

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 28 JABI, ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE JOSEPHINE E. OBANOR**

SUIT NO: FCT/HC/CV/677/2023

BETWEEN:

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| 1. PARAKLATE NIGERIA LTD | - CLAIMANTS/RESPONDENTS |
| 2. ONYIA CONSTRUCTION LTD | |

AND

- | | |
|--------------------------------------|------------------------------|
| 1. ROCK OF AGES PROPERTIESPLC | DEFENDANTS/APPLICANTS |
| 2. ALEX GODFREY | |
| 3. THE OCCUPIER/UNKOWN PERSON | |

RULING

This ruling is in respect of a Motion on Notice dated 8/3/2024 and filed on 11/3/2024, the Applicants seek the following reliefs;

1. An Order of this honourable Court declining jurisdiction to entertain and adjudicate over this instant suit and to strike out same in limine.

In the alternative

2. An Order of this honourable Court staying further proceedings in this suit pending the hearing and determination of the dispute by an Arbitral Tribunal as stipulated in the underlining property Development Agreement between the parties.
3. And for such further orders as this honourable court may deem fit to make in the circumstances.

The grounds upon which the application is brought are;

- I. That the foundation of the instant suit is the Property Development Agreement dated the 31st of August 2017 between the 2nd Claimant and the 1st and 2nd Defendants.
- II. That by the said Property Development Agreement (Clause 22) any dispute arising out of the interpretation or determination of the rights of the parties with respect to any breach of terms by either party shall be referred to Arbitration.
- III. The Claimant have not explored the dispute resolution mechanism stipulated in the underlining agreement before approaching this Honourable Court.
- IV. That this Court lacks the requisite jurisdiction to entertain and adjudicate over this matter owing to non-compliance of condition precedent as agreed upon by the parties in the property agreement, particularly the settlement of dispute clause.

The Applicant filed a 7-paragraph affidavit in support of the motion, deposed to by Peter Akano, a litigation clerk at the Applicant's solicitors' law firm. Attached to this affidavit was a document, the Property Development Agreement dated 31/12/2017, marked as Exhibit A. Additionally, they filed a further and better affidavit.

In response, the Claimants/Respondents submitted a 10-paragraph counter-affidavit opposing the application, sworn by Sadiq Omeiza Kenneth, the General Manager of the 1st Claimant. They attached four documents, marked as Exhibits B, C, D, and E.

Exhibit B is a Letter of Intent/Offer to Purchase Plot 3524, Osun Crescent, Maitama dated October 21, 2021.

Exhibit C is Notification of Part-payment

Exhibit D is Cancellation of offer for sale of two units of 4 bedroom terrace Duplex dated 2nd June 2022.

Exhibit E is Re: letter of intent/offer to purchase Plot 3524 Osun Crescent, Maitama- Cancellation of offer for sale of two units of 4 bedroom terrace duplex dated 9th June, 2022. The Respondents also filled a further affidavit.

The Applicants asserted that the 2nd Claimant and the 1st and 2nd Defendants entered into a Property Development Agreement on 31/12/2017, which stipulates that any disputes between the parties must be referred to arbitration. They averred that the dispute resolution clause is a condition precedent to this lawsuit. Furthermore, they claimed that the subject matter of this suit is based on Exhibit A, with the 1st Claimant acting as an agent of the 2nd Claimant, as presented to the 1st and 2nd Defendants, and therefore bound by Exhibit A. The 1st Claimant's standing to sue is derived from being a party to Exhibit A, either as an agent or through the 2nd Claimant. They also contended that Exhibits B, C, D, and E derive their validity from Exhibit A, and that the inclusion of the 3rd Defendant as a party to this suit does not alter the relationship between the Claimants and the 1st and 2nd Defendants.

The Respondents averred that this suit is based on the Letter of Offer for purchase, notification of partial payment, cancellation of the offer by the 1st

Defendant to the 1st Claimant, and the 1st Claimant's response to the cancellation regarding the sale of four units of four-bedroom terrace duplexes with BQ and two units of five-bedroom semi-detached houses with BQ. They argued that while Exhibit A pertains solely to the development of the property and has no issues, it does not include any sale agreement. Additionally, the 1st Claimant and the 3rd Defendant are not parties to Exhibit A and are not bound by it. They further contended that the 1st Claimant is not an agent of the 2nd Claimant and that Exhibits B, C, D, and E attached to the counter-affidavit are unrelated to Exhibit A. The 1st Claimant's standing to sue is based on the cancellation of Exhibits B and C attached to the counter-affidavit, and the agreement for the sale of the property units, which is the subject matter of this suit, is not connected to any Property Development Agreement.

