ZIMIND PUBLISHERS [PVT] LTD
and
TRANSPARENCY INTERNATIONAL ZIMBABWE [TI-Z] TRUST
versus
MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS & NATIONAL HOUSING
and
MINISTER OF FINANCE & ECONOMIC DEVELOPMENT
and
ZIMBABWE UNITED PASSENGER COMPANY [ZUPCO]
and
MINISTER OF TRANSPORT & INFRASTRUCTURE DEVELOPMENT

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 10 March 2021

Date of written judgment: 13 July 2022

Opposed application

Mr *R. Kadani,* for the applicants
Mr *P. Chibanda*, for the first, second & fourth respondents
Mr *C. Daitai*, for the third respondent

MAFUSIRE J

[1] The first applicant is a publishing house in the print media industry. Its flagship is the weekly newspaper, the *Zimbabwe Independent*. The second applicant is a non-profit trust. It is the local chapter of an international organisation. Its mandate is described as broadly to fight and expose corruption, and to demand transparency in governments, state-owned firms and private institutions. Respondents 1, 2 and 4 are ministers of governments in charge of local government, finance and transport respectively. The third respondent [ZUPCO] is a private company which operates a passenger transport network at national level. Initially the applicants described the third respondent as a parastatal or state-controlled company wholly owned by government, and therefore, an 'administrative authority' within the meaning of the Administrative Justice Act [*Chapter 10:28*]. However, following an objection, the applicants eventually conceded and abandoned all their claims as against the third respondent. They

tendered costs. As regards the fourth respondent, no relief was sought from him right from the beginning. His inclusion was justified on his alleged interest in the matter, being one in charge of the transport sector in which the third respondent operates. It was further justified on the basis that part of the communication that forms part of these proceedings was directed to him as well.

[2] In terms of their draft order as amended, and in paraphrase, the applicants seek an order directing respondents 1 and 2 to supply the applicants, within seven days of the order, with the written reasons for their refusal to provide information relating to the purchase of certain buses for the third respondent. Costs of suit are sought on the higher scale. The factual background to the claim is this. In a year or two preceding the application, a fleet of 64-seater buses had hit Zimbabwean roads in batches. The buses were imported from abroad and consigned to the third respondent. In May 2020 the first applicant ran news items in its newspaper effectively branding the whole deal relating to the importation of those buses as corrupt and scandalous. Featured in those articles as being at the centre of the scandal was a private company called Landela Investments [Private] Limited ["***Landela***"]. It was said to be owned by some individual alleged to be highly connected to some high-ranking government officials.

[3] The predominant drift of those articles was that Landela was importing the buses from certain east European countries and re-selling them at exorbitant prices to government for humongous profit. It was said that that development had come about after several trips that the State President had taken to those countries in the company of the well-connected businessman. The articles referred to leaked government correspondence between, among others, respondents 1 and 2, and the latter's permanent secretary, allegedly confirming or adverting to the procurement of the buses by the government through Landela. However, when contacted for information on the deal, none of the respondents had been forthcoming. Each of them would, one after the other, wash off their hands and refer the newspaper to the next person, or simply ignore the request for information altogether. Central players in the impugned deal as mentioned by the articles were all the respondents and another government-owned or controlled entity called the Central Mechanical Equipment Department [CMED] which was said to have had a hire-purchase agreement with Landela to facilitate the procurement of the buses for the third respondent.

[4] The news items went further to refer to a previous deal concerning the State-funded national maize production programme dubbed the Command Agriculture Scheme, allegedly in which huge sums of money running into billions of dollars and involving the same allegedly well-connected individual had gone unaccounted for. They also referred to a previous development in terms of which the same Landela had been fingered in illegal foreign currency trading on the parallel market following which its bank accounts had been frozen at the instance of the Reserve Bank of Zimbabwe. In some communication which is part of the present application, the point is made that information regarding the actual ownership and other details concerning Landela could not be ascertained as its register at the companies' office registry had gone missing.

[5] Basing on the constitutional right of any person to access information on, among other things, public procurement, the applicants, through their legal practitioners, penned several letters, almost identical, to each of the respondents seeking detailed information regarding the purchase of the buses. Letters were also written to the CMED and another government agency called the Procurement Regulatory Authority of Zimbabwe [PRAZ] which is established in terms of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*]. However, this judgment is concerned only with the communication between the applicants, on the one hand, and the first and second respondents, on the other, there being no case against the rest of the respondents any more.

