

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. 13

CASE NUMBER : SUIT NO: CV/5048/2024

DATE: : TUESDAY 25TH FEBRUARY, 2025

BETWEEN:

ASSOCIATION OF NATIONAL ACCOUNTANTS OF NIGERIA } **CLAIMANT/
RESPONDENT**

AND

NATHAN CHRISTOPHER CONSTRUCTION } **DEFENDANT/
APPLICANT**

RULING

This Consolidated Ruling is made at the instance of **M/168/2025** dated 8th day of January, 2025 and filed on the 10th day of January, 2025 by Defendant/Applicant and Motion Number **M/16770/2024** dated on the 29th day of November, 2024 and filed on the 13th Day of December, 2024 by Claimant/Respondent respectively.

The aforementioned motions were consolidated when they both moved by the respective senior counsel on the 11th February, 2025.

A.T. Kehinde, SAN, moved application No. M/168/2025 for Defendant/Applicant, whereas Motion No. M/16770/2024 was moved by Sunny Ajala, SAN for Claimant/Applicant.

M/168/2025 is supported by affidavit, further affidavit and written address duly adopted in support of the application in view. The said application was brought pursuant to Section 5 (1) of the Arbitration and Mediation Act, 2023 and under the inherent jurisdiction of this Court seeking an Order granting a stay of further proceedings in this suit No **FCT/HC/5048/2024**, and for

such further order (s) as this court may deem fit to make in the circumstance.

The grounds upon which this application is brought are as follows:-

1. The disputes between the parties emanate from several documents that make up the contractual terms between the parties. Among these documents is a letter of award which refers to an arbitration clause, in which the parties donate all the disputes to arbitration under the Arbitration and Mediation Act 2023.
2. The dispute is already pending before arbitral tribunal vides a Notice of Arbitration filed on the 3rd day of May 2024 pursuant to the arbitration clause by reference to the Joint Contract Tribunal (JCT) for Standard form of building contract.
3. The arbitration clause expressly provides for the resolution of disputes arising from the contract through arbitration thus;

5.1.

"In case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or

***after the completion or abandonment of the works,
as..”***

5.1.2.

any matter or thing of whatever nature arising hereunder or in connection herewith including any matter or thing left by this Contract to the discretion of the Architect or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the adjustment of the Contract Sum under clause 30.6.2 or the right and liabilities of the unreasonable withholding of consent or agreement by the Employer or Architect on his behalf or by the Contractor, but

5.1.3.

Excluding any dispute or difference under clause 19A, under clause 31 to the extent provided in clause 31.9 and under clause 3 of the VAT Agreement,

Then such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties to act as Arbitrator, or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an Arbitrator, a person on the request of either party by the

President or Vice - President for the time being of the Royal Institute of British Architects.”

4. The Claimant/Respondent filed this suit on 15th November 2024 in defiance of the aforementioned dispute resolution clause as expressly provided in the enabling contract.
5. Failure of the Claimant/Respondent to comply with the dispute resolution clause as provided in paragraph 3 above undermines the principle of party autonomy and contract between the parties.
6. Granting a stay of proceedings in this suit in favour of arbitration would serve the interests of justice, promote judicial economy, and respect the principle of party autonomy in choosing the forum for dispute resolution.
7. The Arbitration and Mediation Act empowers this Honourable Court to stay proceedings where there is a valid arbitration agreement.

In support of the application, is an affidavit of 13 paragraphs duly deposed to by one Arinze Christopher, the Managing Director of the Applicant.

It is the deposition of the Defendant/Applicant that it was awarded a contract by the Claimant/Respondent, via a letter dated 7th July, 2021, Pursuant to the Letter of Award, two Articles of agreement were executed by the parties. The first Article of Agreement, dated 1st July 2021, was for the construction of the Administrative Block, Nigeria College of Accountancy, Kwall, Plateau State and the second Article of Agreement, dated 22nd September 2021 was for the construction of Gate House and 1 Kilometer Fence, Nigerian College of Accountancy, Kwall, Plateau State (Pages 11-12 of MFS1).

