

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION  
HOLDEN AT JABI FCT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**SUIT NO: FCT/HC/M/6169/2019**

**BETWEEN:**

**CEYLON MULTIPURPOSE COOPERATIVE SOCIETY LTD....APPLICANT**

**AND**

**ALHAJI IBRAHIM GAMBO DANTATA .....RESPONDENT**

Appearances:

Chinedu G. Udora Esq appeared for the plaintiff.

Sadiq L. Yakub Ibrahim Esq appearing with Alhassan Dauda Sani Esq for the defendant.

**JUDGMENT**

By the Amended Motion on Notice dated the 24<sup>th</sup> day of September, 2019 brought pursuant to Order 19 Rule 13 and Order 43 Rule 5 of the Rules of this court, section 49 of the Nigerian Co-operative Societies Act Cap N98, LFN 2004, and under the inherent jurisdiction of this court, the applicant seeks for the following:

- 1) Leave of this Honourable Court to enforce the arbitral award made on the 25<sup>th</sup> of April, 2019 by the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration committee as a judgment of the court;
- 2) An order of this Honourable Court enforcing as judgment of the court the arbitration award delivered by the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration Committee on the 25<sup>th</sup> April, 2019 to wit:
  - a) That the respondent is owing the petitioner the sum of N69,000,000.00 (Sixty Nine Million Naira) being outstanding sum of N15,000,000.00 (Fifteen Million Naira) and the accrued interest;
  - b) That the respondent's property known as plot 2166 Cadastral Zone A01 Garki, Abuja should be sold immediately, to

recover the sum of N69,000,000.00 (Sixty Nine Million Naira) owed to the petitioner and the excess sum from the proceeds of the sale of the property be given to the respondent;

3) And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are:

- 1) Section 49 (1) of the Nigerian Co-operative Societies Act, 2004 which mandates the Director of the Arbitration Committee of Co-operative Societies registered under the Act to settle disputes from any debt between a co-operative society and its members and, to give an award to be enforced by the court.
- 2) The FCTA Arbitration Committee on the 25<sup>th</sup> of April, 2019 delivered an award in favour of the application which has not been complied with by the respondent.
- 3) Section 49 (7) of the Nigerian Co-operative Societies Act mandates the court to enforce the arbitration award given in favour of a party as judgment of the court and by Order 19 Rule 13 of the Rules of this Honourable Court, an application to enforce an arbitral award may be brought either by an Exparte Motion or by Motion on Notice.
- 4) The applicant has brought this application to seek the enforcement of the arbitration award delivered in her favour on the 25<sup>th</sup> of April, 2019 by the FCTA Arbitration Committee.

The Motion is supported by nine paragraphed affidavit deposed to by one Mr. Nasiru John, the litigation clerk in the law firm of the counsel to the applicant, and they rely on all the paragraphs as are contained therein.

The applicant attached the following documents as an exhibits:

- 1) Certificate of Registration of the applicant dated the 4<sup>th</sup> day of July 2013 issued by the Chief Registrar of Co-operative Societies Federal Capital Territory Abuja marked as Exhibit 'A';
- 2) Member Application Form filled by the respondent joining as a member to the applicant dated the 8<sup>th</sup> day of March, 2016, marked as Exhibit 'B'

- 3) The arbitration award made by the FCTA Arbitration Committee dated the 25<sup>th</sup> day of April, 2019 marked as Exhibit 'C'
- 4) Acceptance of terms of settlement signed by the respondent marked as Exhibit 'D'
- 5) Request for extension of time to advance a substantive payment written by the respondent to the applicant dated the 30<sup>th</sup> day of November, 2018 marked as Exhibit 'E'

The counsel to the applicant proffered and filed a written address which he adopts as his oral argument in support of the application.

The respondent filed a nineteen paragraphed affidavit in opposition to the recognition of the arbitral award deposed to by the respondent which he too relies on all the paragraphs.

Attached to the respondent's affidavit are the following documents:

- 1) Offer of credit facility made by the applicant to the respondent dated the 14<sup>th</sup> day of March, 2016 marked as Exhibit 'IGD 1';
- 2) a letter of appeal against an award made to the Honourable Minister of the Federal Capital Territory, Abuja dated the 24<sup>th</sup> day of May, 2019 written by the solicitor to the respondent.

Accompanying the affidavit is a written address, which the counsel adopts as his oral argument.

The applicant further filed a reply affidavit eighteen paragraphs dated the 21<sup>st</sup> day of January, 2020 and attached to it are the following documents:

- 1) a letter written by the solicitor to the applicant to the Registrar/Director of Co-operative FCDA, Abuja claiming the sum of N29,000.000.00 from the respondent dated the 10<sup>th</sup> day of April 2018 marked as Exhibit 'R1';
- 2) copies of three Zenith Bank Cheques issued by the respondent to the applicant which is marked as Exhibit 'R2';
- 3) Deed of Assignment made between one Zainab B. Adams and Master Jinom Paul Adams of the one part, and the applicant of the other part marked as Exhibit 'R3';

- 4) Attendance sheets of the meeting held between the applicant and the respondent which are marked as Exhibit R4 (a) (b) and (c);
- 5) A letter of request to confirm the receipt of an appeal filed by the solicitor to the respondent written by the solicitor to the applicant to the office of the Director Administration of the office of the Minister, FCT Abuja dated the 13<sup>th</sup> September, 2019.

Accompanying the reply affidavit is a reply on point of law which the counsel to the applicant adopts as his oral argument.

It is in the affidavit in support of this application that the applicant is a co-operative society registered with co-operative society of the Federal Capital Territory, and that the respondent is a member against whom the arbitration award sought to be entered.

That the respondent was granted a loan by the applicant on the 14<sup>th</sup> day of March, 2016 pursuant to the respondent's application for such and it is in the sum of N15,000,000.00 at an agreed interest rate of 10% monthly within tenure of 3 months upon its expiration, and the respondent refused and neglected to pay the principal money and the accrued interest.

It is also that the dispute involving a debt between the applicant and its member is to be guided by the Nigeria Co-operative Societies Act, 2004 and to be resolved by either the Director/Registrar of Co-operative society or by an Arbitrator on the reference of the Director/Registrar of the Co-operative society, and that it was due to the failure of the respondent to repay the loan, the applicant through its solicitor wrote a petition to the Registrar/Director of FCT Co-operative Society for the resolution of the dispute. That the Director/Registrar of FCT Co-operative society was not able to resolve the said matter and thereafter referred the matter to FCT Arbitration Committee which heard both parties on the 25<sup>th</sup> April, 2019 and made an award in favour of the applicant and in the following terms:

- a) That the respondent owed the applicant the sum of N69,000,000.00 as outstanding sum of the said loan facility of N15,000,000.00 granted to him and the accrued interest and

b) That the respondent's property known as plot 2166 Cadastral Zone A01, Garki Abuja be sold immediately to recover the said sum, and the excess sum from the proceeds of the sale of the property be given to the respondent.