[6] In the request for information, the applicants sought answers on how many buses had been imported for the third respondent in the preceding twenty-four months; the extent to which the Government of Zimbabwe had been involved in the purchases; who had made the purchases and which resources had been used; what the exact relationship between Landela, the Government of Zimbabwe and the third respondent was; whether the purchases had been subject to any tendering process, and if so, the details thereof, and so on. The information was required within three days. The letter to the second respondent was dated 3 September 2020. The one to the first respondent was dated 9 September 2020. None of the respondents responded within the required time, or at all. The applicants sent reminders on 2 March 2021. In those reminders, express reference was made to the 21-day time frame prescribed by s 8(1) of the Freedom of Information Act [*Chapter 10:34*]. This is the period within which an information officer, as defined, must react to a request for the supply of information. It was

also expressly pointed out in those reminders that in terms of s 10(1) of that Act, any failure to notify of a decision on a request for access to information within the prescribed time-frame, would be deemed to be a refusal of the request. The reminders went on to mention that the applicants had a legitimate expectation to be availed with the written reasons for the respondents' refusal to supply the information and that therefore, in accordance with s 3(1)(c) of the Administrative Justice Act, the applicants required the respondents to supply those written reasons within three days of the receipt of the letters. The respondents did not respond timeously in terms of that further demand, or at all.

[7] It is upon such a factual background that the applicants have launched these proceedings asking for the relief set out above. It is averred in the founding papers that the relief is predicated on s 6 of the Administrative Justice Act which reads:

> "Subject to this Act and any other enactments, any person—
>
> (a) whose rights, interests or legitimate expectations are materially and adversely affected by any administrative action; or
>
> (b) who is entitled to apply for relief in terms of section *four*;
>
> and who is aggrieved by the failure of an administrative authority to supply written reasons for the action concerned within—
>
> (i) the period specified in the relevant enactment;
>
> (ii) in the absence of any such specified period, a reasonable period after a request for such reasons has been made;
>
> may apply to the High Court for an order compelling the administrative authority to supply reasons."

[8] The preparation for this case was rather shambolic by both sides. The presentation was inelegant. It required a lot of explanations and clarifications at the beginning of argument. As it panned out, the matter crystallised to be an application by the first applicant only against the first and second respondents only for the supply of written reasons for their deemed refusal to supply the information pertaining to the procurement of the buses in question, which application was opposed both on technical grounds and on the merits. Initially, the three substantive grounds of preliminary objections by the respondents related to the applicants' failure to provide the authority of their agents, the deponents to the affidavits, to represent them in these proceedings; the applicant's failure to join the CMED as a party to these proceedings; and the applicants' failure to exhaust the domestic remedies as are enshrined in the Freedom

of Information Act before approaching this court. On the merits, the respondents' ground of opposition was simply that the information sought had been supplied and that therefore this application was unnecessary. On their part, the applicants had initially raised a preliminary technical objection of their own. This was in relation to the second respondent being barred for filing his notice of opposition outside the prescribed time-frame. Here now is my judgment, starting with the points *in limine*.

[i] **Points *in limine***

[a] *There is no application before the court*

[9] One Faith Zaba ["***Zaba***"] deposed to the founding affidavit on behalf of the first applicant. She said she was the editor of the *Zimbabwe Independent* and that it was in that capacity that she was making the deposition. The second applicant filed what it called a 'supporting affidavit'. The deponent was one Muchaneta Phildah Mundopa ["***Mundopa***"]. She said she was the second applicant's executive director and that it was in that capacity that she was making the deposition. In his notice of opposition, the second respondent charged that none of the applicants was properly before the court because, contrary to the trite legal position where a body corporate approaches the court through a properly authorised agent, none of the deponents herein had provided the proof of their authority to institute proceedings on behalf of the applicants. As such, the second respondent concluded his objection, there was no application for this court to determine.