He referred to the letter of award (Page 13 of MFSI) sent by the Respondent to the Applicant, dated 7th July, 2021. In the second paragraph of the letter, that the Respondent made compliance with the Joint Contract Tribunal (JCT) standard form contract mandatory for the execution of the contract; the said paragraph states as follows;

"You are to execute the works and complete same in accordance with the contract conditions as in JCT form of Contract 1980 with quantities. You should forward your acceptance letter to the undersigned within two weeks from the date of this letter."

That from the above reproduced paragraph, the conditions in the Joint Contract Tribunal (JCT) for standard form of building contract were mandatory for the execution of the contract. The Applicant subsequently accepted the award on this basis.

That the Job Order, dated 22nd day of September 2021, was a variation of the initial award dated 7th July 2021 to add the construction of the Gate House and 1 Kilometer Fence at Nigerian College of Accountancy to the scope of works under the contract. (Job order-page 14 of MFSI).

The Applicant refers to the JCT attached to the letter of award (page 15-16 of MFS1), specifically in Article 5.

That in furtherance of the Arbitration, the Applicant equally filed its Points of Claim before the Arbitral tribunal. (Points of claim - Pages 22-28 of MFS1).

In line with the law and procedure, learned counsel for the Defendant/Applicant filed a written address wherein a sole issue was formulated for determination to wit;

Whether this Honourable Court should stay proceedings in light of the Arbitration clause and Arbitration proceedings which already ongoing?

Arguing on the above issue, learned counsel answered the question in the negative, reason being that there was a valid arbitration clause to which the disputes between the parties have been referred and couple with the fact that the Applicant initiated arbitration by serving a Notice of Arbitration on the 3rd day of May 2024, in compliance with the arbitration clause.

It is the argument of the learned counsel, that multiple documents define the obligations and terms between the parties. Therefore, the Court should consider all documents relating to the contract before determining what constitutes the terms and conditions binding the parties. He cited the case of ***NITEL TRUSTEES LTD. VS. SYNDICATED INV. HOLDINGS LTD. (2023) 5 NWLR (Pt. 1876) 93 at 119 Paragraphs B-D.***

Learned counsel further added that aside from the two articles of agreement and job order, there is also a Letter of Award, found on page 13 of this document, which expressly incorporates the Joint Contracts Tribunal Standard Form of Contract (JCT), which the parties are required to adhere to in executing the works under the Articles of the Agreement. The import of the letter of award would mean that any step taken in the execution of the

contract must abide by the JCT else the Respondent will be in breach of the terms of contract between the parties.

Learned counsel therefore submits, that the commercial terms in a transaction can be derived from multiple documents and submits that the Letter of Award forms part of the commercial terms governing the transaction between the parties for the following reasons:

The Articles of Agreement do not include any clause excluding external documents or pre-contractual communications from being part of the agreement.

The Letter of Award confirms that indeed a contract has been issued to the Applicant.

The Letter of Award contains binding commercial terms that required and received the Respondent's acceptance. The case of ***MBAT VS. MIN, FCT (2024) 16 NWLR (Pt. 1965) 451 at 486A-G*** was cited.

Learned counsel equally submits, that an arbitration agreement/clause can take several forms whether embedded within a contract or a separate document. He further cited Section 2(5) of the Arbitration and Mediation Act 2023 and the

case of ***NEURAL PROPRIETARY LTD. V. UNIC INS. JPLC (2016) 5 NWLR (PT. 1505) 374 at 384F-H.***

Learned counsel contends, that the Respondent nominated an arbitrator and sought concurrence or a fresh nomination from the Applicant in compliance with the arbitration clause. Under the arbitration clause the Applicant had 14 days after receipt of the notice of arbitration which had a request for concurrence on the appointment of the sole arbitrator. The Notice of arbitrator was delivered on the 3rd day of May, 2024 when the said 14 days would have expired on 17th day of May, 2024 when the Respondent failed to respond. The Applicant in accordance with the terms of the arbitration clause requested the Royal Institute of British Architects (RIBA) to appoint an arbitrator on 5th day of July, 2024. He cited the provision of section 5 (1) of the Arbitration and Mediation Act.

That the arbitration between the parties commenced six months before the Respondent instituted this application before this Court.

On the strength of the submissions made above and in the interest of justice, the court is urge to stay the proceedings in this case.

