October 2023
[10] Ibid

3. LEGAL REGIME ON ACCESS TO INFORMATION

The legal regime on access to information includes the Constitution of the Federal Republic of Nigeria, 1999 (as amended), United Nations Convention Against Corruption, 2003, Freedom of Information Act, 2011, Universal Declaration of Human Rights, 1948, African Charter on Human and Peoples' Rights. The extant law in Nigeria on freedom of information right empowers[11] individuals, groups and association(s) to access public information or records. The legal right to information has its foundation rooted in the Constitution.[12]. A cursory view of Section 39[13] reveals that the citizens of Nigeria have the right to freedom of expression. Subsection 1 of Section 39 is to the effect that all citizens are entitled to freedom of expression, which also includes freedom to hold opinions and to receive and impart ideas and information without interference. The right to freedom of expression cannot be judiciously exercised without adequate information at the disposal of the citizen. This is hinged on the Latin maxim *nemo dat quod non habet,* meaning no one can give that which he has not[14]. Interestingly, the provision provides that a person has the freedom to hold an opinion. The opinion certainly cannot be held effectively if the requisite information is not accessed.

The Constitution, being the grundnorm, serves as the bedrock for the promulgation of the freedom of information law in Nigeria because it encapsulates that every person has the freedom to receive, impart ideas and information without interference. It is the opinion of this research

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[11] History.com Editors, 'Freedom of Information Act' (2018) <https://www.history.com/topics/1960s/freedom-of-information-act> accessed 14 November 2022

[12] Constitution of the Federal Republic of Nigeria, 1999 (as Amended), Cap C23, Laws of the Federation of Nigeria, 2004, s 39

[13] Ibid

[14] Suleiman I. Nchi, *The Nigerian Law Dictionary* (Greenworld Publishing Company Limited, 2000)

work that ordinarily, even without any other law, this provision should suffice in seeking information from public institutions. According to Yakubu[15], this provision is in line with the universal conception that freedom of the press and freedom of expression are so fundamental that any law that tends to obstruct any of the two ideas cannot be law properly so called. At the international level, the United Nations has made considerable efforts towards promoting access to information. The effort was to encourage and compel member states to actively participate by enacting and allowing the implementation of the law on access to Information. It is enshrined in Article 10(a)[16] thus:

Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

This is one of the measures adopted by the United Nations to enhance access to information at the disposal of state parties' public administration. This Convention allows members of the general public, where appropriate, to obtain information on the organization, functioning and decision-making processes of public institutions. The process for obtaining information from the Nigeria Communication Commission, especially where it is refused at first instance, is quite cumbersome. Article 10(b) provides thus, "simplifying administrative procedures, where appropriate, to facilitate public access to the competent decision-making authorities".[17]

[15] John Ademola Yakubu, *Press Law in Nigeria* (Demyaxs Press Ltd, Ibadan, 2003) 12
[16] United Nations Convention Against Corruption, 2003
[17] Ibid

On the strength of the above provision, public institutions are expected and required to make the procedure easier for accessing information. This is aimed at simplifying the administrative procedures by eliminating administrative bottlenecks that inhibit the ease of obtaining public information. It will also facilitate public access to the competent decision-making authorities, and it will inspire confidence of the general public in the process of governance. Public institutions are statutorily expected to publish information which may include periodic reports on the risks of corruption within their system.

Freedom of information law is one of the legislations that helps in fighting corruption in Nigeria because it gives the citizenry the opportunity of checkmating the excesses of government. Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including about its organization, functioning and decision-making processes, where appropriate.[18] In an attempt to ensure compliance with the desired goal of granting access to information, certain procedural steps are laid down. One such initiative into public access to documents held by Community institutions and bodies has resulted in the adoption of rules on public access by the institutions and bodies concerned.[19]. Some of the procedural steps tend to suffocate the original philosophy behind the enactment of the law for accessing public information.