In its written address, the Applicant raised a sole issue for determination of the court to wit;

Whether by virtue of the Property Development Agreement between the 2nd Claimant and the 1st and 2nd Defendants dated the 31st of December 2017 referring to all dispute arising therefrom to arbitration, the court can assume jurisdiction over this matter without 1st resorting to arbitration?

The Applicant argued that before an action is instituted in court, the various condition precedent which ought to be satisfied must be exhausted before a court can be clothed with jurisdiction to hear a matter and recommended the case of *ABDULLAHI V. WAJE COMMUNITY BANK (2007) 7 NWLR (Pt.663) 9*, *BETA GLASS PLC V EPACO HOLDINGS LTD (2011) 4 NWLR (Pt.1237)223* and *AGBAREH V MIMRAH (2008) 2 NWLR (Pt.1071) 378*. He cited clause 22 of the Property

Development Agreement, which mandates arbitration, and stated that when a right is contingent on the occurrence of an event, that right cannot be established until the event occurs. He referenced the case of *ONWARD ENT. LTD V MV MATRIX* (2010) 2 NWLR (Pt. 1179) 530 CA, where it was held thus: once an arbitration clause is retained in a contract which is valid and the dispute is within the contemplation of the clause, the Court should give regard to the contract by enforcing the arbitration clause. It is therefore the general policy of the court to hold parties to the bargain into which they had entered, unless there was a strong compelling and justifiable reason to hold otherwise or interfere.

They contended that a combined reading of paragraphs 5 and 6 of the Statement of Claim leads to the undeniable conclusion that the 1st Claimant, by making payment on the subject matter of the Property Development Agreement with the consent and direction of the 2nd Claimant, acted as an agent of the 2nd Claimant or as a party deriving title from the 2nd Claimant. They argued that the Property Development Agreement forms the basis of the transaction between the Claimants and the 1st and 2nd Defendants. They referred the court to the case of *ASSET MANAGEMENT NOMINEES LTD V FORTE OIL PLC* (2023) 9 NWLR (Pt. 1889) 237 SC at 273, Paras D-F.

They urged the court to strike out this proceeding or in the alternative stay the proceeding and refer parties to Arbitral Tribunal. They relied on the cases of *AGBIZOUNON V NORTHERN ASSURANCE CO. LTD* (1934) 11 NIG LR 177, *CARLEN NIGERIA LTD V UNIVERSITY OF JOS* (1994) 1 NWLR (Pt.323) pg 631@660.

The Claimants/ Respondents in their written address formulated a sole issue for the determination of this court to wit;

“Whether the claims of the Claimants as constituted in the statement of claim has any bearing or relation with Exhibit A annexed to the affidavit in support of the Motion on Notice to warrant a referral to arbitration.”

They argued that for a court to assume jurisdiction over a matter, a fundamental requirement is that the Claimant's claim, as set out in the Statement of Claim, must meet the prerequisites established in GABRIEL MADUKOLU & ORS V. JOHNSON NKENDILIM (1962) 1 All NLR page 581. They asserted that Exhibits B, C, D, and E referred to in the counter-affidavit form the basis of the dispute among the parties. Moreover, the reliefs sought in the Statement of Claim involve transactions and claims that fall outside the scope of Exhibit A, as detailed in the affidavit supporting this application. They referenced the cases of KANO STATE GOVT. & ANOR V A.S.J GLOBAL LINKS (NIG) LTD (PP. 54-55 PARAS. C-C) and CHEVRON U.S.A INC & ANOR V. BRITTANIA-U (NIG) LTD & ORS (2018) LPELR-43519 (CA) (pp.66-67 para. D). They further contended that not all parties to this suit executed an agreement requiring arbitration. They called upon the Court to examine the circumstances that led to the cancellation of the sale agreement between the 1st Claimant and the 1st and 2nd Defendants and to nullify any sale made to the 3rd Defendant. They argued that Exhibit A, submitted in support of the motion, should not be the guiding instrument in resolving any issues related to the property sale in this suit, as neither the 1st Claimant nor the 3rd Defendant had any connection with Exhibit A. They also referred the court to SCHEEP & ANOR V. THE MV “S.ARAZ” & ANOR (2000) LPELR-1866 (SC) (PP. 69-70) where the Supreme Court held that “ It is true that a party to an agreement with an

arbitration clause has the option to either submit to an arbitration or to have the dispute decided by the court. The choice of arbitration does not bar a resort to the Court to obtain security for any eventual awards of the arbitrator in the absence of any provision for security for costs.” And also the case of CITY ENGINEERING (NIG) LTD V FHA (1997) LPELR-868 (SC) (pp. 25 Paras. A). They concluded by stating that this Court has the necessary powers to adjudicate on this suit and any reference to arbitration will be outside the agreement of parties.