In conclusion, learned counsel further urge the court having agreed to resolve their disputes by Arbitration, to give effect to the said agreement by staying Court proceedings in this matter and allowing parties to ventilate their grievances before the arbitral tribunal.

Upon service, Claimant/Respondents filed 28 paragraphs counter affidavit duly deposed to by One John .O. Amah Legal Practitioner, and Director Legal Affairs of the Claimant/Respondent.

It is the Respondent's deposition, that paragraphs 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the said Defendant/Applicant's Affidavit are either false, half-truth and are hereby denied.

That on 1st July, 2021, the Claimant/Respondent and the Defendant/Applicant executed a contract for the construction of an administrative block within the premises of the Claimant/Respondent's training institute at Jos, Plateau State for the total sum of N850,000,000.00. A copy of the said contract is herein attached and marked as Exhibit "A".

That on 22nd September 2021, the Claimant/Respondent entered into another agreement with the Defendant/Applicant for the construction of a gatehouse and one-kilometre fence at the Claimant/Respondent's training Institute at Jos, Plateau State for

the total sum of N290,000,000.00. A copy of the said contract is herein attached and marked as Exhibit "B".

That contrary to paragraph 6 of the Defendant/Applicant's affidavit, the Claimant/Respondent did not via a letter dated 7th July, 2021 or any letter whatsoever award a contract to the Defendant/Applicant.

That by virtue of his position as the Director Legal and Council Affairs of the Claimant/Respondent, the Letter of Award is issued before the execution of a formal contract and not after the execution of contracts.

That further to the above, the Claimant/Respondent could not have issued and did not issue the Letter of Award of contract dated 7th July 2021 to the Defendant/Applicant which was purportedly issued seven (7) days after the execution of Article of Agreement on 1st July 2021 by the parties.

That the Letter of Award dated 7th July 2021 attached to the Defendant/Applicant's Affidavit and which purportedly made conditions in the Joint Contract Tribunal for Standard Form of Building contract (JCT) mandatory for the execution of the contract was not issued by the Claimant/Respondent or its governing body neither was it conveyed on the

Claimant/Respondent's letterhead nor signed by the Claimant/Respondent's Chief Executive Officer at the time.

That all agreements, written communications and correspondences pertaining to the contract between the Claimant/Respondent and the Defendant/Applicant herein have at all times been signed by the Chief Executive Officer of the Claimant/Respondent and in cases of written communications/correspondences, same is written on the letterhead of the Claimant/Respondent.

That the Chief Executive Officer of the Claimant/Respondent as of 2021 when both Articles of Agreement were executed was Dr. Nurudeen Abba Abdullahi, mni, FCNA and the said Dr. Nurudeen Abba Abdullahi mni, FCNA signed the agreements dated 1st July 2021 and 22nd September 2021 on behalf of the Claimant/Respondent and all other communications relating to the said agreements inclusive of the job order attached to the Defendant/Applicant's Affidavit.

That the Nigerian College of Accountancy College Board, which is the training arm of the Claimant/Respondent, cannot award contracts or issue award letters on behalf of the Claimant/Respondent neither can the Nigerian College of

Accountancy College Board communicate, specify or alter clauses not stated or provided for in a contract executed by the Claimant/Respondent herein.

That the terms and conditions as contained in the two contractual Instruments made on the 1st July, 2021 and 22nd September, 2021 respectively executed by the parties contained no clause for arbitration in the event of dispute between the parties.

That the two contractual instruments made on 1st July, 2021 and 22nd September, 2021 and nothing else constitute the bedrock for the adjudication of dispute of all descriptions arising therefrom between the Claimant/Applicant and the Defendant/Respondent.

That no clause in the Articles of Agreement executed between the Claimant/Respondent and the Defendant/Applicant expressly or impliedly references any JCT Contract.

That contrary to the averment of the Defendant/Applicant, the Nigerian College of Accountancy Board cannot by a letter make the conditions in the Joint Contract Tribunal (JCT) for Standard form of building contract mandatory for the execution of a contract it never entered into.