It is of interest to state at this juncture that the provision on the freedom of information is encapsulated in Article 19[20] that everyone

[18] United Nation Convention Against Corruption 2003, art 10
[19] Neil Parpworth, *Constitutional & Administrative Law* (5th edn, Oxford University Press, 2007) 386
[20] Universal Declaration of Human Rights, 1948

has the right of freedom of opinion and expression. The right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. It is expected that there should not be interference in a person's effort to seek, receive and impart information. The right to seek and receive information is also enshrined in Article 9(1)[21] that every individual shall have the right to receive information. Despite the provisions of Section 39[22] and other sundry Articles, the application or request for information from public institutions through this section has met stiff resistance.

4.0 LEGAL REGIME ON ACCESS TO COURT

The provisions of the Nigeria Communications Act lay down procedures in accessing information and the court. It is enshrined in section 88(1)[23] that an aggrieved person may appeal to the court for judicial review of the Commission's decision or other action. The use of the word appeal to the court for judicial review suggests that the Commission makes a decision and reviews its decision. This ought not to be so. The judicial powers in Nigeria to adjudicate over disputes are vested in the courts[24]. The adjudicatory power of the court extends to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person[25]. Access to court is a right guaranteed by the Constitution when it stipulates that in the determination of his civil

[21] African Charter on Human and Peoples' Rights, Cap 10, Laws of the Federation of Nigeria, 1990
[22] Constitution of the Federal Republic of Nigeria, 1999 (as Amended), Cap C23, Laws of the Federation of Nigeria, 2004.
[23] Nigerian Communications Act, 2003
[24] Constitution of the Federal Republic of Nigeria, 1999 (As Amended), Cap. C23, Laws of the Federal Republic of Nigeria 2004, s 6(1)
[25] Ibid, s 6(6)(b)

rights and obligations, including any questions or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality[26]. In order to protect a legal right or interest, an individual has a right to access the court which is constitutionally guaranteed. The legal right to institute any proceedings in the court to compel a government or any of its public institution with a view to accessing information is guaranteed under the law. It is encapsulated thus:

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 the provisions of this act.[27]

The right to institute an action is available to everybody who is entitled to the information required. In the case of *Umeh v Iwu*[28] it was held that parties are permitted to air their grievance at the law courts as when there is a right, there must be a remedy. Freedom of Information Act plays an important role in keeping government transparent and accountable, and has been used to expose a wide range of government misconduct and waste, along with threats to the public's health and safety.[29] A right of access to information helps to ensure that public authorities are held to account and thus limits the risks of complacency

[26] Ibid, s 36(1)
[27] Freedom of Information Act 2011, s 1(3)
[28] [2007] 6 NWLR (Pt. 1030) 416 p. 428, [paras E-F]. See also *Falobi v Falobi* [1976] 9-10 SC 1
[29] History.com Editors, 'Freedom of Information Act' (2018) <https://www.history.com/topics/1960s/freedom-of-information-act> accessed 14 November 2024

and maladministration[30]. Granting access to government held information has the tendency of promoting the citizens interest in government activities. Citizens accessing important information held by government helps in checkmating the excesses of government officials in the performance of their duties by ensuring adherence to the laid down policies, guidelines, principles and the laws.

The Freedom of Information Act[31] was enacted to specifically clothe Nigerians with the adequate legal backing to request and access information from public institutions, private companies using public funds to run it affairs. This law was made irrespective of the provisions of any other Act, law or regulation. The right is granted to any person to apply and access information which is stored or kept in the custody of a public official, agency or institution.

The law also empowers the applicant the right to apply for the information without stating the rationale for the request[32]. This guarantees the applicant some level of leverage to decide what to do with the information. In other words, it does not gag the applicant to state the reasons for the application because he may seek for the information to acquire the knowledge for personal use or to seek for the information to impart on others or to use it to beckon on the government or any of its institution to comply with the extant law where it is in breach.