[10] In the answering affidavit by Zaba, the first applicant, without expressly conceding the objection by the second respondent, or even adverting to it, merely repeated that she was the editor of the first applicant's "titles" and that it was in that capacity that she was deposing to that affidavit. However, she went on to attach and refer to two documents that she claimed were the relevant board resolutions authorising Mundopa and herself to represent the applicants in the present matter. The one document, marked Annexure O, was titled '*Extract from the Minutes of the Meeting of the Board of Zimind Publishers [Private] Limited held on the 20th October 2021 at the Registered Office of the Company*'. In substance, the document said that it had been unanimously resolved that Zaba, the editor for one of the company's titles, the *Zimbabwe Independent*, was authorised to appear before the court on behalf of the company in

the matter pitting the company and the respondents in HC 4197/21. It further said that Zaba was authorised to sign and submit the application, the affidavits, etc., and any other documents as might be required in connection with the case or any other matters incidental thereto. On the space for a signature was written, in long hand, and above the caption '**Chairman / Company Secretary**' some initial and a surname. The document was dated 26 October 2021.

[11] The second document, marked Annexure P, was similarly titled. It also purported to be an extract from the minutes of the meeting of the board for the second applicant on 18 June 2021 at the registered office. It said it had been resolved unanimously that Mundopa, as the executive director, was authorised to appear before the court on behalf of the second applicant in the same matter, HC 4197/21. The document was signed by someone designated as the **Board Chairperson**. It was dated 24 June 2021.

[12] At the hearing, the respondents upped the tempo of their attack. They condemned the purported resolutions as mere shams. With regards the first applicant, the substance of their argument was this. The purported extract having been signed allegedly on 26 October 2021 when the court application had been filed exactly two months before, i.e., on 26 August 2021, it meant that at the crucial moment of filing, Zaba had no authority. With regards, the second applicant, the substance of the argument was that the document was self-evidently and demonstrably counterfeit in that if it had genuinely been executed on 26 June 2021, exactly two months before the application, then in no way could it have possibly referred to the case number because at that stage this case did not exist.

[13] Mr *Kadani*, for the applicants, was in an obvious difficulty. He argued that in respect of the first applicant, there was nothing wrong in Zaba's authority being confirmed after the application had been filed. She did have the authority right from the beginning. With regards, the second applicant, he argued that the date on the document was an obvious typing error. Mundopa, just like Zaba, had the second applicant's authority to represent it in the proceedings and that the date of signature had inadvertently been inserted as 26 June, 2021. However, Mr *Kadani* eventually conceded the irregularity of Mundopa's purported authority. He abandoned the second applicant's case and opted to proceed in respect of that of the first applicant only.

[14] As I demonstrate here and later, it is of some concern that with what is evidently public interest litigation, legal practitioners are sometimes so inelegant and sloppy in the preparation

of court papers. The issue of board resolutions is quite elementary. In this day and age no court should still be detained by it. There is a glut of cases on the point. It is the trite legal position that a company does not function on its own but through an authorised agent. So, where there is nothing before the court to show that the agent has been authorised by the company to institute the legal proceedings, a respondent may take objection: see *Air Zimbabwe Corporation & Ors v ZIMRA* 2003 [2] ZLR 11 [H]; *Madzivire & Ors v Zvarivadza & Ors* 2006 [1] ZLR 514 [S] and *Mall [Cape] [Pvt] Ltd v Merino Ko-operasie Bpk* 1957 [2] SA 347 [C]. There are no hard and fast rules as to the form or nature the agent's authority should take. It may be in the form of a company resolution. It may be by affidavit or affidavits. In all situations where the authority is required, there must be some evidence placed before the court to show that the person purporting to represent the company is duly authorised. But documents should not just be cobbled up perfunctorily without regard to their efficacy.

[15] The respondents charged that even accepting that the purported resolutions might be taken as the requisite authority for the deponents to represent the applicants, they should not have been produced in the answering affidavit, but in the founding affidavit. Mr *Kadani* obviously had no choice, but to concede that Annexure P, for the second applicant, was misleading. The document had all the hallmarks of a simulation. The date could not have been a mistake. In the heading, the alleged meeting was in June 2021. The putative date of signing was also in June 2021. If it was a mistake, it was not suggested what then could have been the correct date. But regarding the first applicant, I am satisfied that Zaba did have the authority to represent the first applicant even though the evidence of that authority might have been produced after the case had commenced. Therefore, henceforth, any reference to the applicant or applicants is a reference to the first applicant only.