That further contrary to the averment of the Defendant/Applicant, the Letter of Award dated 7th July 2021 from the Nigerian College of Accountancy did not make any reference to any attachment and did not attach any Joint Contract Tribunal (JCT) for Standard form of building contract to the said Letter of Award neither has the Defendant/Applicant evidence such attached agreement.

That the Defendant/Applicant has deliberately refused to annex or produce a complete copy of the said Joint Contract Tribunal (JCT) for Standard form of building contract before this Honourable Court as same was never executed by the Claimant/Respondent nor the Defendant/Applicant.

That none of the clauses of the said Joint Contract Tribunal for Standard form of building contract (JCT) referred to the Claimant/Respondent and Defendant/Applicant, the scope of work and other fundamental details relating to the Articles of Agreements.

That contrary to the averment of the Defendant/Applicant in paragraph 9 of its Affidavit, the second Article of Agreement dated 22nd September, 2021 is for a completely different construction work and not a job order in variation of the initial contract/Article of Agreement dated 1st July, 2021.

That further to the above, there is nothing in the Article of Agreement dated 22nd September, 2021 varying the scope of work or other details contained in the Article of Agreement executed on 1st July, 2021.

That the Defendant/Applicant has not annexed any formal contract executed by the parties herein or written communication from the Claimant/Respondent containing an arbitration clause.

That contrary to paragraphs 11 and 12 of the Defendant/Applicant's Affidavit, the Claimant/Respondent has at all times maintained its stance that there is no arbitration clause in the Article of Agreements executed between the Claimant/Applicant and has refused to give its consent or partake in any arbitral proceedings on the subject matter.

That it will be in the interest of justice to dismiss the instant application for being frivolous and lacking in merit as the subject matter of the suit is squarely within the authority and power of the Court to adjudicate upon.

Learned counsel for the Claimant/Respondent filed written address, wherein, sole issue was raised for determination to wit:-

Whether considering the circumstances of this application, the Defendant/Applicant's application ought not to be dismissed for being baseless, frivolous and grossly lacking in merit?

Learned counsel submits, that the instant application of the Defendant/Applicant seeking to stay the proceedings of this Honourable Court is baseless, frivolous and grossly lacking in merit reason being that the Constitution is the ground norm of all the laws and all inter-institutional qua institution relationships. The case of **ATTORNEY GENERAL OF THE FEDERATION VS. ATTORNEY GENERAL OF ABIA STATE & 35 ORS., (2001) 11 NWLR (Pt. 725), 689** and section 6 (6) (a) of the 1999 Constitution of the Federal Republic of Nigeria, were cited in which this court is vested with the powers to do exhaustive justice and function effectively in the adjudication of disputes of all descriptions between the parties.

Learned counsel argues, that the salient features of this case do not support the instant application of the Defendant/Applicant before the court. The Claimant/Respondent had in the counter-affidavit deposed to copious facts that the relationship between the parties was reduced in writing thereby excluding extraneous

materials not expressly stated in exhibits A and B annexed to the counter-affidavit.

Learned counsel submits, that it is settled law that parties cannot by contract oust the Court of its jurisdiction. However, parties can or may covenant that no right of action shall accrue till a third person has decided on any difference that may arise between the parties. That is what is known as a ***SCOTT VS. AVERY*** type of arbitration clause which makes reference to arbitration and an award thereof by the Arbitrator a condition precedent to approaching the Court to seek redress through a lawsuit. He cited ***HANOVER TRUST LTD. VS. UNIQUE VENTURES CAPITAL MANAGEMENT CO. LTD. (2015) AFWLR (Pt. 788) 881 at 911, paragraphs D-F.***

The Claimant/Respondent and the Defendant/Applicant signed Exhibits "A" and "B" that contain no clause for arbitration in the event of dispute. Therefore, there is no basis for the purported unilateral invocation of arbitration as purported by the Defendant/Applicant. The Claimant/Respondent did not sign any other contractual instrument with the Defendant/Applicant outside Exhibits "A" and "B". The case of ***JEGEDE VS. FEDERAL***

REPUBLIC OF NIGERIA (2013) All F.W.L.R. (Pt. 666) was cited.

