

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

MOTION NO. FCT/HC/GAR/M/96/2022

DATE: 5/3/2024

B E T W E E N

MR. OYIJE OGBENJUWA

}

CLAIMANT/APPLICANT

AND

AIICO INSURANCE PLC

}

RESPONDENT

JUDGMENT

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

The Claimant/Applicant's in this case, Mr. OyijeOgbenjuwa, initiated this suit against the AIICO INSURANCE PLC as the Respondent vide originating Motion dated 16th December, 2022 but filed on the 20th December, 2022 praying the Court for a sole order:

1. An Order appointing a second arbitrator for and on behalf of the Respondent in this suit

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

The application is premised on 5 grounds to wit:

- i) Clause 9 of the Insurance Policy Agreement lists procedure for dispute resolution and provides for all disputes arising out of the said contract be finally settled by arbitration before a three member panel.
- ii) The parties fell into dispute arising from the motor accident insurance policy that was paid and subscribed by the Applicant in which the Respondent had failed to pay the Applicant and the aggrieved Applicant initiated the dispute resolution procedure without success.
- iii) The Applicant further issued a notice of arbitration dated 13th July, 2022 to the Respondent and appointed Emmanuel ChukwunonsoEgwuaguFCIarb (Notary Public) as its party appointed arbitrator.
- iv) The Arbitration and Conciliation Act, LFN 2004 provides for the Respondent to appoint its party-appointed arbitrator within 30 days of receipt of request for arbitration, failing which the appointment shall be made by the Court on the application of any of party.
- v) The Respondent has neglected and/or refused to appoint their party-appointed Arbitrator hence this application.

It is supported with a 30 paragraphs affidavit deposed to by the Claimant/Applicant himself. Attached are Exhibits Oyije 1-6, Oyije 8-10.

Exhibit Oyije 1: is a copy of the receipt.

Exhibit Oyije 2: are copies of the Renewal documents.

Exhibit Oyije 3:copies of Insurance documents.

Exhibit Oyije 4: copies of burning pictures and the pictures of the skeletal body of the car at the mechanic work shop at Arab Road.

Exhibit Oyije 5: A copy of the Police Extract date 10th July, 2020.

Exhibit Oyije 6: A copy of the said report.

Exhibit Oyije 8: A copy of the Form.

Exhibit Oyije9:The Notice of Arbitration dated 13th July, 2022

Exhibit Oyije10:A copy of the said letter.

Also in line with the provision of our rules, a written address is attached.

Moving the application with the Motion Number M/96/2022 in Court, the Learned Counsel to the Claimant/Applicant adopted his written address as his oral argument in support of his originating motion and urged the Court to discountenance the counter affidavit of the Respondent and grant his sole prayer. He relied on Section 7(2)(a) of the Arbitration and Conciliation Act.

Opposing this application, the Respondent's Learned Counsel Mr. F. D. Esume Esq. submitted that they have filed a 20 paragraphs counter affidavit with 'Exhibit CL' attached and a written address. He relied on the depositions contained therein in the counter affidavit and adopted his written address as his oral argument in opposition to the grant of this originating motion.

Exhibit CL is a letter written by Claimant/Applicant to the Respondent headed: Re: Claim No. CL/037428/10120/TO/A1 under policy No.: 101/00177/19/TO/A1 dated 29th October, 2021.

He referred the Court to Clause 9 of the Insurance Policy which the Claimant relied upon. He submitted that they don't need to go to Arbitration because there is no difference as the amount to be paid.

SUMMARY OF FACTS

The Claimant states that sometimes in 2018, he acquired a **Mercedes Benz C63 AMG S, 2017 MODEL A Limited Edition with Chasis No. 555WF8HB8GU097262** from de Brain Box Autos at the cost of ~~N~~47,320,000.00 (Forty-Seven Million, Three Hundred Thousand Naira) only.

The Claimant registered the said car at the vehicle License office at Mabushi, Abuja with the Registration No. ABJ 20 BF and thereafter the original documents of the Registration was issued to him from August, 2018 to August 2019 and he renewed the said car documents in August 2019 which was to expire in August 2020.

The Claimant took out a Comprehensive Motor Vehicle Insurance with the Defendant Company with the **Certificate No. AJ 19117055 and Policy No.101/00177/19/TQ/AJ** at the premium of

₦1,200,000.00 (One Million, Two Hundred Thousand Naira) only for the year 2019 to 2020.

The Respondent did a thorough inspection and check of the said vehicle and its documents before the insurance cover was finalized.

The Insurance cover commenced from the 11th September, 2019 and to expire on the 10th September, 2020.

The Claimant states that his car caught fire on the road on 3rd July, 2020 and burnt to only skeletal iron at the Mogadishu Cantonment Bridge in Asokoro Abuja and all effort to put out the fire proved abortive, despite the help of the fire service men.

Before the said fire incident, the Claimant's car had been in a good and working condition as there was no sign of any electrical and or mechanical fault whatsoever neither was any third party interference or suspicion in connection with arson as the car was in motion when it caught fire.

As a result of the Respondent's unwillingness to meet with the Applicant to resolve the pending dispute, the Applicant left without any choice, issued the Respondent with a Notice of Arbitration in accordance with Clause 9 of the Conditions of the Policy.