[b] *Second respondent barred*

[16] In the answering affidavit, the first applicant objected to the purported presence of the second respondent before the court. It was said he had been barred for failure to file his notice of opposition within the 10-day time frame prescribed by the rules. Not only that, but he had also refrained from serving his notice of opposition on the applicants. Only when steps had been taken to enrol the matter for judgment against the second respondent on the unopposed

roll was it discovered that there had been a notice of opposition by him lying somewhere in the record.

[17] The applicants persisted with the issue of the second respondent being barred in their heads of argument. Incredibly, the respondents simply ignored it. The second respondent did not apply for condonation or any pardon of any sort. However, at the hearing, and following a number of queries raised by myself, Mr *Kadani* informed the court that following some kind of trade-off between themselves as counsel, it was agreed that he would not persist with the objection relating the second respondent being barred.

[18] There did not appear to there having been any heads of argument filed on behalf of the second respondent. Certainly, there was nothing filed on behalf of the fourth respondent. Inside the record were some truncated heads of argument on a document titled 'Respondents' Heads of Argument'. In one paragraph the document essentially dealt with the single objection taken by the first respondent in his opposing affidavit which was in relation to the alleged non-joinder of the CMED. Mr *Chibanda* submitted that since no relief had been sought against him, the fourth respondent had refrained from filing any papers. He also explained that he, as counsel, would be riding on those truncated heads to submit composite argument on behalf of respondents 1 and 2. This was quite shoddy. But given Mr Kadani's concession, the second respondent is properly before the court.

[c] *Non-joinder of the CMED*

[19] The first respondent objected to the matter proceeding in the absence of the CMED. He said the CMED was the one hiring the buses in question to the third respondent. It had *locus standi* and a substantial interest in the matter. Therefore, by reason of this alleged non-joinder the application must be dismissed with costs. Reference was made to the case of *Tour Operators Business Association of Zimbabwe v Motor Insurance Pool & Ors* 2015 [1] ZLR 965 [C] for the proposition that as a matter of procedure, a party instituting any legal proceedings must cite every person who has a direct and substantial interest in the matter or who is likely to be prejudicially affected by the relief sought.

[20] The second respondent's objection to the non-joinder of the CMED is misplaced. Respondents' counsel knows very well that the proposition referred to in *Tour Operators* above was not the only one that the apex court made on the point. It was not even the decision or the *ratio decidendi* of the court. After that proposition, the court went on to decide that the failure to cite a person who may be claimed to have a direct and substantial interest in a matter is *not* necessarily fatal in every case, inasmuch as the courts have an inherent discretion to cure any material non-joinder by giving such directions as may be just and appropriate. What is more, the court went on to overrule the objection on non-joinder on the ground that the alleged interest of the absent party was purely peripheral and that any relief granted would not have any appreciable impact on his rights.

[21] The circumstances of the above case are not even the same or similar in the present proceedings. In the present proceedings, the applicants do not seek the reversal of any contractual or whatever arrangements there might have been between the parties which might have led to the third respondent receiving the buses in question. They do not seek an account of the procurement arrangement. All that they seek are the written reasons for the respondents' refusal, deemed or otherwise, to supply the information that the applicants sought in their letters in September 2020 and March 2021. The CMED can have no colour of right or interest in the particular relief being sought. It is a contest purely between the applicants and the respondents. The objection is ill-founded. It is hereby dismissed.

[d] *Applicants' failure to exhaust domestic remedies*

[22] The other objection raised by the second respondent related to the alleged failure by the applicants to exhaust their domestic remedies as provided for in the Freedom of Information Act ["***FIA***"]. The substance of that objection is this. In their letters aforesaid, the applicants predicated their demand for information on s 8 of FIA. They made specific reference to the deeming provision, which is s 10. Then instead of following up on their rights to their logical conclusion as provided for in that Act, the applicants have simply rushed to this court for relief, purportedly acting in terms of s 6 of the Administrative Justice Act ["***AJA***"]. The respondents argue that the right provided for in FIA, which the applicants have allegedly abandoned without reason or explanation, is that of an appeal to the Zimbabwe Media Commission established by

s 248 of the Constitution ["***the Commission***"] in the event that access to information is refused. It is further argued that there is an elaborate appeal process set out in s 35, as read with s 36, s 37 and s 38 of the Act. As such, the applicants are improperly before the court.

