CAN THE PROCESSING OF COURT JUDGMENTS BE RESTRICTED UNDER DATA PROTECTION LAWS?

INTRODUCTION

The right to the protection of one's privacy, especially from intrusions by any individual or state, is enshrined under Section 37 of the Constitution of the Federal Republic of Nigeria,1999 (as amended) and Article 12 of the United Nations (UN) Universal Declaration of Human Rights (UDHR) of 1948. In effect, privacy is a fundamental right, protecting an individual against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information. Hence, the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is guaranteed and protected. Accordingly, conscious of the concerns around privacy and protection of personal data and the grave consequences of leaving personal data processing unregulated, the Nigeria Government just like its counterpart in the UK, in 2001 established the National Information Technology Development Agency (The Agency) who then promulgated the National Information Technology Development Agency Act (NITDA ACT) in 2007, to create a framework for the planning, research, development, standardization, application, co-ordination, etc. of information technology practices, activities and systems in Nigeria.[1] Consequently, in 2019 the Nigeria Data Protection Regulation (NDPR) was enacted.

The NDPR was issued by the NITDA on the 25th of January, 2019 pursuant to Section 32 of the NITDA Act, 2007 as a subsidiary legislation to the NITDA Act, 2007. Thus, apart from other legislations like the Constitution of the Federal Republic of Nigeria, 2011 (as amended)[2], the Freedom of Information Act,[3] the Child Rights Act, 2003,[4] the Nigeria Communications Commission Act, 2003, the National Identity Management Commission Act, 2007,[5] among others[6] on data protection, Nigeria's principal data protection legislation is the Nigeria Data Protection

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[1] https://www.google.com/search?q=an+overview+of+the+national+information+technology+development+agency&sxsrf=ALeKk01K26D9matvvETeHXr_CSgwf9FjAQ:1598006931855&ei=k6Y_X6bfM8y9lwSJ2ZPICQ&start=10&sa=N&ved=2ahUKEwjm9JXcj6zrAhXM3oUKHYnsBJkQ8tMDegQIDxAs&biw=1366&bih=587 accessed on the 21st of August, 2020.

[2] Section 37

[3] Section 14

[4] Section 8

[5] Section 26

[6] Section 12, 14 and 16 of the Cybercrime (Prohibition, Prevention) Act, 2014, section 13(1) of the HIV/AIDS (Anti-Discrimination) Act, 2014, the Central Bank of Nigeria Act, 2007, the National Health Act, Section 9 of the Credit Reporting Act. 2017, the Consumer Code of Practice Regulations 2007 and the Registration of Telephone Subscribers Regulation 2011.

Regulation (NDPR), 2019. The primary objectives of the NDPR is to safeguard the rights of natural persons to data privacy; fostering safe conduct of transactions involving the exchange of personal data; preventing manipulation of personal data and ensuring that Nigerian businesses remain competitive in international trade; through the safeguards afforded by a just and equitable legal regulatory framework on data protection and which regulatory framework is in tune with global best practices.

Also, in a bid to be in tune with international best practice on data protection, the Nigeria government recently published a Draft Data Protection Bill, 2020 (The Bill) with the objectives of establishing and providing efficient regulatory framework for the protection of personal data, regulating the processing of information relating to data subjects and to safeguard the fundamental rights and freedoms of data subject under the Constitution of the Federal Republic of Nigeria. However, the question that is provoked and which this article seeks to determine is, can the processing of court judgments be restricted under these Data Protection Laws? To answer this question, we shall consider the nature of court judgments, that is, whether it is a public document or a private document; the right of the public to know the outcome of cases filed in court except there is a restriction or sealing of the file; whether the content of a judgment qualifies as a private data and finally whether a data subject who has gone out of his way to ventilate his grievance publicly can be heard to say that he retains his privacy as to the content of his grievance.

