IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP	**:**	**HON. JUSTICE Y. HALILU**
COURT CLERKS	**:**	**JANET O. ODAH & ORS**
COURT NUMBER	**:**	**HIGH COURT NO. 23**
CASE NUMBER	**:**	**SUIT NO: CV/481/2018**
	:	**SUIT NO.: CV/2443/2018**
DATE:	**:**	**FRIDAY 17TH JULY, 2020**

BETWEEN:

1. LIMAK YATIRIM, ENERJI URETIM ISLETME HIZMETLERI VE INSAAT A.S
2. ULUDAG AFRICA POWER LTD
3. LIMAK AFRICA POWER LTD — **AWARDCREDITORS**

AND

SAHELIAN ENERGY AND INTEGRATED SERVICES LTD — **AWARD DEBTOR**

RULING

This Consolidated Ruling is at the instance of **Suit No. CV/481/18 and CV/2443/18.**

Whereas in **Suit No. CV/481/18** Award Creditors/Applicants seeks the following;

a. **An Order** registering and recognizing the unanimous Final Arbitral Award published on 28th June, 2018 by the International Chamber of Commerce (ICC) International Court of Arbitration composed of Prof. Dr. Nathalie Voser, Prof. Dr. ZiyaAkinci and Dr. Michael W. Buhler, sitting in Switzerland in ICC Case No. 21617/ZF/AYZ, and granting the Award Creditor/Applicants leave to enforce the said Final Arbitral Award in the same manner as the Judgment of this Honourable Court.

b. **And for such Order(s)** that this Honourable Court may deem fit to make in the circumstances.

On the part of **Suit No. CV/2443/18**, Applicant who is Award Debtor approached this court seeking the following:-

1. **An Order** setting aside the Final Arbitral Award dated 28th June, 2018 **(the Award**) made by the Arbitral Tribunal in the International Chamber of Commerce (ICC) Arbitral Proceedings in ICC International Court of Arbitration Case No: **21617/ZF/AYZLIMAK YATIRIM ENERJI URETIM ISIETME HIZMEIERI VE. INSAAT A.S & ORS VS NORTHWEST POWER LIMITED AND ORS.**

2. And for Such Further or other Orders as this Honourable Court may deem fit to make in the circumstances.

From the afore – reproduced reliefs sought in above suits, it is very obvious that suit CV/481/18 seeks registration of

judgment arising from a final arbitral award, whereas Suit CV/2443/18 seeks the setting aside of the final awards.

The Court shall therefore attempt to consider Suit CV/2443/18 which clearly seeks to stop the registration and recognition of the final award made in favour of the Respondents/Award Creditors which ultimately would entitle them to enforcement of the award in Nigeria.

May I for the purposes of record briefly give a background of the issue in contention for proper understanding which I've deduced from the documents filed before the court.

Applicant, who is an indigenous company, needed a technical partner with electricity distribution license in a foreign jurisdiction for it to participate in the Federal Government of Nigerian privatization process of the Kaduna Disco.

To that extent, the 1st Respondent who is a shareholder of ***ULUDAG ELEKTUK DAGITIM ANONIM SIRKETI***

(ULUDAG)which holds an electricity distribution license in Turkey was contacted by the Applicant.

The discussion between Applicant and the 1st Respondent culminated into the drafting of the Cooperation Framework Agreement (CFA).

The contemplation of the parties as documented in the CFA was that the 1stRespondent, would provide technical know – how to the Applicant, a Nigerian entity, in consideration of the payment by the Applicant of the sum of USD 17.5Million over a period or 5 years – USD 3.5Million payable annually.

On 4.08.13, the Respondents applied to register the Cooperation Framework Agreement (CFA)(herein referred to as the Agreement) with the National Office for technology Acquisition and Promotion **(NOTAP),** which was denied by **NOTAP** on the ground that it violated the requirements of the National Office for TechnologyAcquisition and Promotion Act **(NOTAP**

Act) and the Revised Guidelines for the Registration and Monitoring of Technology Transfer Agreements in Nigeria dated October 2011 made in pursuance of the **NOTAP** Act.