[23] The applicants deny that they are improperly before the court just because they allegedly failed to follow through their alleged rights as provided for in FIA. The substance of their submissions is this. The second respondent's objection stems form a lack of appreciation of the exact nature of the relief sought in this court. The exact nature of the relief sought in this court is an order directing the respondents to supply the written reasons for their refusal to provide the information on the purchase of the buses. It is not to compel them to supply the information, which is what the appeal process in FIA is all about. That appeal structure and process in FIA is clearly in regards to the refusal to supply the information, not the refusal to supply the written reasons for the refusal to supply information. At any rate, the argument concludes, in accordance with case authority, *Makarudze & Anor v Bungu & Ors*[1], domestic remedies must be able to provide effective redress to the complaint. A court will not insist on an applicant first exhausting domestic remedies where they do not confer better and cheaper benefits.

[24] The two Acts of Parliament in question, AJA and FIA, are demonstrably in *pari materia* on some aspects of the rights and freedoms enshrined in the Bill of Rights in Chapter 4 of the Constitution. Both were promulgated, among other things, to give effect to certain of those rights and freedoms. In terms of s 68 of the Constitution, any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct, has the right to be given promptly and in writing, the reasons for that conduct. An Act of Parliament must, among other things, give effect to the rights enshrined in that section and must impose a duty on the State to give effect to those rights. AJA, even though predating the Constitution, is undeniably the Act of Parliament envisaged by this provision.

[25] As alluded to earlier, in terms of s 6 of AJA, any person whose rights, interests or legitimate expectations are materially and adversely affected by any administrative action and who is aggrieved by the failure of the administrative authority to supply written reasons for the action concerned within the prescribed time-frame, may apply to this court for an order

[1] 2015 [1] ZLR 15 [H]

compelling the administrative authority to supply the reasons. It is common cause that respondents 1 and 2 are administrative authorities within the meaning of s 68 of the Constitution, as read with AJA.

[26] On the other hand, FIA was promulgated to give effect to the rights and freedoms enshrined in, *inter alia*, s 62 of the Constitution. This is the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required for the exercise or protection of a right. In fact, FIA recites in its preamble, *inter alia*, s 62 of the Constitution, including the provision that says, among other things, legislation must be enacted to give effect to this right. Of course, FIA was also enacted to give effect to the other right conferred by s 61 of the Constitution, which is the right to freedom of expression and which, among other things, includes the freedom to seek and receive information.

[27] Whilst in AJA there is the right to approach this court for an order compelling an administrative authority to supply the reasons for his or her refusal to supply written reasons for any action taken by him or her with which the applicant may be aggrieved, in FIA there is the right, in s 10(2), to lodge an appeal to the Commission in terms of s 35. This is the provision upon which the second respondent's objection was predicated. It reads:

> "When an information officer is deemed to have refused a request for access to information an applicant may lodge an appeal to the Commission in terms of section 35."

[28] The 'deeming' is provided for in s 10[1] of FIA. It is not found in AJA. In fact, it is my considered view that what gives the right to a cause of action under AJA is a positive action by an administrative authority, an act of commission. A cause of action cannot be founded by mere inaction, that is, an act of omission, such as an administrative authority simply ignoring a request for information. This seems to be the purport of the duty imposed by s 3 of AJA, as read with the definition of 'administration action' in s 2[1]. In s 3, the duty of an administrative authority which has the responsibility or power to take any administrative action, is required to do a number of things listed in that section. One of them, in s 3[1][c], is, where it has taken the action, to supply written reasons therefor within the prescribed time. 'Administrative action' is defined to mean any action taken or any decision made by an administrative authority. Thus, inaction such as simply ignoring a request for the supply of information is not such 'action' as

is contemplated by s 3 of AJA. It is FIA that deems such inaction as an act of commission because it specifically says so in the deeming provision.