It is also in the affidavit that prior to the award the respondent wrote a letter to the Chief Registrar of the Co-operative Society FCTA conveying his acceptance to the terms of the settlement reached by the parties for the repayment of the loan, and also the respondent wrote another letter for extension of time of the 4<sup>th</sup> of February, 2018 to enable him make a substantial payment of the said loan, and despite the award made by the Arbitration Committee, the respondent failed to pay the loan and the interest to the tune of N69,000,000.00, and that the order of this court is required to enforce the said arbitration award as a judgment of this court.

On his part, the respondent deposed to the fact that the applicant took out Arbitration Proceedings against him on alleged failure to pay back the principal loan and the interest of 10% within three months as contained on a loan agreement signed by the parties, and that the applicant directly filed the petition at the Arbitration Tribunal which later issued hearing notice for its sitting wherein both parties were represented by counsel. That on the first day, the respondent admitted before the Arbitration Tribunal the content of the loan agreement signed by the parties which is to the tune of N15,000,000.00 principal loan and the 10% interest of three (3) months only as contained in the agreement.

It is further deposed that at the arbitration wherein it was agreed that the respondent the substantive aspect of the loan of N15,000,000.00 on or before the 4<sup>th</sup> day of December, 2018 and the applicant agreed to extend time within which he would pay the outstanding sum, and that in the event of his failure to pay as agreed, the arbitration should go ahead to determine the merit of the applicant's petition, and he attached the terms of settlement as Exhibit 'A' he also wrote another letter asking for extension of time within which he could meet up with the agreement and which was not replied by the applicant.

It is in the counter affidavit that he could not meet up with the terms of the settlement, and the Arbitration Committee did not invite him, it went ahead to make the award, and that he made several efforts to get the copy of the award and the copy of the proceedings with a view for him to take the next necessary step, but he was denied the said copy of the award.

It is deposed to the fact that the respondent filed an appeal set aside the award, and that the appeal was filed at the office of the Minister of the Federal Capital Territory Abuja which was submitted to the office of the General Counsel who is incharge of all litigation matters on behalf of the Minister.

The respondent believed that the Arbitration Panel cannot in anyway vary or alter the express agreement of the parties and that it acted without jurisdiction, and that the petition did not follow the proper channel through which the arbitration panel can be constituted as no application was made to the Director of the FCT Co-operative society by the applicant to referred to the FCT Arbitration Committee; and it is also noted that the respondent was not awarded fair hearing before reaching the decision of 25<sup>th</sup> of April, 2019.

It is stated that the Arbitration Panel awarded the sum of N69,000,000.00 while the respondent only concluded to the principal sum of N15,000,000.00 and the three months interest of 10%, and to him, the award can be set aside as it cannot be recognized by this court.

It is in the reply affidavit of the applicant that contrary to paragraph 3 of the counter affidavit, the Arbitration proceedings was against the failure of the respondent to repay back the loan and the accrued interest for over three years he was in default, and that contrary to paragraph 4 of the counter affidavit, the applicant directed its complaint to the Director/Registrar of Co-operatives FCT who referred to the Arbitration Tribunal as a result of her unsuccessful effort to resolve the dispute.

It is in the reply affidavit that the respondent admitted to the claims for both the principal loan and the accrued interest before the Arbitration Committee, and he even issued a Zenith Bank cheque in favour of the applicant in the sum of N28,000,000.00 for

the payment of the principal sum and the interest for seven months which were dishonoured by the bank for lack of funds.

It is also in the reply affidavit that the respondent's property sought to be sold to recover his indebtedness to the applicant was used as collateral for the loan and was transferred by the respondent to the applicant via a Deed of Assignment, and that the respondent has attached all the hearings conducted by the Arbitration Committee through his solicitor in person of Musa Danladi and some other lawyers, and the solicitors to the respondent also represented him at the last hearing which was the 18<sup>th</sup> day of December, 2018 when the matter was adjourned to 25<sup>th</sup> April, 2019 for delivery of the award, and that the respondent was not denied copy of the award as he did not make any application for such.

It is also in the reply affidavit that contrary to paragraphs 13 and 14 of the counter affidavit, the respondent did not file any appeal before the Minister of the Federal Capital Territory, Abuja against the arbitral award, and also did not file an originating motion seeking to set aside the said award in any court. That the purported Exhibit 'IGD2' was a letter that the respondent submitted to the office of the counsel General of FCT whom he copied in the said letter.

It is also stated that the applicant wrote a letter to the office of the Minister of FCT to confirm if there was may appeal by the respondent against the arbitral award of 25<sup>th</sup> April, 2019, and the Director administration in the office of the Minister after going through the register of mails of the office of the Minister, confirmed to him there is no such letter or appeal submitted or pending before the Minister of FCT.

It is also stated that the award given is not at variance with the complaint of the applicant before the arbitration.

In his written address in support of the motion, the counsel to the applicant raised this issue for determination:

**Whether by virtue of Order 19 Rule 13 of the Rules of this court, and section 49 (5) of the Nigerian Co-operative Societies Act, 2004, this Honourable Court can grant this application?**

The counsel answered the above question in the affirmative, and further submitted that by section 49(4) of the Nigerian Co-

operative Societies Act 2004, the decision made by an arbitrator under subsection 3(b) is final, and he also cited the case of **Tulip (Nig.) Ltd V. N.T.M.S.A.S. (2011) 4 NWLR (pt 237) CA 245**, and **NITEL Ltd V. Okeke (2017) 9 NWLR (pt 1571) 439**.

It is also submitted that the applicant has complied with the provisions of Order 43 Rule 5 of the Rules of the court, and that the submission of parties to an arbitration requires no special agreement of parties, and he referred to section 49(1) (b) and (d) (2), (3) (4) and (5) of the Nigerian Co-operative Societies Act 2004.

The counsel further submitted that the words of section 49(7) of the Nigerian Co-operative are unambiguous and ought to be given literal meaning by the court, and he cited the cases of **Skye Bank V. Iwu (2017) LPELR 42595** and **Nwankwo & Ors V. Yar'Adua & Ors. (2010) 12 NWLR (pt 1209) 518**, and he urge the court to resolve the sole issue for determination in his favour.