The Respondent neither made any demand for know – how during the bid process or after the hand-over of Kaduna Disco to the Applicant in December 2014, nor was any know – how transferred by the 1st Respondent pursuant to the Cooperation Framework Agreement (CFA) or at all. However, the 1st Respondent on 24.02.15 sent a demand letter to the Applicant requesting for the payment of the annual fee of USD3,500,000.00 under the CFA with an annual interest of LIBOR +4%.

In response, Applicantargued the fact that the CFA, being a registrable agreement was not registered with NOTAP and as such payment for transfer of technology thereunder would be in contravention of the mandatory requirements of Nigerian law.

Nevertheless, the Applicant engaged the 1st Respondent with the view to renegotiating the terms of the CFA to cure the defects in the agreement and bring it in line with Nigerian law, but to no avail.

Notwithstanding Applicant's arguments and attempt towards an amicable resolution of the issues, Respondents initiated the arbitral proceedings at the International Chamber of Commerce, seeking a positive affirmation that the CFA was valid and enforceable as it is and that the Applicant was liable to pay the Consideration Amount.

During the arbitral proceedings, Applicant re-emphasized the fact that payment could not be made to the 1st Respondent under the CFA, as doing so would be in contravention of Nigerian law and public policy, which seeks to protect Nigerian businesses from exploitation by foreign companies and prevent the dumping of obsolete technology in Nigeria.

In applying to have the award in question set aside in the motion under consideration, Applicant/Award Debtor have listed the following as grounds, i.e that the award is against public policy of Nigeria and that there is an error of law on the face of the award.

Applicant/Award Debtor also listed the following as particular of error, to wit:-

i. That by Section 5(2) of the National officer technology and Acquisition Promotion (**NOTAP)** Act, every contract or agreement in relation to transfer of technology entered into by any person in Nigeria is to be registered with NOTAP;

ii. That the Co- operation Framework Agreement (CFA) entered into by the Applicant and the Respondents was not registered with NOTAP;

iii. That Performance of the payment obligations under the CFA is by Section 7(1) of NOTAP Act, illegal in

the absence of registration of the agreement with NOTAP;

iv. That a party is not allowed to circumvent the mandatory requirements of a statute;

v. That the Arbitral tribunal found that the Cooperation Framework Agreement (CFA) requires registration but nevertheless held that the non-registration of the Cooperation Framework Agreement (CFA) was not sufficient to discharge the Applicant of its payment obligations under the Cooperation Framework Agreement (CFA).

vi. And that the award is perverse and in clear contravention of Nigerian law, as it seeks to enforce a payment obligation that clearly contravenes mandatory requirements of a Nigerian statute.

In support of the originating summon is an affidavit of 18 paragraph duly deposed to by One Daniel Okum, a Company Secretary of the Applicant.

Annexed to the Originating Summons are Framework agreement as Exhibit "A" and the final award as Exhibit "B".

In line with law and procedure, Applicant filed a written address wherein a sole issue was formulated fordetermination to wit; whether this Honourable Court ought not to set aside the award.

Arguing on above, learned counsel contended that the Power of Courts to set aside foreign arbitral awards in Nigeria is statutorily provided for in Section 48 of the Arbitration and Conciliation Act, Cap, A18 LFN 2004 (the Act). This power is also vested in the Court by virtue of Order 19 Rule 12(g) of the Rules of this Honourable Court.

Specifically, Section 48(1)(b)(ii) of the Act provides that the Court may set aside an arbitral award if the Court finds that the enforcement and recognition of the award will be against public policy of Nigeria upon an application brought by aggrieved party adversely affected by the Award.

It is the Applicant's submission that the Cooperation Framework Agreement (CFA), being an agreement for the transfer of technology, is requiredto be registered pursuant to the provisions of the NOTAP Act. It is the contention of Applicant's counsel thatthe wording of section 5(2) of the Act is so explicit on the mandatory nature of the provisions.

