IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI COURT 10, FCT, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

CLERK: CHARITY ONUZULIKE

SUIT NO: FCT/HC/M/2772/2022

DATE: 05/03/2024

BETWEEN:

MAB GLOBAL ESTATE LTD…… CLAIMANT/APPLICANT

AND

BRAINS & HAMMERS LTD.....DEFENDANT/RESPONDENT

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

In this consolidated Motion on Notice numbers **M/2772/2022** and **M/11475/2022** between **MAB GLOBAL ESTATE LTD AND BRAINS AND HAMMERS LTD** wherein the Mab Global Estate Ltd is asking for the following orders to wit:

(1) **AN ORDER FOR LEAVE** to mark the Final Arbitration Award delivered by the sole Arbiter in line with the Arbitration and Conciliation Act, LFN 2004, delivered on 22nd September, 2022 as a judgment of the FCT High Court.

(2) **AN ORDER** directing the Final Award to be accepted, registered and deemed a Judgment of the FCT High Court.

(3) **AN ORDER** directing the Enforcement and Execution Unit of the High Court of the FCT to recognize and enforce the said FINAL AWARD.

(4) **AND FOR SUCH FURTHER** order(s) as the Honourable Court may deem fit to make in the circumstances.

On the other hand, the Brains and Hammers Ltd is praying the Court vide their own Motion number **M/11475/22** for Sole relief to wit:

(1) An Order setting aside the Arbitral Award dated 22nd September, 2022 made by the Sole Arbitrator between the herein Applicant and Respondent.

The grounds upon which this particular Motion is premised are as follows:

(1) The Arbitrator was biased and misconducted herself by acting as Counsel to the Respondent.

(2) The Arbitrator's Award was in heavy reliance on the outcome of a visit to locus in which the Applicant and its representatives were absent.

(3) The purported Award dated 22nd September, 2022 has many errors on the face and same is in contrast with the facts, documents and claims pleaded.

(4) The Award granted reliefs which will render the parties agreement a nugatory not minding the fact that the constructions in the agreement is still in progress till 2025.

(5) The Arbitrator erroneously granted reliefs which have not fallen due and which is outside the dictate and specific provision of the agreement.

(6) The balance of convenience is on the side of the herein Applicant who had expended huge amount of monies on the project and the Respondent is not likely to suffer any injury or prejudice upon the grant of the Order sought.

(7) There will be irreparable and immeasurable damages to the Applicant if this application is refused.

The three principal prayers in this application that is M/2772/22 are:

(1) An Order for Leave to mark the Final Arbitration Award delivered by the sole Arbiter in line with the Arbitration and Conciliation Act, LFN 2004, delivered on 22nd September, 2022 as a judgment of the FCT High Court.

(2) An Order directing the Final Award to be accepted, registered and deemed a Judgment of the FCT High Court.

(3) An Order directing the Enforcement and Execution Unit of the High Court of the FCT to recognize and enforce the said Final Award.

In support of the application is a 29 – paragraphs affidavit deposed to by Mr. OnyekachukwuOkeke. Attached is a letter of demand for the immediate compliance with the Arbitral Award. And there is also a written address which is the argument of Counsel in support of the application.

In opposition to the grant of the application is a 23 – paragraphs counter – affidavit to which is attached Exhibits AA, BB, CC, and DD.

There is also a written address in support and in compliance with the Rules of this Court.

The application is anchored on the provisions of **Order 19 Rule 13 of the Rules of this Court, 2018 and section 31 (3) and 32 of the Arbitration and Conciliation Act, 2004.** We must of necessity examine those provisions. But before then and since laws can only be applied to fact(s) to make them applicable and relevant in any given circumstance, we must also find out the facts as established in this proceeding. The facts here are by affidavits evidence.

What are the facts contained and placed before the Court? They are:

(1) That the Claimant/Applicant and the Defendant/Respondent entered into a Joint Venture on Property Development on 2nd February, 2016.

(2) That one of the clauses on the said JVA allows for any of the aggrieved parties to apply for the appointment of a Sole Arbitrator in the event of any issue in executing the JVA.

(3) That the Claimant/Applicant applied for the appointment of a sole Arbitrator, after the relevant Notices has been served, in line with the JVA.