In his written address in opposition to the application, the counsel to the respondent submitted that the use of the word "shall" in any law is a mandatory requirement which must be strictly adhered to and he cited the case of **Katto V. C.B.N (1991) LPELR – 1678, SC**, and it also submitted that Rules of court are meant to be obeyed and that failure of the applicant to file his petition directly to the Director of Co-operative Societies as provided in section 49 of the Nigerian Co-operative Societies Act is fatal as it goes down to the foundation of the Arbitration Panel and therefore renders the proceedings of the panel incompetent and liable to be struck out, and he cited the case of **Eforkire & Anor V. Maduiké & Ors (2003) LPELR 2269 (SC) ppp. 15-16 paras. E-C**.

The counsel further submitted that in certain exceptional circumstances, an aggrieved party to an arbitral award may apply to the court to refuse to enforce or to have it set aside and this is provided in section 49 of the Nigerian Co-operative Societies Act 2004, and further submitted that parties who have chosen their arbitrators, so long as the award is good on the face of it object to the decision either upon law or facts as the parties take their arbitrator for better or for worse but to him the arbitrator was imposed on them and he cited the case of **African Re-insurance Corporation V. Aim Consultants Ltd (2004) 11 NLR (pt 884) 223 at 238**

**paras. F-G**, and also the case of **Aye Fenus Ent. Ltd V. Saipem (Nig.) Ltd (2009) 2 NWLR (pt 1126) 483 at 518 paras. H-B**. To him, the exceptions where an aggrieved party is allowed to apply to the court to set aside an award are set out by the Supreme Court in the case of **Kano State Urban Development Board V. Fanz Construction Ltd (1990) 4 NWLR (142) 1 at pp. 37-38 paras. C-C**, namely:

- a) Where the arbitration of award has been improperly procured;
- b) Where the arbitrator or umpire has misconducted himself of the proceedings,

and (c) where there is an error of law on the face of the award, and he further cited the case of **Arbico (Nig.) Ltd V. Chevron (Nig.) Ltd (2000) 12 NWLR (pt 681) p. 293 at 412 paras. G-H**, and **Akaka V. Ejeagwu (2000) 15 LWLR (pt 692) 684 at 715 para. G**, and to him the emphasis is on seeing the award on the face of it whether the arbitrator complied with the law. He also referred to the case of **Re Hopper (1867) LR 24367**, and therefore, to him, the arbitral award made by the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration Committee on the 25<sup>th</sup> April, 2019 should not be enforced on the grounds that:

- a) There is an error of law on the face of this award

and (b) the Honourable arbitrators misconduct themselves, and he then submitted that the award of the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration Committee is inconsistent and contradictory, which ought to be set aside.

On the issue of misconduct the counsel submitted that the award is at variance with the loan agreement which is that the respondent will pay only the interest of 10% of the principal sum for the period of three months only which is computed to be the sum of N19,500,000.00 and he cited the case of **Baker Marine (Nig.) Ltd V. Chevron (Nig.) Ltd (supra)** where misconduct was interpreted to include where there is a failure on the part of an arbitrator to comply with the terms of an arbitration agreement, and he cited the cases of **London Export Corporation Ltd V. Jubilee Coffee Roasting Co. Ltd (1958) 1 All ER 494 at 497**, and **NITEL V. Okeke (2017) LPELR – 46284 SC pp. 11-29 para. C** to the effect that only that part of the award which contains decision on matters not submitted may be set aside, and to him, the arbitration committee has awarded more than the

agreement of the parties, and also to him, parties are bound by the terms of their agreement and he cited the cases of **Babatunde & Anor. V. Bank of the North Ltd & Ors LPELR 8249 SC p. 21 paras. B-F, UBN Plc V. Ajarule & Anor (2011) LPELR 8239 SC p. 39 paras. C-G, FCMB V. Benbok Ltd (2014) LPELR 23505 (CA) at pp. 42-45 paras. E-B** to the effect that courts do not re-write contracts for the parties, and the courts' duty is to interpret and give effect to that intention which is usually expressed in the agreement. He also cited the case of **F.G.N. V. Zebra Energy Ltd (2002) 3 NWLR (pt 754) p. 471 at 491 paras. E-F.** The counsel then submitted that it is clearly on record that the respondent only admitted the principal loan and the interest of 3 months only, and he cited the case of **Dim V. Enemuo (2009) 10 NWLR (pt 1149) 353 at 369 para. G** to the effect that evidence must be credible in itself in the sense that it should be natural, reasonable and probable in view of the entire circumstances.

On the issue of jurisdiction and apart from what the counsel to the respondent canvassed earlier on, he added that jurisdiction is the power of court to hear and determine a matter, and that the principles guiding that are laid down by the Supreme Court in the case of **Madukolu V. Nkemdilim (1962) 2 SC NLR 341** and **Alade Jobi V. NBA (2013) 15 NWLR (pt 1376) 66 at 81.** He further submitted that parties cannot confer jurisdiction on the court and he cited the case of **Ndayako V. Santoro (2004) 13 NWLR (pt 889) 187 at 219,** and the appropriate thing to do when the court has no jurisdiction is to strike out the suit and he cited the case of **Fosakin Foods (Nig) Ltd V. Shosanya (2006) 10 NWLR (987) 126 at 157 paras. F-G.** The counsel further cited some judicial authorities to the effect that an objection to the jurisdiction can be raised at any time even on appeal before the Supreme Court.

On the issue of fair hearing, the counsel to the respondent submitted that the panel failed to award the respondent a fair hearing as they did not invite him before giving the award, and to him, this is in violation of section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and to him this is a misconduct on the part of the arbitrator, and he cited the cases of **Oswelo V. Grav (1855) 24 L.J.Q.B. 69, Sani V. The Estate (2018) All FWLR (pt 950) pp. 1665-1666 paras. F-A** where reference was made

to the case of **Kotoye V. C.B.N (1989) 1 NWLR (pt 98) 419** where the court set out attribute of fair hearing to include among others as follows:

- a) That the court shall hear both parties not only in the case but also in all material issues in the case before reaching a decision, which may be prejudicial to any party in the case.

He also cited the case of **Ekpenetu V. Ofegobi (2012) 15 NWLR (pt 1323) 276 at 311 paras. D-F** to the effect that where a party is denied fair hearing, the entire proceedings are a nullity and must be set aside and he added the cases of **Nyesom V. Peterside (2016) 7 NWLR (pt 1512) p. 452 at 551 paras. A-C** and **Enl Const. Ltd V. Shelter (Nig.) Ltd (2018) All FWLR (pt 959) p. 1089 paras. E-G**, all on fair hearing.