Specifically, **Section 5(2) of the NOTAP Act** whichprovides that: ***"every contract or agreement entered into by any person in Nigeria with another person outside Nigeria in relation to any matter referred***

to in section 4(d) of this Act shall be registered with the national Office."

It is Applicant's further argument that there is an underlining public policy consideration behind the mandatory requirements of the provisions of the statute, and that Nigerian Courts have seized the opportunity in certain cases to describe the expression public policy even though the term "public policy" was not defined neither described in the Act. However, a plethora of authorities have laid down a working definition for public policy. ***OKONKWO VS OKAGBUE (1994) 9 NWLR (Pt. 368) 301 at 361 Paragraph G-H***was cited in support, where the Supreme Court defined public policy as ***"the ideals which for the time being prevail in any community as to the conditions necessary to ensure its welfare, so that anything is treated as against public policy if it is generally injurious to the public interest."***

On the whole, Opasanya, SAN urged the court to grant the reliefs sought.

On their part, upon service, Respondents filed a counter affidavit duly deposed to by One Mark ChidiAgbo, a counsel in the law firm of the Respondents' counsel.

It is the counter affidavit of the Respondents that the privatization process of the Kaduna Disco required the Applicant to have a technical partner who possessed an electricity distribution license in a foreign jurisdiction.

Applicant therefore established contact and commenced discussions in furtherance thereof with the 1st Respondent, who is a shareholder of UludagElektrikDagitimAnonimSirketi (ULUDAG), a company which holds an electricity distribution license in Turkey.

Pursuant to the discussions and negotiations between the 1st Respondent and the Applicant, they entered into a

Cooperation Framework Agreement (CFA) (Applicant's Exhibit A") on 28th February, 2013 to cooperate with each other to successfully participate in the privatization process of 60% of the shares in the Kaduna Disco in 2013 as reflected in paragraphs 3 of the recitals at page 3 of the Applicant's Exhibit "A".

In specific response to paragraph 7 of the supporting affidavit of Daniel Okum, that the CFA was not only for the purpose of transfer of technical know – how but was for participation in the bid as a shareholder of the Special Purpose Vehicle (SPV) established by both parties as reflected in paragraph 6.04 at page 9 of the CFA (Applicant's Exhibit "A").

The Final Award (Applicant's Exhibit "B") sought to be set aside by the instant application is a product of voluntary arbitration which commenced in 2016 and Award given in 2018.

The Arbitral Tribunal at its session of 31 May, 2018 fixed the costs of the arbitration at USD 555,000.00. Additionally, the Respondents incurred costs and expenses pertaining to the arbitral proceedings in the total amount of USD 603,096.00, EUR 4,315.85, GBP 2, 033.87 and CHF 13, 938.30 while the Applicant (as Respondent 2) incurred costs in the total amount of USD1,098,160.44, CHF 2,866.08 and GBP 2,033.87 as submitted to the Arbitral Tribunal by parties and captured in paragraphs 709 to 712 at page 161 of the final award (Applicant's Exhibit "B").

Learned counsel for the Award Creditors/Respondents filed written address and formulated 6 issues for determination to wit;

1. ***Whether paragraph 16, particularly paragraphs 16.1, 16.2, 16.3 and 16.6 of the Applicant's supporting affidavit of Daniel Okum are not liable***

to be struck out for being in violation of Section 115 of the Evidence Act, 2011.

2. ***Whether this Honourable Court has the powers to set aside the unanimous final International Arbitral Award (Applicant's Exhibit 'B') arising from arbitration which was not conducted under the Nigerian Arbitration and Conciliation Act, 2004.***

3. ***Assuming that this Court has the powers to set aside the Award, whether the Applicant is entitled to an Order setting aside the unanimous Final Award arising from a voluntary submission by parties to Arbitration in which it fully participated and even counter-claimed.***

4. ***Whether the Award is against public policy.***

5. ***Whether the Applicant's argument on effect of non-registration of Exhibit 'A' is a sufficient ground to set aside the Award.***

6. ***Whether the Applicant who has benefitted from the Cooperation Framework Agreement (Exhibit 'A') can be allowed to successfully raise and rely on the allegation of illegality.***