[30] John Wadham, Jonathan Griffiths, and Kelly Harris, *Blackstone's Guide to The Freedom of Information Act 2000* (Oxford University Press, 3rd edn, 2007) 2
[31] 2011.
[32] Ibid, s 1(2)

4.1 Factors Inhibiting Access to Information Under the Nigerian Communications Act

The Nigeria Communication Commission[33] was established in 2003 with a view of providing regulatory framework and to ensure that telecommunication network providers are regulated to operate within the ambit of the law. It is also saddled with the responsibility for the regulation of the communications sector in Nigeria. This law as enacted by the National Assembly is aimed at limiting and frustrating access to information from the Commission. The procedural requirements laid down in the law in the event of an applicant being aggrieved against the decision for the refusal of the request will delay justice. In the legal palace the principle is that justice delay is justice denied. Section 86[34] limit access to justice.

4.2 Factors Inhibiting Access to Court Under the Nigerian Communications Act

Accessing court is sometime faced with challenges. Some of the challenges are corruption, complex legal rules and procedure, cost of litigation, lack of access to documentary information, delays in granting access to information and herculean regulatory measures among others. One of the prerequisites of a well-established democracy is a liberated, strong, impartial and well-motivated judiciary. The Judicial systems in flourishing democracies, besides being the custodian of constitutional governance and democracy, should be independent in every sense of the word and well equipped to dispense justice to all and sundry without hindrance or prejudice. It should inspire belief of citizens that justice shall be done in all cases[35].

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[33] Nigerian Communications Act, No. 19 2003, s 1

[34] Ibid

[35] Ani Comfort Chinyere, 'Access to Justice in Nigerian Criminal and Civil Justice Systems' <www.legalpediaonline-com.cdn.ampproject.org> accessed 30 October 2023.

Nigerian Communications Act, 2003[36] (hereinafter referred to as NC Act) provides for the requisite pre-condition before a party can exercise a right of action against the decision(s) of the NCC and that failure to comply with the condition precedent robs court of jurisdiction. The NCC Act[37] also provides for administrative procedure for venting grievance(s) against decisions of the NCC prior to instituting an action against it. The provisions shall be discussed in detail subsequently. In the decided case of *Orakul Resources Ltd. and 1 Or. v Nigerian Communications Commission & 4Ors*[38] where the court held that the provision of Section 88(3) of the Act, prescribes that compliance with the procedure and steps set out in Sections 86 and 87, is a condition precedent to be satisfied and fulfilled before resort can be had to a legal action by way of application for judicial review. As demonstrated in the judicial authorities cited earlier on the point, failure to satisfy or fulfil a statutory condition of or to an action in court, renders any such action taken or initiated incompetent thereby depriving the court of the requisite jurisdiction to entertain and adjudicate over the action since one of the essential requirements for the assumption of jurisdiction, has not been met.

The facts of this case are that the appellants had a grouse with some decisions of the NCC and sued at the High Court claiming declaratory and injunctive reliefs against the respondents herein. The respondents filed objections to the appellants' action on the ground that the conditions precedent under sections 86, 87 and 88 of the Nigerian Communications Act, 2003 provides that before any action could be instituted against the NCC the prospective plaintiff must have first exhausted all other remedies provided under the NCC Act and this provision was not complied with. The respondent argued that the

[36] Nigerian Communications Act, No. 19 2003, s 88
[37] Ibid, Ss 86 and 87
[38] [2022] 1 SCNJ

administrative remedies provided for by Sections 86 to 88 of the NCC Act should have been resorted to firstly by the appellants before approaching the court. The trial court upheld the objections, struck out appellants' action on the ground that the action did not comply with a condition precedent needed to clothe the court with jurisdiction.

The decision of the court in the above matter under reference was rather to the extreme. The court gave more priority to the interest of Commission than the appellant. It is the Constitution that clothes the Nigerian courts with jurisdiction not the Nigerian Communications Act. The Nigeria Communications Act cannot oust the provisions of the Constitution. The Nigerian Communications Act cannot confer jurisdiction where the Constitution provides otherwise. The provisions of the Nigerian Communications Act should not be allowed to thrive in the midst of hindered access to court. For example, if Mr. A being an aggrieved person applies for the statement of the reasons for a decision by the Commission via the instrumentality of the Freedom of Information Act, the Commission should not insist on its sixty days timeframe. The Commission as a public institution should comply with the seven days period stipulated under the Freedom of Information Act[39] for granting or refusing application. The Constitution created the courts and clothed them with jurisdiction to entertain matters emanating from aggrieved persons. The judicial powers of in Nigeria have been conferred and vested in the courts.[40] Section 6(6)[41] provides thus:

The judicial powers vested in accordance with the foregoing provisions of this section –

[39] Freedom of Information Act 2011, s 4
[40] Constitution of the Federal Republic of Nigeria, 1999 (As Amended) Cap C23, Laws of the Federation of Nigeria 2004, s 6(1)
[41] Ibid

a. shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law; b. shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

The judicial powers conferred on the courts extend to all matters between persons, government, authority and to any persons in Nigeria. The courts' jurisdiction also includes all actions and proceedings for the determination of the civil rights and obligations of Nigerians. In this context a person includes individual and corporate entity. On the attitude of the court to statutory provisions limiting a citizen's right of access to court it was held thus:

…a legitimate regulation of access to Courts should not be directed at impeding ready access to the Courts. There is no provision in the Constitution for special privileges to any class or category of persons. Any statutory provision aimed at the protection of any class of persons from the exercise of the Court of its constitutional jurisdiction to determine the right of another citizen seems to me inconsistent with the provisions of Section 6(6)(b) of the Constitution ...[42]

The provision of the Constitution is clear that government or authority including NCC is to subject all actions, decisions and proceedings for the determination of any civil rights or obligations before the courts not otherwise, that is, without heaping statutory impediments for accessing the court to ventilate grievance. The intension of the provisions of the NCC Act is to obviate the rights of aggrieved persons

[42] *Amadi v NNPC* [2000] LPELR-445 (SC) Pp. 50 [paras A] (Karibi-Whyte, JSC)

from accessing the courts easily. The provision of the constitution on the other hand has given Nigerians unhindered access to court to ventilate their grievances. The NCC Act is a legislative attempt to usurp the constitutional provisions that guarantees easy accessibility to the court of law by all aggrieved persons.

The provisions of the NCC Act particularly Sections 86, 87 and 88 cannot by any stretch of imagination oust, whittle down or override the provisions of the constitution. This principle has secured judicial blessing by the Supreme Court in the case of *Global Excellence Communications Ltd & Ors. v Duke*[43] where it was held that access to court is a constitutional right which can only be taken away by a provision in the Constitution. It cannot be taken away by implication or speculation by the courts.

The law provided a platform for all and sundry to be accorded equal rights and opportunity before the law without protecting one and exposing the other. The court as the shelter of justice and fairness accommodates all citizens without discrimination or giving one party advantage over the other. The law does not support the situation where the checkpoint being the gate that leads to justice creates different yardsticks for access. In tune with this, Section 17[44] provides as follows:

1. The state social order is founded on ideals of Freedom, Equality and Justice
2. In furtherance of the order –
a. every citizen shall have equality of rights, obligations and opportunity before the law.

[43] [2007] LPELR – 1323 SC
[44] Constitution of the Federal Republic of Nigeria, 1999 Cap C23, Laws of the Federation of Nigeria, 2004

b. the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

Flowing from the above, the law creates an equal platform for the parties that seek to access the fruit of justice irrespective of whether you are a private person, company or public institution. The courts over the years have decided that the provisions of the NCC Act only set administrative processes for an aggrieved person to exhaust. This was illustrated in the case of *Blue-Chip Communication Co. v NCC.*[45] where the Court of Appeal held thus:

The simple purport of Section 88 of the Act is that an aggrieved person shall not apply to Court for a judicial review unless that person has first exhausted all the administrative processes of remedies set out under the Act. This is the interpretation that the learned trial Judge gave to the Section and rightly too. The provisions of Sections 86, 87 & 88 are not ouster clauses aimed at shutting an aggrieved party out of the Court. Rather, they are meant to regulate the access of an aggrieved party to the Court.

It is worrisome that a law such as the Nigeria Communications Commission Act will seek to regulate the access of an aggrieved person to the court. Where the Constitution has granted an aggrieved person unfettered accessibility of the court of law to vent his grievance, no other law can regulate or restrict such access.