The Defendant/Applicant have contends in its written address that there are other documents apart from the Articles of Agreements executed on 1st July 2021 and 22nd September, 2021 such as a Job Order and Letter of Award dated 7th July, 2021 that govern the relationships between the parties herein. The Defendant/Applicant further contended that the said Letter of Award which is annexed to its Affidavit referred to the Joint Contracts Tribunal (JCT) Standard Form of Contract which has embedded in it an arbitration clause. Thus, by the doctrine of Incorporation by Reference, the Job Order and Letter of Award dated 7th July, 2021 equally constitute primary documents in the transactions between the parties. In response, the Defendant/Applicant has not denied that the Article of Agreement executed by the parties does not contain an arbitration clause. Rather, the Defendant/Applicant has erroneously urged this Honourable Court to rely on the doctrine of incorporation by reference to hold that there is an arbitration clause based on the Job Order and the Letter of Award dated 7th July, 2021.

Learned counsel submits, that contrary to the submissions of the Defendant/Applicant, the doctrine of incorporation by reference does not apply to the instant case, as there are no other documents between the parties outside the Articles of Agreement that either expressly or by implication incorporates an arbitration clause. Furthermore, the Articles of Agreement themselves contain no arbitration clause. He cited ***N.B.C. PLC VS. EKPO (2020) LPELR – 51997 (CA) Pages 19 - 21 Paragraph F.***

It is further the argument of the learned counsel, that a cursory look at the Letter of Award dated 7th July, 2021 will reveal that it is not a document emanated from the Claimant/Respondent herein as it was not conveyed on the Letterhead paper of the Claimant/Respondent nor signed by its Chief Executive Officer at the time, who was at all times signed all relevant documents and agreements pertaining to the contracts on behalf of the Claimant/Respondent.

Learned counsel further contends, that the Claimant/Respondent could not have issued a Letter of Award seven (7) days after the Article of Agreement has been duly executed by the parties and further asking the Defendant/Applicant to accept the award

within 2 weeks after the parties have duly executed a valid contract in the form of Exhibit "A".

Learned counsel submits that Exhibits "A" and "B" never Incorporated the purported Letter of Award dated 7th July 2021 neither is the author of the said Letter of Award a party to Exhibits "A" and "B" so as to bind the Claimant/Respondent or alter or introduce new clauses or documents. In the circumstances of the clear and express provisions of Exhibits "A" and "B", counsel contends that there is no basis for the stay of proceedings of this Honourable Court based on the purported unilateral invocation of arbitration by the Defendant/Applicant together with the purported appointment of the purported Sole Arbitrator over the dispute between the parties that is rightly before this Honourable Court. He cited the case of ***MOHAMMED VS. MOHAMMED (2012) 11 NWLR (Pt. 1310) 1 at 34-35, paragraphs G - A.***

It is further the argument of the learned counsel, that the Defendant/Applicant had alleged that the Joint Contract Tribunal (JCT) Standard Form of Building Contract was attached to the Letter of Award dated 7th July, 2021, however, the Defendant/Respondent deliberately failed to produce the Joint

Contract Tribunal (JCT) Standard Form of Building Contract as attached to the said Letter of Award as same clearly does not support the contention of the Defendant/Respondent. Counsel therefore submits that this amounts to withholding of evidence under Section 167 (d) of the Evidence Act and the court is urged to so hold. He further cited the case of ***ODUOYE & ANOR VS. AJAYI & ORS. (2015) LPELR - J40527 (CA) Page 75-76 Paragraphs B-B.***

Learned counsel further contends, that the Defendant/Applicant having deliberately failed to annex the entire and complete Joint Contract Tribunal (JCT) Standard Form of Building Contract to its Counter Affidavit, this Honourable Court cannot act on nor ascribe probative value to such an incomplete or mutilated document. The case of ***HADYER TRADING MANUFACTURING LTD. & ANOR VS. TROPICAL COMMERCIAL BANK (2013) LPELR – 20294 (CA) Pages 58 – 60.***

Learned counsel urges the court to discountenance the faulty submissions of the Defendant/Applicant as they rest on a fundamentally erroneous premise and lack merit.

The court is urged to resolve the lone issue in favour of the Claimant/Respondent and dismiss the instant application of the Defendant/Applicant.

In conclusion, learned counsel urged the court to dismiss the instant application of the Defendant/Applicant for grossly lacking in merit.