On issue one, ***whether paragraph 16, particularly paragraphs 16.1, 16.2, 16.3 and 16.6 of the Applicant's supporting affidavit of Daniel Okum are not liable to be struck out for being in violation of Section 115 of the Evidence Act, 2011.***

Learned Counsel submit that, by Section 115(1) & (2) of the Evidence Act, 2011 every affidavit used in court shall only contain a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

Learned Counsel argued that paragraph 16.1, 16.2, 16.3 and 16.6 of the Applicant's supporting affidavit violate the mandatory provision of Evidence Acts. Counsel cited

and relied on the case of ***BAMAIYI VS STATE (2001) 8 NWLR (Pt. 715) 276 at 289 paragraph D.***

On issue 2, ***whether this Honourable Court has the powers to set aside the unanimous final International Arbitral Award (Applicant's Exhibit 'B') arising from arbitration which was not conducted under the Nigerian Arbitration and Conciliation Act, 2004.***

Learned Counsel submit that the instant suit is a gross abuse of court process deliberately designed to irritate, annoy, harass the Respondents as powers of Nigerian Courts to set aside an Arbitral Award are contained in Section 29, 30 and 48 of the Arbitration and Conciliation Act 2004 only apply to Domestic Award and not International Award.***SPDC VS CRESTAR INTEGRATED NATURAL RESOURCES LIMITED (2015) LPELR – 40034 (34).***

On issue 3, ***assuming that this Court has the powers to set aside the Award, whether the Applicant is entitled to***

an Order setting aside the unanimous Final Award arising from a voluntary submission by parties to Arbitration in which it fully participated and even counter-claimed.

Learned Counsel submit that all issues raised in the Applicant's supporting affidavit were raised and addressed by the Arbitral Tribunal in its final award. We have demonstrated this in the counter affidavit of Mark ChidiAgbo, particularly paragraph 4(e) to 4(h). Thus, the instant suit is akin to an invitation to this Court to sit on appeal over the Award which your Lordship should refuse as this Court does not have the jurisdiction to do so.***K.S.U.D.B. VS FANZ CONST. LTD (1990) 3 NWLR (Pt. 142) 1 at 37.***

On issue 4, ***whether the Award is against public policy.***

Learned counsel argued that there is no known consideration of public policy involved in a unanimous Foreign Award (Applicant's Exhibit 'B') which is a

product of a voluntary submission of arbitration which was not governed by Nigerian Law.

On the issue of public policy, which the Applicant has argued particularly from paragraph 20 of its written address in support of the instant substantive suit, learned senior counsel further contended that the Award (Exhibit 'B') is not against any known public policy.***BAKER MARINE (NIG.)LTD VS.CHEVRON (NIG.) LTD (2000) 12 NWLR (Pt. 681) 393 at 410, Paragraph B,*** was cited in support.

On issue 5, ***whether the Applicant's argument on effect of non-registration of Exhibit 'A' is a sufficient ground to set aside the Award.***

Learned senior counsel on this issue contended that the non-registration of the CFA with NOTAP does not *ipso facto* affect its validity and/or make it an illegal contract. On this point, we refer your lordship to the Arbitral Tribunal's finding at paragraph 433 at page 102 of the

Applicant's Exhibit 'C' that the NOTAP Act does not merely make its material requirements a condition for validity of contracts, but instead subjects the registration and processing of payments by Nigerian Banks to these material requirements. In essence, the Applicant's assertion is misplaced and we urge your lordship to discountenance same.

On issue 6, ***whether the Applicant who has benefitted from the Cooperation Framework Agreement (Exhibit 'A') can be allowed to successfully raise and rely on the allegation of illegality.***

Learned senior counsel argued that, Applicant who has benefited from the CFA cannot now turn around to evade its obligations under the Award on the grounds of illegality attributable to the non-registration of the CFA with NOTAP. This is more so as the requirement for registration and/or failure to register, as vehemently canvassed by the Applicant, was its responsibility and not

that of the Respondents. On the whole, learned senior counsel urged the court to dismiss the suit of the Applicant.***OYEGOKE VS IRIGUNA (2002) 5 NWLR (Pt. 760) 417 at 439 G-H and ADEDEJI VS NBN LTD (1989) 1 NWLR (Pt. 96) 212 at 226*** was cited and relied upon by counsel.