It is expected that all parties enjoy freedom, equality and justice being the ideals of the state social order. It is improper for any statute to lay down mountainous conditions on the Plaintiffs' path before accessing the court. See the case of *Orakul v NCC.*[46] where it was held thus:

[45] [2008] LPELR-3882 CA
[46] [2022] 1 SCNJ

The unnecessary statutory roadblocks on the way of the Plaintiffs, as mounted by Section 86, 87 and 88 of the NCC Act, when viewed against the background of equality of rights and obligations of litigants before the law and the court are manifestly designed to deny the Plaintiffs their rights to be equally treated in law and before the law court qua their rights to approach the court of law without restraint to seek reliefs against the NCC, a statutory corporation.

Ordinarily, placing the parties on the weight scale, the Respondent, that is, the Nigeria Communication Commission, is more enveloped with the garment of protection being a government establishment than the appellant, which is a private company. It is unfair that the Act.[47] mounted speed bumps that eventually led to the delay of justice delivery in Nigeria on the path of the aggrieved party seeking redress. It was held in the case of *Amadi v NNPC.*[48] thus:
The right to easy access to the law court for the citizen to vent grievances, i.e in pursuit of the determination of his civil rights or obligations against the other, including individuals, government, or authorities, means the approach (or access) to the court of law without constraint. Such constraints include unnecessary and cumbersome statutory roadblocks, such as Sections 86, 87 and 88 of the NCC Act, which have actually sought to or do mount in the way of the litigants like the instant plaintiffs.

All citizens appearing before the law have the same standing as to equal rights, obligations and opportunity which ensure equality between litigants. The Constitution creates easy accessibility to the

[47] Nigerian Communications Act 2003, Ss 86, 87 and 88
[48] [2000] 10 NWLR (pt. 874) [72], [76]

court for all litigants. When delivering a dissenting judgment in the case of *Orakul v NCC*[49] per E. Eko, JSC held thus:

> Uninhibited or unhindered access to a court of law, that is, the direct and "easy accessibility thereto" guaranteed by Section 17(2)(e) of the Constitution, is a major aspect of the Rule of Law. Any provision of a municipal law or statute purporting to restrict "easy accessibility" to the law courts for citizens to ventilate their grievances must be subjected to strict interrogation or interpretation.

There is a plethora of authorities that frown at any legislation that hampers or deters easy accessibility to the courts by the citizens. In the case of *Cotecna Int. Co. Ltd v Churchgate Nigeria Limited*[50] where the Supreme Court held thus:

Unhindered accessibility to the court of law by the citizens of this country, like any other, that operates under the rule of law for the citizens to vent their grievances, is a hallmark of civilization. Hence, any statutory provision tending to regulate or restrict the constitutional right of easy access to the court of law by citizens must be viewed very seriously and strictly too.

It is important to note that in the determination of civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[51] The NCC Act has no power to confer and cannot usurp

[49] Op cit
[50] [2010] 18 NWLR (pt. 1225) 346
[51] Constitution of the Federal Republic of Nigeria, 1999 (As Amended) Cap C23, Laws of the Federation of Nigeria 2004, s 36(1)

the jurisdiction of the court. This is hinged on the fact that the law abhors sacrificing the merit of a case on the altar of technicalities.

4.3 Inhibitory Legislative Factors

Legislation is expected to promote and protect the best interests of the people without creating hurdles that makes the rights unrealizable for the citizens. Any law that laid down cumbersome requirements for asserting a right will defeat or weaken its potency. The provisions of Section 86(1)[52] provides thus:

A person who is aggrieved or whose interest is adversely affected by any decision of the Commission made pursuant to the exercise of the powers and functions under this Act or its subsidiary legislation ("aggrieved person" may request in writing to the Commission for a statement of the reasons for the decision.

One of the factors is deliberate decision(s): A person is expected to request a statement of the reason for the decision that made him aggrieved or adversely affected his interest by the Commission. A point of note here is that there are circumstances where the decisions may be made deliberately because the applicant is in political opposition. It could also be that the decision which caused the applicant grievance is made due to a mistake. Where the decision is made, the statement of the reasons for the decision would either be delayed, refused, or frustrated.