The counsel cited some additional judicial authorities and further paragraph 622 of **Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 2 at pp. 330-331** which gave examples of acts that could qualify as a misconduct on the part of an arbitrator. He then urged the court to set aside the arbitral award.

The counsel to the applicant in his reply on part of law raised two issues for this court to determine, that is to say,

- a) **Whether by virtue of the provisions of section 49, of the Nigeria Co-operative Society Act 2004 as under the peculiar circumstances of this application, the Honourable Court is authorized to set aside an arbitral award made pursuant to the Act?**
- b) **Whether paragraphs 15(b), (c), (d), (e) and (h) of the respondent's affidavit did not offend section 115 (2) of the Evidence Act and ought to be struck out?**

On the issue No. 1, the counsel submitted that section 49 of the Nigeria Co-operative Society Act, 2004 did not authorize the court to set aside an arbitral award in the absence of any substantive application to do so made before the court, and to him, it is settled that where any law or rule of court provides specifically for a procedure of doing anything, the court is bound to follow that procedure, and he cited the cases of **Resident Ofioguma & Anor. V. Ibuje & Anor (2012) LPELR 7920 (CA)**, **Akpagher V. Gbungu (2015) 1 NWLR (pt 1440) at 209**, and this was amplified by the Court of Appeal

in the case of **Ekiti State V. Akinyemi (2011) 17 NWLR (pt 1276) p. 16 at 373** to the effect that where a statute or constitution prescribes a procedure for seeking a remedy of the doing of anything or act and the language used is clear and unambiguous, that is the only procedure open to the parties concerned and departure therefore will be an exercise in futility. He went ahead to reproduce the provision of section 49(6) of the Nigerian Co-operative Society Act, and submitted that the words cited in that subsection are clear and unambiguous and ought to be given literal meaning, and he cited the case of **B.M. Ltd V. Woeman-Line (2000) 13 NWLR (pt 1157) p. 149 at 179** to the effect that the section leaves no one in doubt that the only remedy to a party who is not satisfied with the arbitral award is to appeal to the Minister of FCT, and to him the respondent failed to show that he has appealed against the arbitral award to the Minister FCT and to him in the absence of any substantive appeal was directly to the Minister of FCT then the respondent cannot put something on nothing and expect it to stand and he cited the case of **Mc Foy V. UAC (1961) 3 WLR 405 at 1409**.

The counsel to the applicant drew a distinction between the Co-operative Societies Act and Arbitration and Conciliation Act, which in the former, no provision is made authorizing the court to set aside an arbitral award nor it empowered an aggrieved party to bring an application to set aside any arbitral award, while the later made ample provisions for setting aside arbitral award, and he referred to section 49(5) and (6) of the Nigerian Co-operative Society Act and sections 29 and 30 of the Arbitration and Conciliation Act, and to him, it is a known rule of interpretation that the express mention of a thing in a statute means an intention to exclude that is not mentioned (expression univous exclusion alterus)and he referred to the case of **Awoye V. Obasanjo (2006) All FWLR (pt 334) 1967 at 1979** and submitted that this court is not authorized to set aside the arbitral award and not also authorized to set aside the arbitral award and not also authorized to hear and entertain any application in that regard. To him the submission made by the counsel to the respondent that an aggrieved party to an arbitral award may apply to the court to refuse to enforce it or to set it aside and the statutory authority of section 49 (6) of the Nigerian

Co-operative Societies Act and some judicial authorities are rather erroneous and it is a false submission. It is the submission of the counsel to the applicant that the authorities relied upon by the counsel to the respondent are not applicable in the instance case but are distinguishable from the peculiar facts and circumstances of this suit and they can be distinguished based upon the following reasons:

- a) All the authorities cited by the respondent were decided under the arbitration and Conciliation laws of various states and not under the Nigerian Co-operative Society Act as it is the case in this application;
- b) The provision of the Nigerian Co-operative Society Act are sui generis for matters relating to arbitration for co-operative societies and its members;
- c) The Nigerian Co-operative Society Act expressly in section 35 (2) excluded the application of the provisions of Arbitration and Conciliation Act to the members of Co-operative Societies such as the instant case;
- d) The Nigerian Co-operative Society Act did not empower the court to set aside an arbitral award pursuant to the Act and did not provide for application to set aside an arbitral award.

The counsel therefore submitted that it is trite that for the purposes of distinguishing a case from another, each case must be decided upon its peculiar circumstances and a decision made in a previous case must not be adopted arbitrarily and applied in another case, and he cited the case of **Agbaeze V. C.C. Item District (2007) 7 NWLR (pt 1032) p. 196**, and to him, the peculiar facts of this case gravitates around the provisions of Nigerian Co-operative Society Act, and the said Act did not provide for setting aside of an arbitral award not authorize this Honourable Court to entertain same as the only alternative available to the respondent was to appeal to the Minister of the FCT.

It is his submission that it is settled that where there are two enactments, one making a general provision and the other making specific provisions on a subject matter, the specified provisions prevail over the general provision, and he cited the case of **Inakoju**

**& ors V. Adeleke & Ors (2007) LPELR 1510 SC**, and to him, the applicable law in the instant case is the Nigerian Co-operative Society Act and not Arbitration and Conciliation Act, and section 55(2) of the Nigerian Co-operative Society Act expressly and specifically excluded the application of the Arbitration and Conciliation Act and he urged the court to so hold.

The counsel submitted that in the event the court holds that the respondent is empowered to apply for the setting aside of the arbitral award made under the Nigerian Co-operative Society Act, he then submitted that such application can only be made vide a substantive Motion on Notice brought within the allowed time of three months under the Rules of this Honourable Court and not by incorporating it in a written address in an answer to the application for enforcement of the arbitral award and he cited **Order 43 Rule 5(1) & (4)** of the Rules of this court and the case of **The Vessel MV Naval Gent & Ors V. Associated Commodity International Ltd (2015) LPELR 25973 (CA)** to the effect that the only way an award can be set aside is by way of an application.

To him, even if an application is brought before a court such court is not authorized to review the findings of the arbitrator as the court cannot sit on appeal over an arbitral award, and he cited the cases of **Optimum Const. & Property Dev. Co. Ltd & Ors V. Provast Ltd (2018) LPELR 43689 (CA)**, **Dunlop (M.G.) Plc (now DN Tyre & Rubber Plc) V. Gaslink Nig. Ltd (2018) LPELR 43642 (CA)**, **Baker Marine Nig Ltd V. Chevron Nigeria Ltd (supra)**, and he then urged the court to resist the invitation of the respondent for the review of the findings of the Arbitration Committee as to the exact amount admitted and owed by the respondent.