The Applicant nominated **Emmanuel ChukwunonsoEgwuatu** as its party appointed arbitrator and notified the Respondent of its time limit of 30 days to appoint the second arbitrator.

The 30 days has since lapsed and the Respondent has refrained and/or neglected to appoint the second arbitrator in accordance with the arbitration agreement.

This in summary is the facts that culminated this case.

The Claimant/Applicant's Learned Counsel Mr. NzedebeChinonso Paul Esq. submitted a sole issue for determination in this case. The issue is this;

“Whether in the circumstances of this case, this Honourable Court ought to grant the reliefs sought by the Applicant?”

According to him, it is trite that the appointment of an arbitrator in conformity with the agreement of the parties where there is a dispute is a matter that is regulated by the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004. He cited the provision of Section 7(2)(a) of the Act which provides as follows:

“Where no procedure is specified under subsection (1) of this Section –

- (a) In the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third, so however, that –**
- i) If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so by the other party; or**
 - ii) If the two arbitrators fail to agree on the third arbitrator within thirty days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement;”**

See **MAGBAGBEOLA v. SANNI (2002) 4 N.W.L.R (PART 756) at 193 at 205, para. F – 206, para A.**

He further submitted that the Respondent have failed to comply with Clauses 18(2)(b) and (3) of the contract providing for the procedure for resolution of dispute and appointment of arbitrator. He said the Applicant in this case has established by affidavit evidence that by its Notice of Arbitration, it requested the Respondent to appoint the second arbitrator which the Respondent has failed to do for a period exceeding 30 days. He relied on Section 7(2)(a) (i), Section 57 of Arbitration and Conciliation Act, Article 7(1) and (2), 8(1) and (2) of Arbitration Rules.

Finally, he urged the Court to grant his application.

Mr. Esume Felix Esq., the Learned Counsel to the Respondent in his written address submitted a sole issue for determination to wit:

“Whether the Claimant/Applicant instant application is grantable based on the facts of this case”

He submitted that the instant application of the Claimant/Applicant is anchored on **Clause 9** of the Insurance Policy which is a contract between the Claimant/Applicant and the Respondent. He submitted that going by the provision of that Clause 9 the only occasions that warrant the differences of parties being referred to Arbitration is where there is difference as to amount to be paid to the Claimant/Applicant.

Clause 9 of the Insurance Policy says thus:

“All differences arising out of this Policy in respect of the amount to be paid shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitration to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the company”.

He said what is between the parties is the repudiation of the Insurance Policy contract and nothing more. He called in aid the cases of **CAPITAL HOTELS PLC & ORS. VS. ABDULLAHI (2020) L.P.E.L.R. –**

**52315 (CA) 100; INDUSTRIAL AND GENERAL INSURANCE CO. LTD.
VS. KECHINYERE ADOGU (MRS.) (2010) 1 N.W.L.R. (PART 1175) 337.**

I have considered the divergent views of the two Learned Counsel both for and against the grant the sole prayer of this application.

Without much ado, I pitch my tent with the Respondent and agree in toto with his submission beautifully conched at paragraphs 2.08 – 2.12.

2.08 We humbly submit that what Clause 9 of the Insurance Policy Agreement envisages is a situation where the parties disagree on the amount payable to the Claimant/Applicant by the Respondent and not a situation of repudiation of contract as was done in the instant case and not every dispute between the parties and we humbly urge your Lordship to so hold.

2.09 Also, in **ABDULRAZAK ISMAIL BAGWAI & ANOR. VS. SAADU YUSUF GODA & ORS. (2011) 7 N.W.L.R. (PART 1245) page 28 at 57, para. A**, it was held that one of the Cardinal Principles of Interpretation of statutes is to exclude what is not stated in the status. This is expressed in Latin as “***expression uniusest exclusion alterius***” meaning what is not stated is deemed excluded.

2.10 We further submit that the parties herein having expressly mentioned that all differences as to the amount payable to the Claimant shall be referred to Arbitration, any other dispute which includes but not limited to repudiation of contract is unequivocally excluded from being referred to Arbitration and we respectfully urge your Lordship to so hold. The Respondent is not challenging the amount of claim

payable to the Claimant that would warrant this matter to be referred to Arbitration.

2.11 As it was held in the case of **INDUSTRIAL AND GENERAL INSURANCE CO. LTD. v. KECHINYERE ADOGU (MRS.)** (*supra*) at **357 – 358, paras. H – A**, a contract of Insurance should be of utmost good faith "*uberrimafidel*"

2.12 It is our further humble submission that Clause 9, of the Insurance Policy contract having clearly specified the only occasion in which dispute may be referred to Arbitration, referring this matter which borders on repudiation of contract (which is outside the agreement of the parties) would be a waste of time and of resources and would be tantamount to an exercise in futility.

I therefore have no difficulty, in going along with his reasoning and his interpretation of Clause 9 of the Insurance Policy as the correct and perfect interpretation of the Clause which the Claimant also relied upon in bringing this application.

In effect therefore, this suit is incompetent and highly defective and hereby dismissed.

Judgment is hereby given in favour of the Respondent ALLCO INSURANCE PLC.

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S. B. Belgore
(Judge) 5-3-2024