I have perused the Application of the Applicants as well as the response and the issues that call for the determination of the Court to my mind is *“Whether this suit as filed by the Claimants/Respondents is based on issues that arose from Exhibit A (the Property Development Agreement between the 2nd Claimant and the 1st and 2nd Defendants) dated the 31st of December 2017”* if the 1st issue is answered in the positive then *“Whether the parties ought to have referred the matter to arbitration before filing this suit.”*

The entirety of the relief sought by the Applicants in this application is that the subject matter of this suit is based on Exhibit A attached to this application. They are calling upon the Court to decline jurisdiction since Clause 22 which is the arbitration clause has not been complied with.

“The Law is settled that it is an elementary principle for the determination of jurisdiction to consider the subject matter of claim as endorsed in the Writ of Summons and Statement of Claim. It is a fundamental principle of law that it is the claim of the Plaintiff that determines the jurisdiction of the Court which entertains

the claim. This is because the Court can only exercise jurisdiction to hear and determine the subject matter of the claim before it. Where such subject matter was within its jurisdiction and there is no feature in the case which precluded it from the exercise of its jurisdiction. That is that the claim before the Court must also be competent in the sense that it came before the Court initiated by due process of Law, and upon fulfillment of the necessary condition precedent to the exercise of jurisdiction. Of course, every Court can exercise jurisdiction for the purpose of determination whether it has jurisdiction to hear and determine a matter before it. This is not the same as the jurisdiction with respect to the subject matter of a claim which enables the Court to hear and determine the claim before it on its merits“Per Bage,J.C.A in *GLOBAL GAS & REFINING LTD V. VITOL & ORS* (2015) LPELR-50444 (CA) (PP. 19-20 PARAS. D). See *MADUKOLU & ORS. V. NKEMDILIM & ORS.* (1962) 1 ALL NLR 587 at 595; *BARCLAYS BANK LTD V. CENTRAL BANK LTD* (1976) 6 SC. 175; *SAVANNAH BANK OF NIGERIA LTD. V. PAN ATLANTIC SHIPPING AND TRANSPORT AGENCIES LTD & ANOR.* (1978)1 SC. 198 at 266; *DR. O. G. SOFEKAN V. AKINYEMI & ORS.* (1980) 5 - 7 SC. 1 at 22; *O.C. MAJOROH V. PROF. M. A. FASSASSI* (1987) 6 SC. 8 at 10.

I have gone through the claims of the Claimants as endorsed on the Writ in 10 paragraphs and the claims are based on a contract of sale between the 1st Claimant and the 1st and 2nd Defendants. I have also gone through the 32-paragraph Statement of Claim, particularly Paragraphs 5 and 6 relied upon by the Applicants, although the Property Development Agreement was referred to in the aforementioned paragraphs of the Statement of Claim, it was only done to explain a previous contractual relationship between the 2nd Claimant and the 1st and 2nd

Defendants. There are no claims or reliefs sought on breach or disputes arising from Exhibit A (the Property Development Agreement) or the interpretation or determination of the rights of the parties with respect to any breach of terms of Exhibit A. I agree with the Claimants/Respondents that the foundation of this suit is based on Exhibits B, C, D, and E attached to the counter-affidavit, rather than Exhibit A attached to the affidavit in support of the application. The reliefs sought in the Statement of Claim pertain to transactions and claims that fall outside the scope of Exhibit A. Having answered the 1st issue in the negative, I need not embark on the unnecessary exercise of answering the 2nd issue before refusing the application of the Applicant and it is accordingly dismissed.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimants/Respondents; Darlington Owoji, Esq. and Loretta Nnadike, Esq.

For the Defendants/Applicants; Adebayo Adedeji, SAN and Adanna Heartrice Ibe, Esq.