The counsel submitted that there was no misconduct on the part of the arbitrator and that the arbitrator did not go beyond the terms of what was agreed by the parties in Exhibit '(GD)' and this can be seen from the cheques earlier as issued by the respondent in the sum of N28,500,000.00 for the repayment of the principal sum and the interest beyond three months.

The counsel to the applicant also submitted that the applicant's complaint was to the Director of Co-operative Society who in accordance with the Act referred the matter to Arbitration

Committee and that the respondent admitted to have attended the arbitration and also admitted to the claims, and he referred to the attendance sheets which the solicitor of the respondent attended, and to him, it is settled that where a party is given an opportunity to be heard in a matter and he fails to utilize it he cannot complain of not being heard or denied of fair hearing, and he cited the cases of **INEC V. Musa (2003) 3 NWLR (pt 806) at 72** and **Dantata V. Mohammed (2012) 8 NWLR (pt 1302) at 366**, and therefore urged the court to discountenance the submission of the counsel to the respondent that they have been denied of fair hearing.

On the issue No. 2, the counsel submitted that paragraph 15(b), (c), (d), (e), and (h) of the respondent's affidavit offends the provisions of section 115 (2) of the Evidence Act because it contained conclusion and not facts, and he cited the case of **Njoemana V. Ugboma & Anor (2014) LPELR 22494 (CA)**, and he urged the court to strike out the offending paragraph, and he cited the case of **Ogunwale V. Syrian Arab Republic (2007) 9 NWLR (pt 771) at 153-154**

On the whole the counsel to the applicant urged the court to grant their application and to enter the arbitral award as its judgment.

Now having summarized the affidavits of both parties and the submissions of their counsel, let me formulate the issues for determination with a view for this court to resolve in one way or the other, that is to say:

**1) Whether or not there is an error of law on the face of the award?**

**2) Whether the arbitrator has misconducted itself?**

Before resolving the above questions for determination, it will be appropriate for this court to resolve some issues that have arisen or have brought by the parties, and which I think are preliminary in the circumstances of this case.

Thus, the counsel to the applicant in his reply on point of law submitted that the authorities cited and relied upon by the counsel to the respondent are not applicable in the instant case, and to him, are distinguishable from the peculiar facts and circumstances of this suit, and that the authorities ought to be distinguished from the case

at hand. To my mind, the counsel to the respondent made reference to several judicial authorities to buttress his argument on several issues. With due respect to the learned counsel to the applicant, that he did not specifically point at any other case, which was cited upon by the counsel to the respondent that can be distinguished with this instant case. If this court can uphold his urge in distinguishing the judicial authorities cited by the counsel to the respondent with this instant case, it will amount to dissipation of a judicial time of this court and its energy, and it is also difficult for this court to appreciate which case that can be distinguished with this instant case, and on what issue.

It is on account of the above observation, this court will have to ask itself that what law that governs this case?

Thus, the applicant predicated this application upon the provision of the Nigerian Co-operative Societies Act Cap N98, Law of the Federation of Nigeria, 2004, and the Rules of this court. The Act to provide for the registration and operation of a co-operative societies throughout the Federation, and for related purposes.

Both counsel in their submissions made references to the provisions of the Act, and moreso, by the provision of section 55(2) of the same Act, it could be inferred that the courts have limits and are restricted to the application of this Act to any matter referred to an arbitrator to the exclusion of the Arbitration and Conciliation Act section 55(2) of the Nigerian Co-operative Societies Act Caps N98, LFN 2004 provides:

**“The provisions of the Arbitration and Conciliation Act shall not apply to any matter referred to an arbitrator under the provision of this court.”**

Therefore, from the above quoted provision, and for all intent and purposes, the provisions of the Nigerian Co-operative Societies Act that governs this case, and to this, I therefore so hold.

The counsel to the respondent in his address contended that an aggrieved party to an arbitral award may apply to the court to refuse to enforce or to have an arbitral award set aside, in which he relied upon the provisions of section 49 of the Nigerian Co-operative Societies Act, which to him, provides that a party who is aggrieved by an arbitral award under the section may within 30 days appeal to

the Minister and which the respondent did. He further contended that an aggrieved party to an arbitral award is allowed to apply to court to either set aside an award or refuse the recognition or enforcement of that award, and he cited the case of **Kano State Urban Development Board V. Fanz Construction Ltd (supra)** to the effect that the Supreme Court set out three grounds upon which an arbitral award can be set aside that is to say, if the arbitration or award has been improperly procured; if the arbitrator or umpire has misconducted himself of the proceedings; and if there is an error of law on the face of the award, and to this, he cited some judicial authorities.

On his part, the counsel to the applicant contended that the submission of the counsel to the respondent on this is false, and to him, the reason being that the section (section 49) did not mention anywhere an aggrieved party may apply to the court to refuse to enforce an award and nor did it authorize any party to apply to court to set aside an arbitral award, but that the only option provided under the Act is that an aggrieved party may appeal to the Minister. He further contended that the authorities cited and relied upon by the counsel to the respondent were decided based upon Arbitration and Reconciliation Act, and to him, this court has no power to set aside an arbitral award made pursuant to the Act and did not provide for an application to be made to court for setting aside an arbitral award.

In addition to the above, the counsel to the respondent contended that the petition of the applicant was not written directly to the Director of the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration Committee in contravention of section 49 (1) & (2) of the Nigerian Co-operative Societies Act, and further contended that the parties were not offered the opportunity of selecting the panel members of their choices as provided by the Arbitration and Conciliation Act, and that the panel reserved ruling on what was not finally address. On his part, the counsel to the applicant contended that the complaint of the applicant was directed to the Director of Co-operative Societies, and he also relied on Exhibit 'R' and paragraph 4 of the reply affidavit.

Now whether this court has the jurisdiction to entertain this application? To this, I have to give this answer in two folds. One is whether this court has the jurisdiction to enforce the award or to set it aside, and the other whether this court has the jurisdiction to sit on appeal or to review the findings of the arbitration committees?

Thus the provision of section 49 (4) of the Nigerian Co-operative Society Act provides:

“A decision made by an arbitrator under subsection 3(b) of this section shall, except as otherwise provided in subsection (6) of this section be final”

By this, it could be inferred to mean that if not as provided under subsection (6) of section 49 of the Act in relation to an appeal to be made to the Minister by any aggrieved party, the decision of the arbitration committee is final, and the provisions of section 49(5) of the Act also provides:

“The decision shall, on the application of the party in whose favour it is made, be entered by any court which has the jurisdiction in a civil suit between the parties to the dispute to give a judgment for the payment of the amount awarded or where the decision does not relate to the payment of money, to give a similar decision in the same manner as if the decision has been a judgment or decision of the court.”