THE NATURE OF COURT JUDGEMENT

The Supreme Court in the case of ***Saraki and Anor v. Kotoye,***[7] defined court judgment as a binding, authentic, official and judicial determination of the court in respect of claims and in an action before it. The term "Court Judgment" has also been variously defined as "the reasoned and binding judicial decision of the court delivered at the end of a trial"[8] and as the "official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination."[9] In essence, Judgment is the Court's final determination of the rights and obligations of the parties in a case. It includes an equitable decree and any order from which an appeal lies.[10]

[7] (1992)9NWLR(Pt.264)156
[8] Nwadialo F. "Civil Procedure in Nigeria" 2nd ed., University of Lagos Press, 2000, at p. 704
[9] Henry C., "Black Law Dictionary" 6th Edition, (1881-1991) 841-842
[10] PDP v. Sen. Daniel I. Saror & Ors. CA/MK/EPT/03/2012

IS A COURT JUDGMENT A PUBLIC DOCUMENT?

Public documents are defined in section 102(a) and (b) of the Evidence Act as;

a) Documents forming the official acts or records of the official acts of;
    i. the sovereign authority;
    ii. the official bodies and tribunals or
    iii. of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and
b) Public records kept in Nigeria of private documents.

An important characteristic of public documents under section 102(a) is that they usually relate to public matters, for public purpose and are open for public inspection by persons who may be concerned with the document.[11] Examples of public documents under section 102(a) include certificates and testimonials etc. issued by government owned and training institutions, licenses and permits issued by licensing authorities, court judgments and other court proceedings and processes, proceedings and other transactions of legislative houses and local government authorities such as legislative bills, Acts/Laws and Bye Laws and other legislative instruments, official gazettes etc. In essence, public documents are documents either made or kept by persons who are officers of government. Thus, for a document to acquire the status of a public document it must have been made by a public officer or kept by a public officer who could include the president, governors, ministers, commissioners, judges, civil servants in the judiciary and legislative bodies, civil servants in governmental ministries, departments, and agencies etc.

Hence, in ***Onwuzuruike v Edoziem***[12] the Supreme Court stated that, the origin or authorship of a document is not determinative of its status as a public document. Specifically, the court held that "documents though private in nature, when sent to the Nigeria Police requesting it to discharge its constitutional duties, upon their receipt by the Nigeria Police became public records kept by them of private document. From the foregoing, Exhibit 'C comes within the category of documents defined in section 109 (b) of the Evidence Act. To hold otherwise is to accord section 109 (b) strained interpretation..." Also, in the case of **Tabik Investment Ltd v. G.T.B.**[13] the Court held that "a private petition sent to the police, as in the instant case, formed part of the record of

[11] Chinelo N., "Tendering of Public and Private Documents", lectured delivered at the weekly continuing legal education lecture organized by the office of Chief Chris Uche, SAN on 22nd May, 2009.
[12] *(2016) 6 NWLR (Pt. 1508) 215, 233-234*,
[13] (2011) All FWLR (pt. 602} 1592 at 1607

the police and consequently a public document within the provisions of section 109 of the Evidence Act". The court further held that:-

By the provision of section 318(b) of the Constitution of the Federal Republic of Nigeria 1999 and section 18(1) of the interpretation Act, a police officer is a public officer and so all documents from the custody of the police, especially documents to be used in court are public documents.

In effect, the Police to whom the petition was addressed and who held same as part of their records are public officers within the meaning and intendment of s,109(now section 102 of the Evidence Act) of the Evidence Act. In the hands of the appellant who wrote it, the document was a private document, but the moment it was received by the Police to whom it was addressed it became part of the record of public officers and thus a public document.

Again, in **Aromolaran v. Agoro**[14] the supreme Court held that a letter written to the Governor of a State in his official capacity by a person who is not a government official, is public document because it is a public record kept in Nigeria of a private document which comes under the provisions of section 109(b) of the Evidence Act, Cap. 112 of the Laws of the Federation of Nigeria, 1990 (now section 102 of the Evidence Act, 2011).