Another factor is written request: The above provision further requires an applicant to request for the information in writing. On the other hand, freedom of information law does not make it mandatory for the application to be in writing[53]. In the event that the applicant is an

[52] Nigerian Communications Act, 2003
[53] Freedom of Information Act 2011, s 3(4)

illiterate and indigent he might forfeit the right except providence provides him with pro bono services. Upon receipt of a written request by an aggrieved person the Commission shall make a copy of the statement of the reasons for the decision and any relevant information taken into account in making the decision.[54]

The Commission shall upon such written requests by an aggrieved person, provide a copy of a statement of reasons for the decision and any relevant information taken into account in making the decision.

There are exceptions to the general provision of the law on the provision of the statement of reason to an aggrieved person. The Commission[55] is not under obligation to disclose or publish a statement of reason to the aggrieved person where it would disclose a matter that is of confidential character in the opinion of the commission. The Act needs to categorically make it clear on what would amount to confidential character so that the standard is not left at whims and caprices of the commission. Another exception is that the commission would not disclose the reasons for its decision where it would be prejudicial to the fair trial of a person or involve the unreasonable disclosure of personal information about any individual including a deceased person.[56] The Commission is not required to publish, or to disclose to the aggrieved person, a statement of reason or a part of a statement of reasons if the publication or disclosure would:

a. Disclose a matter that is, in the opinion of the Commission, of a confidential character;
b. Be likely to prejudice the fair trial of a person, or

[54] Nigerian Communications Act 2003, s 86(2)
[55] Ibid, s 86(3)(a)
[56] Ibid, s 86(3)(b) & (c)

c. Involve the unreasonable disclosure of personal information about any individual (including a deceased person).
d. In this Chapter, "decision" includes any action, order, report direction.

An aggrieved person in this work refers to an applicant who seeks access to information but he is denied or refused. The NCC Act stipulates timelines for the application by an aggrieved person and equally provided for the timeframe for responses. It is enshrined in Section 87(1)[57] that upon receipt of the Commission's statement of reasons any person aggrieved with the decision should not later than 30 days request in writing for a review of the Commission's decision and the reason and basis must be specified. [58] Section 87 provides thus:

An aggrieved person may at any time within but not later than 30 days after the date of the receipt of the Commission's statement of reasons specified in section 86(2) of this Act request the Commission in writing for a review of the Commission's decision and specify therein the reasons and basis for his request.

The requirement for specifying the reasons is quite baffling. Does it mean that where a person did not specify the basis and reasons, the request will not be granted? Should a requester of access to information from the commission specify the reasons and basis for the application? Where the applicant is subjected to stating his reasons for the application before it is accepted and granted, would it not amount to the contravention of the freedom of information act?

[57] NCC Act, 2003.
[58] Ibid

An applicant for access to information is not required to specify his reasons for the application[59]. Once the applicant requests for information it behooves on the public institution to oblige him the required details without demanding for the rationale. The requirement for specifying reasons and basis for the request under the Nigeria Communication Commission is contrary to and in conflict with the provision of the Freedom of Information Act. The contradiction is supposed to be resolved in favor of the Freedom of Information Act. It is the opinion of this research that if the applicant is subjected to stating his reasons for requesting for an information will amount to the contravention of the freedom of information law in Nigeria. The law stipulates thus "subject to subsection (1) of this section, upon receipt of the aggrieved person's written submissions the Commission shall meet and review its decision taking into consideration the submissions of the aggrieved person under subsection (1) of this section".[60]

The legislation arrogated the commission excess power which is susceptible to be abused. Is it proper that the commission should be allowed to take a decision and have the power to review the same decision? It is inappropriate for the commission to take a decision over an application or any other issue and will sit over it to review its decision. This is against the principle of *nemo judex in causa sua* meaning *that you cannot be a judge over your case.* This principle is one of the cardinal rules of natural justice. A decision in this context includes any action, order, report direction[61]. It creates an impression as if the commission would likely not be fair in arriving at its decisions that is why the clause was included in the legislation.