It is on the premise of the above quoted subsection that the applicant herein applied to this court for the enforcement of the arbitral award made by the Federal Capital Territory Arbitration Committee, and to this, I have to answer this question in the affirmative, that this court has the jurisdiction to entertain this application for the enforcement of the arbitral award and to this, I therefore, so hold.

It is very glaring and apparent that the respondent did not file any application before this court for the setting aside of the arbitral award, and only in his counter affidavit that he deposed to the fact that to his believe the arbitral award can be set aside, and it is in the interest of justice that the arbitral award not to be recognized. It is also obvious that having filed this application will have to decide to either enforce or to refuse to enforce the arbitral award, and

therefore, where it is refused, then by all necessary implication the effect is that the arbitral award is not to be entered.

Therefore I found that both counsel should not have dissipated their energy on this, and the argument is uncalled for. See the case of **Zakirai V. Muhammad (2018) All FWLR (pt 964) p. 1928 at 1968 paras. F-G** where the Supreme Court held that arguments of counsel which are designed to assist the court, are not binding on the court. In the instant case the argument as to whether this court can set aside an arbitral award or not goes to no issue as there is no application before the court in this regard and it is hereby discountenanced.

The counsel to the respondent with the aid of plethora of judicial authorities submitted that jurisdiction is the power of court to hear and determine a matter brought before it, and for a court to assume jurisdiction, the suit must have been filed by the due process of law and upon fulfillment of any condition precedent to the assumption of jurisdiction and the subject matter of the suit must be one over which the court has jurisdiction over, and the notable among the cases cited is the case of **Madukolu V. Nkemdilim (supra)**. To him, an objection to the jurisdiction can be raised at any stage of proceedings even for the first time at the Supreme Court, and he then urged this court to hold that the respondent is on the right footing to have risen the issues of jurisdiction for having not raised it before the Arbitration Committee. Let me observe that the counsel did not adequately submit as to what this court or the Arbitration Committee do not have jurisdiction over, but it could be inferred that the counsel to the respondent earlier on contended that the failure of the applicant to file his petition directly to the Director of Co-operative Societies as provided in section 49 of the Nigerian Co-operative Societies Act is fatal as it goes to the jurisdiction of the Arbitration Panel, and these renders the entire proceedings of the panel incompetent and liable to be struck out. On his part the counsel to the applicant submitted that the applicant has complied with the above section 49 of the Act as it directed its complaint to the Director Co-operative Societies, and relied more particularly on Exhibit 'R1' accompanying his reply affidavit.

The court has the bounding duty to examine the exhibit 'R1' as attached by the applicant. See the case of **Chemiron International Limited V. Egbujuonuwa (2007) All FWLR (pt 395) p. 444.**

On the face of Exhibit 'R1' it could be inferred that it is a letter written to the Registrar/Director of Co-operatives, FCDA, Abuja – Nigeria with a caption “**Claim of the sum of N29,000,000.00 (Twenty Nine Million Naira) against Mr. Ibrahim Gambo Dantata for refusal to liquidate his indebtedness to Ceylon Multi-Purpose Co-operative Society Limited**” which is dated the 10<sup>th</sup> day of April, 2018. So, it could be seen that the letter was addressed to the Registrar/Director of Co-operatives.

Let me reproduce the provision of section 49(2) (3) (a) & (b) of the Nigerian Co-operative Societies Act which provides:

“A claim by a registered society for any debt or demand due to it from a member or nominee, heir or estate of a deceased member, shall be deemed to be a dispute touching the business of the society within the meaning of subsection (1) of this section.

(3) The Director shall on receipt of a reference under subsection (1) of this section:

(a) settle the dispute;

or (b) subject to the provisions of any regulation made under this Act refer it to an arbitrator appointed in attendance with regulation made under this Act for disposal.

Therefore, by the above quoted provisions, it could be interred that the complain having addressed to the Director is in order, and does not contravene section 49 of the Act in any way which would have rendered the Arbitration Committee not having jurisdiction to entertain the claim, and to this, I therefore, so hold. See the case of **Sule V. State (2018) All FWLR (pt 953) p. 172 at 185 paras. G-H** where the Supreme Court held that where the words or a statute or constitution are clear and unambiguous, they call for no interpretation, the duty of court in such a circumstance being to apply the words as used by the legislature. In the instant case going by subsection (3) of section 49, and coupled with the fact that the address is the Registrar/Director of Co-operatives, I so hold that the complain was in order, and that the Arbitration Committee or this

court has the jurisdiction to enforce an arbitral award made pursuant to such complain.

The counsel to the respondent further contended that they have not been given the opportunity to choose their arbitrator as against the provision of the Arbitration and Conciliation Act. To this, I have to reiterate that the applicable law in this application is the Nigerian Co-operative Societies Act Cap. N98, LFN 2004, and not Arbitration and Conciliation Act. See section 55(2) of the Nigerian Co-operative Societies Act. Therefore, if the Arbitration and Conciliation Act made provisions for parties to choose their arbitration, certainly the Nigerian Co-operative Societies Act did not, rather it provides in paragraph (b) of subsection (2) of section 49 of the Act:

“Subject to the provisions of any regulation made under this Act refer it to an arbitrator...”

As at the time of writing this judgment, I have not laid my hand on any regulation made under this Act which stipulates the membership of the Arbitration Committee, however, for the fact that the complain was referred by the Director Co-operatives to the Arbitration Committee of the FCTA, that serves the purpose for which the committee was constituted, and therefore, for the fact that the parties, more particularly the respondent, have not been allowed to choose the arbitrator, the intent and purpose of this Act had been adhered, and the argument of the counsel to the respondent is discountenanced.

The counsel to the respondent also contended that the Arbitration Committee did not give him an opportunity to address the court finally, and this renders the proceedings of the Committee a nullity. To this, I have to make reference to section 294 (1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) which provides:

“Every court established under this constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses...”

By the above quoted provision, it could be inferred that it is incumbent upon every court established under the constitution to deliver its decision within three months after the conclusion of

evidence and final addresses. To this, it is not incumbent or mandatory on the Arbitration Committee to adhere strictly this, and therefore, not giving the counsel to the respondent the opportunity to finally address the court is not fatal to the case of the applicant, and to this, I therefore, so hold. See the case of **Bernard Okoebor V. Police Council & 2 Ors (2003) FWLR (pt 164) p. 199 at pp. 215-216 paras. C, G-B** where the Supreme Court held that the procedure whereby the parties to a case at the conclusion of evidence are to address the court on the evidence before the court enumerating the issues canvassed and advert to the law governing the issues has taken such a root in our superior courts that denial of it cannot be regarded as a mere procedural irregularity.