Stemming from the above decisions, it is deducible that a court judgment is a public document though it contains the personal data of a data subject. This is more so because, although court processes contain the personal data of a data subject, however, the moment it is addressed to the court and filed, it ceases to be a private document and it is clothed as a public document. This is further buttressed by the provisions of section 36(7) of the Constitution of the Federal Republic of Nigeria, 1999 which provides to the effect that "when any person is tried for any criminal offence, **the court or tribunal shall keep a record of the proceedings** and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case. Accordingly, the moment the documents though private is kept by the court, it becomes a public document relying on the decision of the Supreme Court in the case of **Aromolaran v. Agoro**[15] and the ***Onwuzuruike v Edoziem***[16].

[14](2014) 18 NWLR (pt. 1438} 153
[15] Supra
[16] Supra

THE RIGHT OF PUBLIC TO KNOW THE OUTCOME OF CASES IN COURT

Section 36(3) of the Constitution of the Federal Republic of Nigeria, 1999 provides to the effect that "the proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection 1 of section 36, including the announcement of the decisions of the court or tribunal shall be held in public. What follows from this provision is that a Court or tribunal must, in their proceeding in relation to the civil rights and obligations of persons, conduct such proceedings and pronounce their decisions in that regard in public. Hence, proceedings including pronouncement of decision in the State or Federal High Courts, have always been conducted in the open Court. Thus, Mohammad JCA (as he then was) in the case of **Kosebinu & Ors. v. Alimi**[17] held thus:

> "It is my firm and considered view that a place qualifies under S.36 (3) of the 1999 Constitution to be called "public", and which a regular Court room is, if it is outrightly accessible and not so accessible on the basis of the "permission" or "consent" of the Judge. In the case at hand, but for the "permission" or "consent" of the Judge to have the judgment delivered in his Chambers, neither the parties nor their counsel and **indeed the public at large would have had access as of right** to the Judge's Chambers. It is of essence of justice that not only should it be done but that it should actually be seen to be done…any act of secrecy, however desirable it might seem, detracts from the aura of impartiality, independence, publicity, and unqualified respect which enshrouds justice given without fear of favour. Its acceptance by the public at large, and the confidence it demands, depend on this aura being strictly adhered to."

Furthermore, in **Chukwu v. State**,[18] the Court of Appeal pronouncing on the provisions of Section 36(3) and (4) of the Constitution held that "the proceedings of a court or Tribunal including the announcement of decisions shall be held in public. The hearing of the court in a particular cause starts from the filing of the action or writ as the case may be, the calling of evidence, the addresses of counsel and the pronouncement of judgment. In all these, the proceedings must be in public."

Consequently, save for the exceptions contained in subsection 4(a) and (b) of section 36 of the Constitution, all proceedings before a court or tribunal shall be held in public and every members

[17] (2005) LPELR-11442(CA)
[18] (2012)LPELR-15360 (CA)

of the public invariably have a right to attend the proceedings and therefore know the outcome of such proceedings. This position was further buttressed by the Court of Appeal in the case of **Kosebinu & Ors v. Alimi**[19] where the Court of Appeal, relying on the decision of Lord Blanesburgh in Mepherson v Mcpherson and the decision of Lord Halsbury in Scott v Scott held that "the right provided under S.33 (3) (now section 36(3) of the Constitution) is a public right for "every Court of Justice is open to every subject of the king" and "The Court must be open to any who may present themselves for admission. Secret trials, whether civil or criminal are not norms of a democratic society." Suffice to say that the public has the right to know the outcome of a case.

DOES THE CONTENT OF A JUDGMENT QUALIFIES AS A PRIVATE MATTER?