(4) That the Arbitration Tribunal was duly constituted and the both parties (Claimant and Respondent) accepted the authority of the Nigeria Institute of Chartered Arbitrators as enshrined in the JVA.

(5) That the Sole Arbitrator was appointed the both parties accepted the appointment and further participated in the Arbitration process.

(6) The Arbitration process was duly constituted in line with the Arbitration clause in the JVA signed by both parties.

(7) That the Arbitration was conducted in line with the Arbitration and Conciliation Act CAP A. 18 Laws of the Federation of Nigeria, 2004.

(8) That at the conclusion of the Arbitration process, the Sole Arbitrator delivered an Award title Final Award. See paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of the supporting affidavit.

All the above 8 facts were not controverted by the Respondent in their counter-affidavit. I am therefore bound to accept them and I so pronounced. See **NWOSU VS. IMO ENVIRONMENTAL SANITATION AUTHORITY (1990) 2 NWLR (PT. 135) 688.**

We can now turn to **Section 31 of the Arbitration and Conciliation Act, 2004**. It reads:

> ***"31 (1) An arbitral award shall be recognized as binding and subject to this section 32 of this Act, shall upon application in writing to the Court, be enforced by the Court.***
>
> ***(2)The party relying on an award or applying for its enforcement shall supply –***
>
> ***a. The duly authenticated original award or duly Certified Copy thereof;***
> ***b. The Original arbitration agreement or a duly Certified Copy thereof;***

(3) An award may, by leave of the Court or Judge, be enforced in the same manner as a Judgment or Order of the same Court."

Section 32, to which the above **Section 31** is subjected to, reads:

"Any of the parties to an arbitration agreement may request the Court to refuse recognition or enforcement of the award."

Order 19, Rules 13(1) and (2) of the FCT High Court (Civil Procedure) Rules, 2018 says:

(1) An application to enforce an award on an arbitration agreement in the same manner as a Judgment or Order may be made ex-parte, but the Court hearing the application may order it to be made on notice.

(2) The supporting affidavit shall –

a. Exhibit the arbitration agreement and the original award or in either case Certified copies of each;
b. State, the name, as usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;
c. State as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application."

What are the legal arguments proffered by both Counsel in support and against the grant of this application?

Mr. Abbas OlaniyiShittu adopted the address attached to the counter – affidavit which in my humble view is the same address he intended to use as his argument in support of his Motion number **M/11475/2022** which he filed to set aside the Arbitral Award. One issue was framed for determination. That is:

> ***"Whether on the strength of the materials placed before this Honourable Court, the Court is entitled to set aside the Arbitral award dated 22nd September, 2022."***

Counsel, then went on to argue in summary that there is an error of law on the face of an award which has been held to amount to misconduct to warrant the setting aside of an arbitral award. Counsel cited the case of **R.M.A.F.C. VS. U.S.E. LTD (2011) 9 NWLR (PT. 1252) 379.**

Counsel submitted that the failure of the Arbitrator to consider the case of a party before it amounts to a breach of the principle of fair hearing enshrined in **Section 36(1) of the 1999 Constitution**. He cited and relied on **NEWS RES. INT'L LTD VS. ODUNSI (2011) 2 NWLR (PT. 1230) 102; RASAKI SALU VS. TAIWO EGEIDON (1994) 6 NWLR (PT. 348) 23** where the Supreme Court held thus:

> ***"It also had to be remembered that the denial of a fair hearing was a breach of one of the rules of a natural justice that is the requirement that a party must be given a fair hearing. The consequence of a breach of the rule of natural justice of fair hearing is that the proceedings in the case are null and void."***

On his part, Mr. OnyekachukwuOkeke also submitted one issue for determination, to wit:

> ***"Whether the Applicant has been able to show sufficient reasons to be entitled to the Order sought for?"***

To my mind, the two issues differently worded and framed by learned Counsel can be seen to be saying the same thing in different way.

Mr. Okeke argued that **Section 28 of the Arbitration and Conciliation Act** if properly explored by the Brains and Hammers Ltd would have cured the errors complained by them.