The emphasis in the above decision is that such has taken a root in our superior courts, and therefore, not necessarily for the Arbitration to have strictly adhered to it.

The counsel to the respondent contended that the panel failed to accord the respondent fair hearing in that they failed to call or invite him before and when they gave the award but that he was only invited at the settlement stage, and therefore to him the Arbitration panel is in violation of section 36 of the 1999 constitution of the Federal Republic of Nigeria and this is a misconduct on the part of the Arbitration committee, and he cited some judicial authorities on the issue of fair hearing, and that where a party has been denied fair hearing, the correctness or otherwise of the decision becomes irrelevant, the entire proceedings are a nullity and must be set aside. He then urged the court not to enforce the award on that ground.

On his part the counsel to the applicant contended that the respondent admitted to have attended the arbitration, and to this he referred to Exhibit 'R4' which is the attendance list for the proceedings of 18<sup>th</sup> of December, 2018 showing the name of the respondent's solicitor where the 25<sup>th</sup> of April, 2019 was fixed for the delivery of the award, and he submitted that where a party is given an opportunity to be heard in a matter and he fails to utilize it he cannot complain of not being heard or denied of fair hearing, and he buttressed this argument with some judicial authorities.

Thus, it is in paragraph 4 of the affidavit of the respondent that both parties were represented by counsel pursuant to the issuance of hearing notice, and by this it could be inferred that the respondent was represented at the various sittings of the Arbitration Committees.

However, it was deposed in paragraph 11 of the affidavit of the respondent that on the 25<sup>th</sup> of April, 2019, the date upon which the arbitral award was given the respondent was not invited and neither his lawyer, but that he heard that the award was given against him.

Going by paragraph 4 of the affidavit of the respondent, it is that the respondent attended all the sittings, through his solicitor, up to the last sitting where the date of 25<sup>th</sup> April, 2019 and was taken. By Exhibit 'R4C' which is the attendance sheet of the sitting of 6<sup>th</sup> December, 2018, and by Exhibit 'R4B' which is attendance sheet of the sitting of 18<sup>th</sup> December, 2018, the name of the counsel to the respondent appeared and which shows that he appended his signature, and by paragraph 10 of the reply affidavit of the applicant, it would be seen that the respondent was represented by his solicitor at the hearing of the 18<sup>th</sup> December, 2018 when the matter was adjourned to 25<sup>th</sup> April, 2019, and this was not controverted at all by the respondent.

This court is not unmindful of the provision of section 36 of the 1999 constitution of Nigeria, and it is in that spirit that failure to give notice to proceedings to an opposing party in a case where service of process is required is a fundamental omission which renders the proceedings void because the court has no jurisdiction to entertain it, the fundamentality of a hearing notice on a party intimating him of the hearing of a matter in which he has interest cannot be over emphasized, since it is the service of hearing notice that confers jurisdiction on the court to entertain the matter. See the case of **Ozigbo – Eseré V. Debekeme (2018) All FWLR (pt 918) p. 114 at pp. 136-137 paras. H-C.** let me re-iterate that, in the instant case, what the counsel is contending is that the respondent was not informed of the date of the delivering of the award, however, by the said Exhibit 'R4B' the counsel to the respondent was there on the 18<sup>th</sup> of December, 2018 when a date of 25<sup>th</sup> of April 2019 was taken for the award, to my mind, and undoubtedly the respondent will not be

allowed to complain of lack of fair hearing, this is because, for the fact that the counsel to the respondent was there as at the time the date of 25<sup>th</sup> April, 2019, for the delivery of the award, was given, certainly he has no cause to complain of lack of fair hearing. See the case of **Onadeko V. U.B.N Plc (2015) All FWLR (pt 250) p. 42 at p. 78 paras. E-H** where the Court of Appeal Ibadan Division held that ordinarily failure to give notice of proceedings to an opposing party where service is required is a fundamental omission capable of avoiding proceedings due to loss of jurisdiction on the part of the court to entertain it with regard to hearing notice, the best notice to parties is the one communicated to them personally in court. a party is deemed to have notice of trial if he was only represented by counsel when the trial was fixed. In such a situation, a party who had notice of trial thereby but opts to be absent from court on the trial date, cannot be heard to complain of lack of fair hearing because of non issuance of hearing notice. See also the case of **S & D Construction Ltd V. Ayoku (2011) All FWLR (pt 604) p. 8 at 13 para. B.** In this instant case for the fact that the respondent's counsel was there before the Arbitration Committee when a date of 25<sup>th</sup> April, 2019 for the delivery of the award, certainly the respondent will not be heard to complain of lack of fair hearing, and to this I therefore hold, and the argument of the counsel to the respondent is hereby discountenanced.

Thus, it is not the duty of this court to sit on appeal over the award of the arbitrators, and it is also not empowered to determine whether or not the findings of the arbitrators and their conclusions were wrong in law. See the case of **Baker Marine Nigeria Ltd V. Chevron Nigeria Ltd (supra)**, however, the duty of the court has been spelt out in section 49 (5) of the Nigerian Co-operative Societies Act in essence to give judgment for the payment of the amount awarded or to give a similar decision in the same manner as if the decision has been a judgment or decision of the court. The appeal over the decision of the Arbitration Committee of the FCTA lies to the Minister of FCT by virtue of section 49(6) of the Act. I therefore hold the firm view that this court has no jurisdiction to sit and review the decision of the Arbitration Committees.

Another issue that calls for concern by this court is whether paragraph 15(b), (c), (d), (e) and (h) of the respondent's affidavit did not offend section 115(2) of the Evidence Act?

Section 115(2) of the Evidence Act provides:

“An affidavit shall not contain extraneous matter by way of objection, or prayer, or legal argument or conclusion.”

Thus, it was held by the Supreme Court in the case of **Stanbic IBTC Bank Plc V. I.G. Capital Ltd (2018) All FWLR (pt 927) p. 175 at 189 paras. B-C** that where a party alleges that certain paragraphs offend the provisions of section 115 (2) of the Evidence Act, the responsibility is on that party to explain how the paragraphs of the affidavit are inconsistent with the section of the Evidence Act. It is not enough for a party to allege that certain paragraphs are inconsistent with the provisions of the Evidence Act. In the instant case, the counsel to the applicant did not explain in his address as to how paragraphs 15(b) (c) (d) (e) and (h) contravene section 115(2) of the Evidence Act, and to this he fails to prove such, and his argument is hereby discountenanced.