In turn, Defendant/Applicant filed 15 paragraphs further affidavit duly deposed to by Arinze Christopher, Managing Director of the Defendant/Applicant in this matter wherein all paragraphs of the Claimant/Respondent's counter-affidavit are denied as if laid out and traversed seriatim.

That he has no response to paragraph 6, where the Respondent referred to this application as frivolous, vexatious and an abuse of court process, because that determination can only be made by this Honourable Court at the close of hearing.

In response to paragraphs 7, 8 and 9. He states that the flow of communication was such that Dr. Kayode O. Fasua, FCNA who was the Director General (D.G.) NCA and now the CEO of ANAN) the exam body of ANAN i.e "the College of Accountancy" could make certain communications because the project in question was in Jos and in the college of education.

That the letter of Award issued to the Project Manager (KEJOD Associates Limited/GOCH Associates Limited also came from the D.G under the joint letter head of the college of Accountancy and ANAN as was done with the Applicant's letter of award and dated 7th July 2021, same as with the Applicant's letter of award. The letter of award to the Project manager is on page 1 of Exhibit "NCCL2".

That in response to paragraphs 10 -13, he further states that the date for the issuance of the letter of award was not within the control of the Applicant, the Applicant was simply interested in signing same and knowing what conditions would apply to the contract as stated in the Article of Agreement.

That in response to paragraph 14, he emphasized the point above on the award letter of the project issued in the like manner and on the same date as the award letter to the Applicant.

In response to paragraph 15, he states that the said information on the powers of the college of education to influence the general affairs of ANAN is an information that pertains to the internal administrative control within ANAN and arms, departments or establishments.

He further states that a meeting was held between ANAN, the project manager and the Applicant on 10th December 2022 and the decisions reached was prepared and sent to him and signed by the same Dr. Kayode .O. Fasua FCNA but the Chief Executive officer of ANAN. The letter is relied upon and found on pages 2 and 3 of Exhibit "NCCL2".

That the college of Education is not an entity separate from ANAN the Association of National Accountants of Nigeria Act, managed and directed by ANAN. He further refers to paragraph 15 of the Respondent's counter affidavit.

That that the Nigerian College of Accountancy College Board, which is the training arm of the Claimant Respondent.

That in response to the other paragraphs of the counter-affidavit, he relies on the affidavit in support of this application and further refers to the complete Joint Contract Tribunal (JCT) Agreement Pages 4 to 65 of Exhibit "NCCL 2".

Learned counsel for the Defendant/Applicant filed a Reply on points of law.

Learned counsel submits, that the crux of the Defendant's argument is that the contract award letter issued on 7th July, 2021, bearing a joint letterhead of the Nigerian College of Accountancy (NCA) and the Association of National Accountants of Nigeria (ANAN) does not bind the ANAN. The Defendants further contends that NCA acted independently in issuing the letter and that ANAN bears no responsibility for the commitments.

Learned counsel submits in response, that the Nigerian College of Accountancy is an institution created under the statutory framework of ANAN and functions as its educational arm. Institution established under a statutory body do not possess independent legal personalities separate from the body unless the law expressly grants them autonomy.

The Court is urged to agree that the letter of award was properly issued and is binding on ANAN. Learned counsel based his argument under three points;

- a. The ANAN Act defines the NCA as the training arm of ANAN
- b. The letter of award was issued under a joint letterhead signed by the then Director General of NCA.

c. The Director General of the NCA later became the Executive officer of ANAN during the pendency of the contract.

He refers the court to section 20 of the ANAN Act. Which defines the NCA as;

"Nigerian College of Accountancy" means the institution established as the training arm of the Association,

This definition captures the intention of the law, which is that the NCA should be an adjunct or alter ego of ANAN.

It is the learned counsel's submission that the NCA under the complete control of ANAN such that the college is like an agent of ANAN to carry out its training activities.

Learned counsel submits that it is evident from the facts of this case that the Nigerian College of Accountancy (NCA) and the Association of National Accountants of Nigeria (ANAN) are intrinsically linked such that NCA functions as an extension of ANAN rather than an independent entity.