[29] Section 4 of AJA gives any person who is aggrieved by the failure of an administrative authority to comply with s 3 to apply to this court for relief. As demonstrated above, failure to comply with s 3 is a failure to take action, not mere inaction. What is more, s 4 makes itself subject to, among other things, any other law, suggesting that in the event of a conflict or inconsistency between itself and the other law, the other law is to prevail. It is the same construction to be placed on s 6. This the provision the applicants expressly rely on. Firstly, the provision also makes itself subservient to 'any other enactment'. Secondly, the written reasons that the court may compel, are those in relation to the failure of the administrative authority in regards to the action concerned.

[30] Therefore, for any person aggrieved by the inaction of an administrative authority, the remedy lies in FIA. Its s 10[1] provides that if an information officer fails to notify a decision on a request for access to information within the specified time-frame [maximum of 21 days], or any extension thereof, he or she shall be deemed to have refused the request. It will be remembered that this is the provision upon which the applicants' ultimatum in their reminder letters of 2 March 2021 was predicated. Evidently, the applicants regarded respondents 1 and 2 as 'information officers' within the meaning of FIA. Indeed, it would appear, without deciding the point, that the definition of 'information officer' in s 2[1] of FIA is wide enough to cover ministers of government. This is because 'information officer' is defined as the 'principal officer' of an entity, or any such person designated by the principal officer to act on his behalf. 'Principal officer', in relation to any entity, is the person who is the executive head, by whatever name known, of the entity concerned, or any person acting in that capacity. 'Entity' means a private entity, public entity, public commercial entity or statutory office. Therefore, it seems quite correct for the applicants to have regarded the respondents as information officers. At any rate, the respondents did not at any stage seek to challenge this.

[31] Where two or more Acts of Parliament are in *pari materia*, effect must be given to both or all. A latter enactment that deals with the same subject matter as an earlier one has to be reconciled with it, and in the case of uncertainty, both should be construed in such a way that there is mutual consistency: see *Chihava & Ors v Principal Magistrate & Anor* 2015 [2] ZLR 31 [C], at p 37C – D; see also L Madhuku, *An Introduction to Zimbabwean Law*, Weaver Press,

2010, at p 176. Plainly AJA and FIA do overlap in certain of their provisions in the process of giving effect to the rights and freedoms enshrined in the Constitution. But the procedural detail on how one goes about it in vindicating such of one's rights as are granted by the Constitution is undoubtedly different.

[32] With respect, the applicants seem to be approbating and reprobating. Right from the beginning, they indicated to the respondents that they were relying on FIA to vindicate their rights. Like commuters at a bus stop, they had a choice of two buses: the AJA bus whose route would take them straight to the High Court, and the FIA bus whose route included a detour to the Commission, but nevertheless eventually reaching the High Court. The applicants, in their letters of demand, seemed to have opted to board the FIA bus. How then can they purport to be in the AJA bus?

[33] The right of appeal to the Commission in terms of s 10[2] of FIA is in respect of a deemed refusal of access to information by an information officer, who, according to the definition of that term, is an administrative authority. The applicants submit that this is not the right they wish to vindicate by this application. On the other hand, the right to approach this court in terms of s 6 of AJA is in respect of a failure to supply written reasons for the action taken by the administrative authority with which the applicant may be aggrieved. They say this is the right they seek to vindicate.

[34] The applicants argue that the appeal procedure set out in s 36 of FIA cannot possibly be in relation to a deemed refusal to supply reasons because where an appeal is lodged in terms of s 35, the information officer must, in terms of s 64[4], submit to the Secretary of the Commission the application for access to information together with the officer's reasons for refusing. Implicit in this submission, which was not quite developed at the hearing, is that in a deemed refusal, there are no reasons or anything that the information officer can possibly submit to the Secretary of the Commission. It is further argued that the appeal procedure does not confer an aggrieved person with any remedy in a situation where the information officer has simply failed to provide reasons for his or her refusal of access to information. It is argued that no power is conferred on the Commission to compel an information officer to supply written reasons where they have been requested but not supplied.