Court:- I have considered the averments contained in the affidavits in support of the Originating Motion filed by the Applicant/Award Debtor and the Respondents/Award Creditors' counter affidavit,vis-a-vis the ensuing legal arguments for and against the matter under consideration.

From what has played out, the gamut of the legal conundrum is centered on the issue of non-registration of the Cooperation Framework Agreement (CFA) with NOTAP i.e National Office for Technology Acquisition and Promotion.

I shall therefore limit my searchlight to the argument on the non – registration of the said Cooperation Framework

Agreement (CFA) pursuant to the extant provisions of NOTAP and the legal consequences.

Section 7 of the NOTAP Act has this to say;

> ***"subject to section 8 of this Act, no payment shall be made to the credit of any person outside Nigeria by or on the authority of the Federal Ministry of Finance, the Central Bank of Nigeriaor any licensed bank in Nigeria in respect of any payments due under a contract or agreement mentioned in Section 4(d) of this Act is presented by the party or parties concerned together with a copy of the contract or agreement certified by the National Office in that behalf."***

There are two fundamental things to be noted in these provisions, the first of which is that they are very clear, plain and unambiguous in language and words used by legislature in setting out and expressing their tenor and purport. The interpretative duty of a Court would not arise

in the ascertainment of the true and real intention of the legislature in enacting the provisions, as the only duty of a Court is to ascribe and assign the ordinary, grammatical and natural meanings to the words specifically and deliberately chosen and used by the legislature, which best bring out and say the intention of the law maker and giver. The second fundamental thing to be noted is that the simple, plain and clear provisions of Section 7 are made "subject to Section 8 of this Act." Uwaifo JSC, in the case of ***N.D.I.C. (LIQUIDATOR OF ALLIED BANK OF NIGERIA PLC.) VS OKEM ENT. LIMITED (2004) 18 NCSQR, 42 (2004) 10 NWLR (880) 107, RELYING ON OKE VS OKE (1974) 1 ALLNLR (1)443 at 450***, defined the effect of the use of the phrase "subject to" in a statute. He stated that: - "It must therefore be understood that "subject to", introduces a condition, a restriction, a limitation, a proviso: it subordinates the provisions of the subject Section to the Section empowered by reference thereto and which is intended to be diminished by the

subject Section." In the latter case of ***OLORUNTOBA-OBA VS ABDULRAHEEM (2009) 13 NWLR (1157) 83***the apex Court, per Adekeye, JSC enunciated on the above position that: "wherever the phrase "subject to" is used in a statute, the intention, purpose and legal effect is to make the provisions of the Section inferior, dependent on, or limited and restricted in application to the Section to which they are made subject to. In other words, the provisions of the latter Section shall govern, control and prevail over the provision of the Section made subject to it. It renders the provision of the subject Section subservient." ***LABIYI VS ANRETIOLA (1992) 8 NWLR (258) 139; TUKUR VS GOVERNOR, GONGOLA STATE (1989) 4 NWLR (117) 517 AND FRN VS OSAHON (2006) 5 NWLR (973) 261.***

Indeed, in their ordinary, grammatical and natural meanings in the context of Section 4(d) of the Act, they explicitly say that: - "(a). No payment, in whatever

currency, must be made in Nigeria to the credit of any person outside Nigeria, by or on the authority of: - (i)Federal Ministry of Finance, (ii) Central Bank of Nigeria or (iii) Any licensed bank, in respect of: (b) Payments due under all registrable contracts or agreements having effect in Nigeria for the transfer of foreign technology to Nigerian parties, unless - (c) A certificate of registration of such contracts or agreements issued under the Act is presented by the party or parties concerned together with copies of the contracts or agreements, in essence and essential/material particulars, the provisions not only intend to, but provide for conditions to be met by parties to a registrable and registered contract or agreement for the transfer of foreign technology to Nigerian parties, for any payment to be made in Nigeria to the credit of any person outside Nigeria (foreigner or Nigerian) by or on the authority of any of the three (3) institutions named and stipulated therein. Primarily, the provisions are on and deal with

conditions precedent for the payments due on any registered contract or agreement for the transfer of foreign technology to Nigerian parties by or on the authority of institutions named specifically, therein.