Whilst it remains trite that a judgment of a court is a public document, there is no gainsaying the fact that the content of the said judgment cannot be seen as a private matter. That is, although in the hands of the data subject the document is a private matter, personal to him and subject to the provisions of the Data Protection Laws, however, the moment the data subject voluntarily and in his own accord discloses his personal data vide court processes and the court processes is received and kept by the court officials, the said document containing his personal data ceases to be a private matter and becomes part of the record of the court and thus a public document by virtue of section 102(a) of the Evidence Act, 2011. Consequently, the personal data of a data subject contain in a judgment cannot be termed a private matter.

As Moore in his work[20] puts it, "let's begin with a relatively mundane case of stepping out for a walk in a public setting. As you enter a public space, you are clearly waiving access rights to personal information. Short of wearing a disguise, your height, eye color, sex, and approximate weight and age are all easily accessible. Your words will be heard unless whispered, and your movements will be noticed. It may even be the case that your picture will be taken or there will be a video capture of your walk. Given the way human senses work, it would be odd to maintain that the other inhabitants of the public space should not look at or notice you. Minimally, we might claim that by freely entering the public domain, you have waived access rights to certain sorts of personal information." Accordingly, it is abundantly clear that the moment a data subject discloses his personal data vide court processes, the personal data hitherto a private matter becomes a

[19] Supra
[20]

public matter save for the exceptions contained in section 36(4)(a) and (b) of the Constitution, 1999.

Also, as Justice Nariman in the case of **Naomi Campbell v. MGN Ltd**[21]. points out, privacy is only with regard to those details which one does not choose to part with. Once details are in the public domain, republishing them cannot be objected. In such a case, one can certainly take the plea that a person has waived his fundamental right and cannot complain of violation of privacy.

Lastly, in the Singapore case of **Kee Kuan Yew v. Tang Liang Hong & Anor**[22] Yung Pung How C.J. held "…once revealed in court (an affidavit) became a public document… we find no authority, nor were we referred to any, to suggest that an affidavit, once read out before the court remained protected from revelation in the absence of any privilege claimed. Such a document became a public record, with the necessary consequences that there would appear to be an accompanying unfettered right to reveal it".

CAN A DATA SUBJECT WHO VENTILATES HIS GRIEVANCES/PRIVATE MATTER PUBLICLY BE HEARD TO SAY HE RETAINS PRIVACY?

Whilst privacy has traditionally been regarded as a process of withdrawal from others, Altman in his work,[23] explores privacy as a dialectic process which involves "being in contact with others and being out of contact with others." A.F. Westin, also in his book[24] wrote "the most subtle state of privacy is the creation of a psychological barrier against unwanted intrusion; this occurs when the individual's need to limit communication about himself is protected by the willing discretion of those surrounding him." Consequently, while it can be said that if X actively discloses his personal information/data to Y, Y is under an implied obligation not to disclose such information to Z as that would violate the privacy right of X. However, similar position cannot be said if X discloses his personal data in the public. In this wise, X is deemed to have waived his constitutional right of privacy. Thus, in the case of **Cox. Broadcasting Corporation v. Cohn**, a State law had prohibited the publication of a rape victim's name. The Appellant's reporter, who had attended a court session on the rape saga not only heard the name of the victim, but also saw it in the public records kept by the court. His subsequent news reporting, therefore, included the victim's name. In an action for damages, the Supreme Court dismissed the action. Justice Douglas held that "there is no power on the part of Government to suppress or penalize the publication of 'news of

[21] 2004 UKHL 22

[22] (1997)2 S.L.R.(R) 862

[23]

[24]

the day'. Therefore, relying on the decision of Justice Nariman in the case of **Naomi Campbell v. MGN Ltd,**[25] once details are in the public domain it ceases to be a private matter and the data subject will be deemed to have waived his right of privacy.