Section 28 reads:

> ***"A party may, within 30 days of receipt of an arbitral award, with notice to the other party, request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature, and give an interpretation of a specific point or part of the award. The tribunal shall revert within 30 days. The tribunal may also on its own volition, within 30 days of the date of the award, correct any error."***

Also, he contended that an arbitral award is final and there is no provision for an appeal arising therefrom under Nigerian Law. However, he called the attention of the Court to provisions of **Sections 29 and 30 of the Arbitration and Conciliation Act** which stipulate three (3) grounds under which an arbitral award could be set aside.

Section 29 (2) provides that the Court may set aside an arbitral award if a party makes an application (on notice to the other party) and furnishes proof that the award contains decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award that contains decisions on matters not submitted may be set aside.

Section 30(1) provides two further grounds for setting aside an arbitral award. The first ground is if an arbitrator has misconducted himself or herself. The instance of misconduct were set out by the Supreme Court in the case of **TAYLOR WOODROW (NIG) LTD VS. S. E. GMBH (1993) 4 NWLR (PT. 286) 127.**

Second ground under which the Court may set aside an award is if it was improperly procured or tainted by fraud. The instance that would constitute misconduct as held by the Apex Court include:

(a) If the Arbitrator or umpire has failed to act fairly towards both parties.

(b) If the Arbitrator or umpire accepts the hospitality of one of the parties, being hospitality offered with the intention of influencing his or her decision.

(c) If the Arbitrator or umpire acquires an interest in the subject matter of the reference, or is otherwise an interested party.

(d) If the Arbitrator or umpire takes bribe from either party.

He referred the Court to the case of **NITEL VS. OKEKE (2017) 9 NWLR (PT. 1571) 439** where the Apex Court was confronted with a complaint of the Appellant that the arbitrator had not considered the

evidence the way a Judicial panel would. The Supreme Court rejected this argument and held that:

> ***"Court should not therefore upset the expectation of the parties except for the clearest evidence of wrong doing or manifest illegality on the part of the arbitrator." The Apex Court stated expressly that a challenge application is not a merits appeal and deprecated the appellant's approach of attacking the substance of the award rather than demonstrating the alleged misconduct.***

He is not done yet as he submitted further that Brains and Hammer Ltd has not been able to show or demonstrate any form of misconduct or bias by the Arbitrator. The applicant had every opportunity to complain in the event of or likelihood of bias or misconduct, but did not do so, rather, he participated throughout the Arbitration processes, called witnesses and led evidence in defense and cross-examined the witnesses of Mab Global Estate Ltd.

Still submitting, he said it is trite principle of law that 'when parties have referred a question to a judge of their choice, they must be bound by his decision whether the conclusion be right or wrong' he referred to the case of **ARBICO NIG. LTD VS.NIGERIA MACHINE TOOLS LTD (2000) 15 NWLR (PT. 789) 1.**He said fair hearing connotes that an individual shall have an opportunity to present evidence to support his or her case, and to discover what evidence exists against him or her. This principle of justice merely requires that an opportunity to be given to someone and not that the person must utilize such opportunity.

It must be quickly observed that no law says that once a Motion on Notice is filed urging setting aside of an arbitral award, that *ipso facto* and without more serves or operate as a Stay of Execution.

I shifted through the entire gamut of the content of **Arbitration and Conciliation Act 2004,** I found no such stipulation therein.

The prayer of **MAB GLOBAL ESTATE LTD** is essentially for enforcement of award. What are the principles governing same?

(1) There must be a valid agreement:

An arbitration agreement is an agreement to submit to arbitration concerning present or future disputes. It must be in writing. For an arbitration agreement to be valid, it must be written in clear and certain terms. It must be in a document signed by the parties. See **Section 1 of the Arbitration and Conciliation Act, 2004**.

By virtue of **Section 2 of the Arbitration and Conciliation Act, 2004,** an arbitration agreement shall be irrevocable except by agreement of parties or by leave of the Court or a Judge. However, the right to go to arbitration is a personal right. It is not a constitutional right. Therefore, it can be waived by either of the parties to the agreement expressly or by contract. See **CARLEN (NIG) LTD VS. UNIJOS (1994) 1 NWLR (PT. 323) 631 SC; KURUBO VS. ZACH-MOTISON (NIG.) LTD (1992) 5 NWLR (PT. 239) 102.**

The question now is, is there a valid arbitration agreement between the parties? The answer is in the affirmative. A look at the Joint Venture Agreement between the parties reveals this answer. Exhibit AA referred to in paragraph 4 (v) of the counter-affidavit deposed to by Blessing Magaji, clause 12 thereof reads:

> ***DISPUTE RESOLUTION AND ARBITRATION***
>
> ***"12.1 The parties agree that their first course of action in the event of a dispute or claim arising out of or in relation to or in connection with this JVA, including***

any dispute as to the construction, validity, interpretation, enforceability or breach of this JVA ("Dispute"), should be to attempt to resolve the dispute amicably without the intervention of outside parties……."