It is instructive to state here that the Power of Courts to set aside foreign arbitral awards in Nigeria is statutorily provided for in **Section 48** of the **Arbitration and Conciliation Act, Cap, A18 LFN 2004 (the Act).** This power is also vested in the Court by virtue of Order 19 Rule 12(g) of the Rules of this Honourable Court.

Section 48(i)(b)(ii) of the Act provides that the Court may set aside an arbitral award if the Court finds that the enforcement and recognition of the award will be against public policy of Nigeria upon an application brought by an aggrieved party adversely affected by the Award.

Specifically, **Section 5(2) of the NOTAP Act** provides that. "..***every contract or agreement entered into by any person in Nigeria with another person outside Nigeria in***

relation to any matter referred to in section 4(d) of this Act shall be registered with the National Office..”

Further to the above, the Act clearly sets out the legal consequences of failure to register the CFA. Specifically, Section 7 of the Act provides that: “***.. no payment shall be made in Nigeria to the credit of any person outside Nigeria by or on the authority of the Federal Minister of Finance, the Central Bank of Nigeria or any licensed bank in Nigeria in respect of any payments due under a contract or agreement mentioned in section 4(d) of this act, unless a certificate of registration issued under this act is presented by the party or parties concerned together with a copy of the contract or agreement certified by the national office in that behalf.”***

It is worthy of note that by Exhibit “B” i.e the final Award, the Arbitration tribunal found out clearly at page 100 paragraph423 that the agreement entered into i.e Cooperation Framework Agreement (CFA) required

registration with NOTAP, but proceeded to say the following;

427. ***"The Arbitral Tribunal considers that the analysis of the legal relevance of the NOTAP Act should begin (but cannot end) on a conflict of law level. For the reasons set out below, the Arbitral Tribunal finds that the NOTAP Act (or certain of its provisions) does not apply directly, i.e as foreign mandatory rules but that it must be considered in the CFA's analysis under Turkish law."***

Realizing the fact that it is a mandatory provision of the NOTAP Act which is a Nigerian Law that has been transgressed upon; now that parties have had to resort back to a Nigerian court for the enforcement of the arbitral award; should this court ignore the observation of the Award Debtor/Applicant bordering on non-compliance with the law?

I clearly do not think so,in view of the fact that the said registration of the Cooperation Framework Agreement (CFA) is a sine qua non for the recognition of the CFA under the Nigerian law.

Respondents/Award Creditor counsel also drew the attention of this court to paragraphs 16, 16.1, 16.2, 16.3 and 16.6 which he said offends section 115 of Evidence Act 2011.

I have considered the said paragraphs vis – a -vis the reply of Opasanya SAN. I am not in agreement that the said paragraphs offend section 115 Evidence Act.

It is further the argument of learned counsel for the Respondents/Award Creditorsthat Applicant/Award Debtor having submitted itself to the Arbitral Tribunal and raised the issue of non – registration of the Cooperation Framework Agreement (CFA) with NOTAP cannot raise the issue again, hence the present preceedings amounts to abuse of court process.

To the extent that a party shall not use court process to the irritation of an opponent or re-litigate a litigated matter again, I agree with counsel for the Respondent/Award Creditor.

I hasten however to say that no two circumstances are the same.In the instant case at hand, considering Exhibits “A” and “B” i.e the Cooperation Framework Agreement (CFA) agreement and the final award of the arbitrator, should this court close its eyes on the face of the revealing provisions of Nigerian Law i.e NOTAP Act touching on the mandatoryregistration of Exhibit “A” i.e the Cooperation Framework Agreement (CFA) which clearly is the reason for the award contained on Exhibit “B” which Respondents/Award Creditors also seek to have recognized in Nigeria and registered?