[59] Freedom of Information Act 2011, s 1(2)
[60] Nigerian Communications Act 2003, s 87(2)
[61] Ibid, s 86(3)(d)

The commission[62] is granted latitude of discretionary powers to be exercised at the course of reviewing its decision and that it can use or exercise any of its powers. The Commission may, in carrying out the review of its decision under this part, use and exercise any of its powers under this Chapter.

Whenever an aggrieved person submits his written submission challenging the decision, the commission has sixty days period for the review of its decision. It is after the sixty days duration that the aggrieved person will be informed in writing of the commission's final decision. This is encapsulated in Section 87(4)[63] thus "the Commission shall not later than 60 days from the date of receipt of the aggrieved person's written submissions, conclude its review of the decision and inform the aggrieved person in writing of its final decision thereon and the reasons therefore".

The length of time for the review is quite worrisome and it can make an aggrieve person lose interest in pursuit of his right. This provision which cumulatively provides for three months unsettles the mind of an aggrieved person. An area that keeps the mind thinking is that there are no consequences for failure on the part of the Commission to conclude its review of the decision. The law should have provided a penalty in the event of default on the part of the Commission failing or refusing to conclude its review within the stipulated sixty (60) days.

An aggrieved person has the right to challenge the decision of the commission in the court of law for a judicial review.[64] Despite the action that is instituted in the court the decision being challenged shall

[62] Ibid, s 87(3)
[63] Ibid
[64] Ibid, s 88(1)

remain binding until it is set aside.[65] Section 88(3)[66] stipulates that 'a person shall not apply to the court for a judicial review unless that the person has first exhausted all other remedies provided under this Act'. This provision is aimed at robbing an aggrieved person of access to court for ventilating his grievances. It was held in the case of *Alabi v The Olubadan in Council*[67] that the right of a citizen to have access to Court is constitutionally guaranteed. No other law can subtract from it or derogate from it[68]. Any legislative attempt or style of laying herculean internal remedies in a law against an aggrieved person should be discouraged and not promoted.

4. CONCLUSION

There is no part of the constitution that authorizes the national assembly to promulgate a law that is anti-people. Legislature is not expected to enact laws that promote impunity and abuse of power by public officers, authorities and statutory corporations. The Constitution and Freedom of Information Act provide for direct access to information. On the other hand, Nigerian Communications Act encourages delay access to information and justice.

Enacting legislature that promotes openness and easy accessibility to information and court will bring about good governance in the best interest of the citizenry. It will also secure the trust and confidence of the people in the ability of the public institution to deliver on its mandate.

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[65] Ibid, s 88(2)
[66] Ibid
[67] [2021] LPELR-56294 CA
[68] The cases of *Fidelity Bank Plc v Monye* [2012] 10 NWLR (Pt. 1307) 1; *Global Excellence Communications Ltd v Duke* [2007] 16 NWLR (Pt.1059) 22; *Ugwu v Ararume* [2007] 12 NWLR (Pt. 1048) 365 and *Amadi v Nigerian National Petroleum Corporation* [2000] 10 NWLR (Pt. 674) 76.

5.1 Findings

In view of the issues discussed in this paper, the following findings are made:

a. The Nigerian Communications Act requirement for application to review decision laid a procedural and technical hitch defeating justice.
b. Internal mechanisms of sixty days before responding to application is unreasonably prolonged therefore inhibiting access to information.
c. Lack of punitive measures where the Commission fails to conclude the review of its decision within the stipulated period.

5.2 **Recommendations**

It is recommended pursuant to the above findings as follows:

a. There is need to remove the requirement for application to review decision constituting procedural and technical hitches that defeats the course of justice in Nigeria.
b. The Nigerian Communications Act should be amended to eliminate the internal mechanisms requiring the commission to review its decision which inhibits access to information and court.
c. There is a need for severe punitive measures against the Commission and any staff that fails to conclude the review of its decision within the stipulated time.