The fact of the above arbitration agreement which is in writing and signed by the parties is not denied by the Respondent. I have also found out the existence of the valid agreement as a fact in this case.

This first principle or condition is therefore met or complied with by this applicant.

(2) There must be a valid award

Any award made by the Arbitral Tribunal must be duly signed and dated by the arbitrator(s). The award which must be in writing shall state reasons upon which it is based, the date it was made and the place of the arbitration. The award must be final and a copy of the award must be delivered to each of the parties. See **Section 26(1) – (4) of the Arbitration and Conciliation Act 2004.**

The law is that an award must be expressed in such a language that leaves the parties in no doubt as to what was decided. In particular, certainty is required in the award in respect of the following:

(a) Parties to be bound by, or to perform the award must be certain;

(b) If money is to be paid by a party, the amount involved and the person to receive the same must be clearly specified;

(c) If the award directs performance of any conditions or terms, such terms or conditions must be precisely defined; and

(d) The time to perform the award or any condition set out therein must be fixed, or clear direction given to enable such time to be easily ascertained.

See **MARGULERI BROTHERS LTD VS.DATINS THOMAIDES & CO (UK) LTD (1958) 1 ALL E.R. 777; ORICON WARREN – HAN DELS G.M.B.H VS.INTERGRAAN N. Y. (1967) 2 Lloyd's Rep. 82.**

I have a close and firm look at the arbitral award in this case. It is Exhibit 'AA' referred to above. I am satisfied that the content of the final award comply with all the conditions laid down in the relevant statutes and the case law. For instance, it is signed by the arbitrator, it is in writing. It is duly dated, it is clear on what is to be done by who and to who, (See 143 – 146 paragraph N. 362 of the Final Award, Exhibit AA) and copies each were delivered to each of the parties.

So, this condition is also satisfied.

(3) There must be failure to perform the award

The fact of this litigation vide the consolidated Motions filed, clearly lend credence to the fact of failure to perform the award by the Respondent (Brains and Hammers Ltd).

The Respondent themselves, want the award to be set aside. Clearly, they have refused to comply with the arbitral award.

In my own very clear view, this application anchored on the eight facts earlier enumerated in this judgment satisfied all the three (3) requirements laid down in **Order 19 Rules 13 (2) of the Rules** of this Court.

The point must be clearly made here, that where parties have decided on their own to settle their disputes by arbitration, the law requires them to obey the rules, proceedings and awards of the

arbitration panel or Tribunal for better or for worse. That is the path of honour and civilized ethos. See **COMMERCE ASSURANCE LTD VS.ALLI (1992) 3 NWLR (PT. 232) 710; C. G. DE GEOPHISQUE VS.ETUK (2004) 1 NWLR (PT. 853) 20.**

Equally, a iron cast duty is placed upon the Courts to act upon such agreement and enforce it strictly. See **M. U. LUPEX VS. N. O. C. & S. LTD (2003) 15 NWLR (PT. 844) 469.**

Finally, I agree with Mr. OnyekaChukwuOkeke, that they have placed all the necessary materials required by law before this Court to enable them succeed. They are therefore entitled to favourable orders of this Court. This application, that is Motion number M/2772/2022 has considerable merit in it and it is therefore succeed.

For avoidance of doubt, leave is hereby granted for the Final award delivered on 22nd September, 2022 to be registered and deemed as a Judgment of this Court.

Secondly, leave is hereby granted to the applicant (MAB GLOBAL ESTATE LTD) to enforce the arbitral award made on 22nd September, 2022 against the Respondent (Brains & Hammers Ltd).

I made all these orders pursuant to **Section 31 of the Arbitration and Conciliation Act 2004 and Order 19 Rules 13 (1) and (2) of the FCT High Court (Civil procedure) Rules 2018.**

…….

S. B. Belgore

(Judge) 05/03/2024