It is clear from the ensuring arguments that the Cooperation Framework Agreement (CFA) (i.e agreement) which ought to have been registered with

NOTAP was not registered in compliance with the NOTAP Act (supra).. Both Applicant/Award Debtor and Respondents/Award Creditors are ad – idem on this issue.

I make bold to say that registration of the said Cooperation Framework Agreement (CFA) clearly is a condition precedent for the recognition and enforcement of such an agreement as parties cannot by agreement flout the provisions of the law in advancing the course of their agreement and run to the law for protection.

The law is that a contract or agreement rooted in illegality must not be pleaded and if so pleaded, it cannot be enforced by any court of law. In otherwords, an agreement is illegal if the consideration or promise involves doing something illegal or contrary to public policy.

The cases of ***NNADOZIE VS MBAGWU (2008) 1 SC (Pt. 11) 42, WEST CONSTRUCTION CO. LTD. VS***

BATALHA (2006) 9 NWLR (Pt. 986) 595, are instructive..

I am not in agreement with Respondents/Award Creditors'argument that Applicant/Award Debtor having submitted to arbitration cannot raise the issue of non – registration of the CFA as ground to approach this court again.

As I said, the issue of registration of the Cooperation Framework Agreement (CFA) with NOTAP is mandatory, and since the award was made pursuant to the said agreement (i.e CFA) which was not registered, the present action of the Applicant/Award Debtor cannot and is not an abuse of court process as you cannot put something on nothing and expect it to stand.

I say this regardless of the fact that both parties have submitted themselves to the said arbitrator and or benefitted from such an agreement..parties who agree to disregard the provisions of law shall bear the risk.

The working of the court, as I perceive it is expected to as much as possible protect and give effect to the lawful and not unlawful bargains of men.. For the court to give recognition to an award which was/is deeply rooted in contract that is in breach of an established law, would amount to giving effect to a contract which became ex-facie void for non – registration as a condition precedent.

The position of the law ably canvassed by counsel for the Respondents/Award Creditors that this award being foreign award, this court does not have the jurisdiction to set same aside and that in the event that this court holds that it has the jurisdictional competence to set aside such an award, whether this present award could be set aside.

I have discussed the issue of setting aside an award in the preceedingpart of this ruling..learned counsel for the Applicant/Award Debtor has reacted to the argument of Gadzama, SAN on the issue of setting aside final award.

Permit me to state here and now that an award, Foreign or local can be set aside in exceptional circumstances.. Section 48 of ACA Cap A18 LFN (2004) and Order 19 Rule 12 (g) of the Rules of Court of the High Court of FCT are clear on this issue.

The argument of Gadzama,SAN for the Award Creditors/Respondents on above issue is most misplaced.

From the foregoing position of the law, the proceedings of this court in the present suit cannot and does not amount to sitting on appeal over the final ward of the arbitrator as wrongly canvassed by Award Creditors/Respondents' counsel.

The argument of learned senior counsel for the Award Debtor/Applicant, Opasanya SAN, which is to the effect that the arbitral awards sought to be registered in Nigeria contravenes the Mandatory Provisions of the NOTAP Act, thus against public policy, hence not valid and be set aside has the support of the law, same is hereby upheld.

Accordingly, the said award contained in Exhibit "B" which Respondents/Award Creditors seek to have registered and recognized in Suit **No.CV/481/18**which is against public policy and hence not valid is hereby and accordingly set aside.

The consolidated suits are like siesmen twins..only one of the twins shall survive upon surgical operation to separate them.

Having set aside the award in question, **suitCV/481/18** dies a natural death… I say no more.

Justice Y. Halilu
Hon. Judge
17th July, 2020

APEARANCES

DARLINGTON O. ESQ with MARK CHIDI A. and MADU JOE – KYARI GADZAMA – for the Award Creditors/Respondents.
GODSWILL N. IWUAJOKU – for the Respondent.