Notwithstanding, it is pertinent to note that past revelations or conduct do not result in a blanket waiver of the right of a personal life.[26] In **A v. B,C,D,**[27] Eady J. noted that "the fact that something has been published does not necessarily mean that a further revelation cannot infringe the right of privacy and where the claimant has chosen to put personal information into the public domain, even though it may prima facie attract the protection of the law, it does not necessarily follow that it is open season for the media to publish any other information relating to the same subject matter. Therefore, in **Z v. Finland**[28] the court granted the prayers of the applicant that her case file should not be accessible to the public until after 10 years. The court particularly held that "it is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general." …The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data…" The court further held that as to the issues regarding access by the public to personal data, a margin of appreciation should be left to the competent national authorities in striking a fair balance between the interest of publicity of court proceedings, on the one hand and the interests of a party or a third person in maintaining the confidentiality of such data, on the other hand. The scope of this margin will depend on such factors as the nature and seriousness of the interests at stake and the gravity of the interference.

Following suit, on the question whether Nigerian courts have substantive or inherent jurisdiction to order limitation of access to case files in judicial proceedings and under what circumstances can such powers be exercised, it is imperative to state that neither the Constitution, nor the Rules of Court nor the Data Protection Laws nor any statutes vests on the courts either the inherent jurisdiction or substantive jurisdiction to limit the access of case files in judicial proceedings. What the Constitution provided for in section 36(4)(a) and (b) is, a court or tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defense, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it

[25] Supra
[26] Naomi Cambell v. MGN Ltd (Supra)
[27] (2005)EWHC 1651, (2005)EMLR 851(QB), at 17
[28] App. No. 22009/93, 25 Eur. H.R. Rep. 371 (1997).

may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice. And if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or the tribunal that it would not in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter. Save for these provisions, the constitution which is the grundnorm does not imbue the court with the jurisdiction to make an order to restrict the access to court files. Nevertheless, relying on the last limb of subsection 4(b) which states "…and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter", it can decisively be said that the court can on this premise make an order to restrict the access of the court file of an data subject in other to prevent the disclosure of the matter.

CONCLUSION

Section 6 of the Human Rights Act, 1998(in the UK) makes it unlawful for a public authority, including the courts, to act in a way which is incompatible with an European Convention on Human Rights (ECHR) right. Thus, where a party seeking to restrict public access to particular court records, he is infact asking the court to exercise its power to uphold his right to private and family life. However, it has been argued among scholars that where the court makes an order restricting such access, this could be regarded as being contrary to the public's right to be informed of the outcome of cases in court. Hence, in **Attorney General v. Leveller Magazine Ltd,**[29] Lord Dipplock held that public scrutiny is an "important safeguard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice. Levelling on this dictum, Jeremy Bentham intoned "keep the judge, while trying, under trial."

From the foregoing, it becomes crystal clear that the processing of court judgment can hardly be restricted under data protection laws. On the premise that, the court judgment is a public document and the public by virtue of judicial authorities can be granted access to the documents filed in court.

Notwithstanding the above, the National Information Technology Development Agency (NITDA) recently, issued a "Guidelines for the Management of Personal Data by Public Institutions in Nigeria, 2020" to implement the Nigeria Data Protection Regulation,(NDPR)

[29] (1979)AC 440(H.L) at 450

2019 with public institutions in Nigeria. The purpose of the Guideline is to provide guidance to public officers on how to handle and manage personal information in compliance with the NDPR, 2019, acknowledging that governments at all levels are the biggest processors of personal data of Nigerians and in Nigeria. The Guideline is to operate for the purpose of the implementation of the Nigeria Data Protection Regulation, 2019. This therefore implies that the principles and core requirements for protection of personal data remains applicable. The Guideline governs the roles and responsibilities of public officers and public institutions with regards to the processing and management of personal data.

To this end, it is pertinent to conclude that pursuant to the provisions of the Guideline issued by NITDA, the provisions of the NDPR applicable to data controllers and processors shall be applicable to officials of public institutions. Therefore, while this is a commendable and laudable step to protect the personal data of Nigerians in the records public institution, the court inclusive, it is questionable whether the court officials are aware of this Guideline.