Now coming to the main issue for determination formulated by this court.

The first question is:

Whether or not there is an error of law on the face of the award?

Based upon the foregoing analyses with respect to fair hearing and lack of jurisdiction on the part of the arbitration Committee which this has extensively dealt with, I have not seen any error of law pointed out by the counsel to the respondent which appears on the face of the award. In essence the counsel to the respondent did not canvass any legal argument with respect to any error of law on the face of the award, which will warrant this court to see whether there is any error of law on the face of the award. However, I have dispassionately read the proceedings of the Arbitration Committee more particularly the decision made the 25<sup>th</sup> day of April, 2019, and I have not discovered any error of law on the face of the award, and to this, I therefore, so hold that there is no error of law discovered on the face of the award.

It is in the respondent's affidavit in paragraphs 5, 15 (a) (f) (h) are to the effect that the respondent admitted only to the content of the Arbitration Agreement to the effect that he collected a loan of N15,000,000.00 with an interest of 10% payable within three months, and that the Arbitration Committee erroneously awarded the sum of N69,000,000.00 which is at variance with the agreement, and in his written address the counsel to the respondent relying on the case of **Baker Marine (Nig.) Ltd V. Chevron (Nig.) Ltd (supra)** submitted that where there is a failure on the part of an arbitrator to comply with the terms of an arbitration agreement this will amount to misconduct. Let me at this juncture look at the arbitral award, and the agreement made between the two parties in obtaining the loan.

The arbitral award which was labeled as Exhibit 'C' and its findings more particularly Roman number (iii) shows that for about 36 months the interest rate has increased to N54,000,000.00 which brought the Total Sum of N69,000,000.00 including the interest, which means the interest of 10% has accrued to N54,000,000.00 from the date the loan was collected.

The respondent attached the copy of the offer of credit facility dated the 14<sup>th</sup> day of March, 2016, which he labeled as Exhibit 'IGDI'

The content of the offer reads:

**OFFER OF CREDIT FACILITY**

We refer to your request for credit facility and are pleased to inform you that co-operative has approved N15,000,000.00 (Fifteen Million Naira only) subject to the following terms and conditions:

LENDER	CYLON MULTI-PURPOSE CO-OPERATIVE SOCIETY
BORROWER	IBRAHIM GAMBO DANTATA
TENURE	3 MONTHS (90 DAYS)
EXPIRY DATE	11 <sup>TH</sup> JUNE 2016
PURPOSE	BUSINESS
INTEREST RATE	10% PER MONTH
REPAYMENT	ONE OFF

SECURITY:

- 1) Repayment Cheque(s)
- 2) Provision of Adequate collateral

CONDITION PRESENT TO DISBURSEMENT:

1. Membership of the co-operative Society
  2. Acceptance of the terms and conditions stipulated in this offer letter by signing/sealing the acceptance column behind
  3. The borrower accepts that in case of default, submitted collateral can be authorized to pay the principal amount and accrued interest to that date.
  4. You will be charged 10% legal recovery fee upon default.
- If the above terms and conditions are agreeable to you, kindly return this letter to us with the acceptance column duly executed by you.

Yours faithfully,

For: Cylon Multi-purpose Co-operative Society

Signed

Operational Manager

14/03/2016

### **ACCEPTANCE COLUMN**

I/we have read this offer letter and fully understood it.

I/we am/are pleased to accept the offer for the facility in the terms and conditions contained herein.

SIGNATURE

Signed

NAME

IBRAHIM GAMBO DANTATA

DESIGNATION

PHONE NO: 08038240089

DATE 14/03/2016

COMPANY SEAL

The agreement specifically made a provision captured "TENURE" 3 months (90 days), that is what the respondent is contending that this represents the time upon default the respondent will pay 10% monthly as interest, and not for the period of 36 months the time which the Arbitration Committee based its decision in the award. To the respondent and his counsel this really is a misconduct on the part of the Arbitration Committee.

It is the contention of the counsel to the applicant that the interest of 10% was agreed by the parties not limited to the three months but rather upon default of the payment of the loan until when it is finally paid. It is on this, the respondent issued some

cheques to the applicant which bounced upon presenting at the bank. To him, the respondent issued some cheques of Zenith Bank dated the 10<sup>th</sup> day of February, 2017 for the payment of the principal sum and the then accrued interest in the name of the applicant. To him, this shows that the respondent has agreed to pay the accrued interest not only for the three months, but that for the period of default of payment of the principal sum, and that it was on that basis the Arbitration Committee made the award of the sum of N69,000,000.00 for both the principal loan, and the accrued interest for 36 months.

In financial transactions interest connotes a compensation allowed by law or fixed by the parties for the use or forbearance of borrowed money. It is that payment a borrower pays a lender for the use of money sought and obtained by the borrower from the lender. See the case of **Veepee Ind. Ltd V. Cocoa Ind. Ltd (2008) All FWLR (pt 425) p. 1669 at 1680**. Therefore, interest may be awarded in a case, either as of right or where it is contemplated by the agreement between the parties.

It is based upon the foregoing that I have to draw an inference that having taken into consideration the cheques issued by the respondent for repayment of the principal loan, and in addition the accrued interest as at then, it could be inferred that the parties have agreed to payment of the 10% interest from the time of the granting the loan to the time of payment of the principal loan. The three months tenure signifies the time upon the principal loan could have been paid and beyond that the interest of 10% will start to accrue.

In the circumstances, it could not be said that the Arbitration Committee has misconducted itself, and to this, I therefore, so hold.

The argument of the counsel to the respondent is hereby discountenanced on this.

On the whole, and based upon the foregoing consideration, I have come to the conclusion that the two issues raised by this court are resolved in favour of the applicant, and I will not hesitate to grant the application as prayed.

Leave is hereby granted to enforce the arbitral award made on the 25<sup>th</sup> of April, 2019 by the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration Committee.

An order is hereby given enforcing as judgment of this court, the arbitration award made by the Federal Capital Territory Administrative (FCTA) Co-operative Arbitration Committee on the 25<sup>th</sup> April, 2019 to wit:

- a) That the respondent is owing the petitioner the sum of N69,000,000.00 (Sixty Nine Million Naira) being outstanding sum of N15,000,000.00 (Fifteen Million Naira) and the accrued interest;
- b) That in the event the respondent refuses or neglects to pay the sum, his property known as Plot 2166, Cadastral Zone A01 Garki Abuja be sold to recover the sum of N69,000,000.00 and whatever is the excess sum from the proceeds of the sale of the property be given to the respondent.

Signed  
Hon. Judge  
05/05/2020