[35] The stance taken by the applicants, in relying, and at the same time rejecting, FIA is difficult to understand. The substantive right that is conferred by the Constitution is that of access to information. It is not that of written reasons for refusal to supply information. FIA is designed to give effect to the substantive right. What the applicants wanted, and was not given, was access to the information pertaining to the procurement of the buses in question. There is a procedure laid out for getting access to that information. If the information officer does not provide the access, either by an outright refusal, or simply by inaction, FIA provides the process by which to compel him or her. It is not correct that the Commission has no power to compel an administration authority or information officer. Its powers in s 38 seem quite broad. Among other things, it can confirm the decision appealed against, or substitute a new one for it. The section also enshrines the right of further appeal to this court.

[36] However, having considered these two Acts closely, and having regard to the specific remedy that is sought by the applicants in the present proceedings, it seems that whilst the applicants might appear to have blown hot and cold in their demand letters, and to have conflated the procedural rights in AJA and FIA, nevertheless, they cannot be non-suited merely by reason of the fact that they have approached this court in terms of AJA, and not gone on appeal to the Commission in terms of FIA. The applicants do not seek an order to compel the respondents to supply them with the information pertaining to the procurement of those buses. That seems to be the predominant drift of FIA. They seek an order to compel the respondents to provide them with the written reasons for their refusal to supply the required information. I cannot adjudicate on a right that is not being pursued.

[37] Quite plainly, it is AJA that is directly in point regarding the specific remedy sought by the applicants. It is s 4 of that Act that provides that any person who is aggrieved by the failure of an administrative authority to comply with s 3 of the same Act may apply to this court for relief. Section 3 provides the duties of an administrative authority. These include the duty, where the administrative authority has taken action, to supply written reasons within the relevant period after being requested to do so [s 3[1][c]]. I see no reason why the applicant cannot invoke the deeming provisions of FIA to assert its rights in terms of AJA. The ultimate objective of the two Acts is to give effect to the rights enshrined in the Constitution. Refusal to supply reasons by mere inaction, is tantamount to taking action. I perceive no conflict or inconsistency between these two Acts.

[38] It is upon these premises that I dismiss the objection in relation to the applicant being allegedly improperly before the court simply by reason of the fact that they did not appeal to the Commission in terms of FIA.

[ii] **On the merits**

[39] Apart from the technical objection that the non-joinder of the CMED precluded the applicants from proceeding with the application, the only other averment by the second respondent that might be construed as his ground of opposition on the merits was that he never at any time refused to respond to the applicants' questions since he had given a response which had actually come out in the press. The first respondent also averred that he had referred the applicants for further information to the CMED which was the client of the third respondent, ZUPCO, and which ought to have supplied the required information. The second respondent's opposing affidavit is largely argumentative and long on technical objections and short on facts. But in substance, the ground of opposition on the merits is the same as that of the first respondent, namely that the applicants had been supplied with all the information needed or that they were barking up the wrong tree. The applicant denies that the respondents ever responded to its request for information.

[40] The factual position is clearly one not to detain the court. The responds have not produced anything to support the claim that they responded to the applicant's request, even via the press, notwithstanding that this would not be in compliance with the legislation. The respondents did not comply with the law. As administrative authorities, they did not comply with the duty imposed upon them where a request for information such as was made by the applicant herein is concerned. Not having done so, they were required to supply their written reasons. There can be nothing standing in the way of the very limited relief sought by the applicants, save the question of costs which are sought on an attorney and client scale. Nothing has been shown to warrant such a penal order of costs.

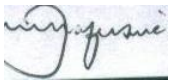
[41] In the circumstance, the application is granted in terms of the draft order as amended. The following order is hereby made:

i/ The withdrawal of the application as against the third respondent is hereby confirmed and the applicants shall bear the third respondent's wasted costs jointly and severally, the one paying the other to be absolved.

ii/ Within seven [7] days of the date of this order, the first and second respondents shall supply the first applicant, through its legal practitioners Atherstone and Cook, with the written reasons for their refusal to provide the information sought by the applicants through the letters to the respondents dated 3 September 2020, 9 September 2020 and 2 March 2021 pertaining to the procurement of the 64-seater buses consigned to the third respondent.

iii/ The costs of this application shall be borne by the first and second respondents jointly and severally, the one paying the other to be absolved.

13 July 2022



Atherstone & Cook, applicants' legal practitioners
Attorney-General's Office, first, second & fourth respondents' legal practitioners
Magwaliba & Kwirira, third respondent's legal practitioners