It is the argument of the learned counsel that the contract award letter in question was issued on a joint letterhead of both ANAN and NCA, and it was signed by the then Director-General of NCA, who subsequently became the Chief Executive Officer of ANAN

during the pendency of the project and remains its current CEO of ANAN. This sequence of events underscores the inextricable link between NCA and ANAN, it further reinforces the position that ANAN cannot repudiate a commitment made through its own subsidiary body particularly where its senior official now its CEO, played a central role in the execution of the document. Furthermore where a statutory body creates an institution as part of its structure and exercises control over it, the institution's actions within its operational scope must be deemed acts of the parent body. To hold otherwise would allow statutory bodies to evade obligations by merely attributing liabilities to their internal institutions without conferring them independent legal personality.

Learned counsel contends that the letter of award was issued on a letterhead, signifying that both NCA and ANAN endorsed the communication. A joint letterhead inherently reflects institutional affiliation and common authority, demonstrating that NCA operates under the control and oversight of ANAN. Secondly, the Director-General of NCA, who signed the letter of award later assumed the position of Chief Executive Officer of ANAN during the pendency of the contract. This transition highlights the fluid and interconnected leadership between the two entities, further

reinforcing that NCA is not a separate legal entity but an arm of ANAN.

Learned counsel therefore submits, that ANAN cannot disassociate itself from the obligations undertaken through NCA, as doing so would amount to an artificial distinction between what is in reality, a related operational structure. Therefore, ANAN remains bound by the commitments made under the joint letterhead by its own official, both at the time of issuance and subsequently as the head of ANAN.

On their part, Claimant/Respondent filed further counter affidavit duly deposed to by Emmanuel Tsebo legal practitioner in the law firm of the Respondent counsel.

It is his deposition that paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of the said Further Affidavit are either half-truth or false and are hereby denied.

That there was no flow of communication that permit the Director General of the Nigerian College of Accountancy or its Board to make any decisions about awarding contracts on behalf of the Claimant/Respondent, or specify or alter the terms of agreement duly entered into by the Claimant/Respondent.

That the Claimant/Respondent never issued any letter of award to the Project Manager (KEJOD Associates Limited/GOCH Associates Limited).

That all communications relating to the contract entered into with the Defendant/Applicant had always been from the Chief Executive Officer of the Claimant/Respondent and not any other person or entity.

That it will be in the interest of justice to dismiss the instant application for being frivolous and lacking in merit as the subject matter of the suit is squarely within the authority and power of the Court to adjudicate upon.

On Motion **M/16770/2024**, Counsel on behalf of the Claimant/Applicant pray for the following:-

1. An Order of this Honourable Court staying further proceedings and/or hearing in the purported arbitral proceedings unilaterally invoked by the Defendant/Respondent with the Claimant/Applicant herein as a Defendant in the absence of an arbitration clause in the contractual instruments made on 1st July, 2021 and 22nd September, 2021 respectively by the parties herein pending

the hearing and determination of the instant lawsuit before the Court.

2. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds of this application are:-

1. That on 1st July, 2021, the Claimant/Applicant and the Defendant/ Respondent executed a contract for the construction of an administrative block within the premises of the Claimant/Applicant's training institute at Jos, Plateau State for the total sum of **N850,000,000.00**
2. That on 22nd September 2021, the Claimant/Applicant entered into another agreement with the Defendant/Respondent for the construction of a gatehouse and one-kilometre fence at the Claimant/Applicant's training Institute at Jos, Plateau State for the total sum of **N290,000,000.00.**
3. That out of the total contract sum of **N1,387,464,895.95 (One Billion, Three Hundred and Eighty Seven Million, Four Hundred and Sixty-Four Thousand, Eight**

Hundred and Ninety-Five Naira and Ninety Five Kobo)
for the two projects inclusive of the subsequent Variations and Fluctuations claims, the Claimant/Applicant has paid to the Defendant/Respondent, the total sums of **N1,081,772,401.42 (One Billion, Eighty-One Million, Seven Hundred and Seventy-Two Thousand, Four Hundred and One Naira and Forty-Two Kobo).**

4. That the terms and conditions as contained in the two contractual Instruments made on 1st July, 2021 and 22nd September, 2021 respectively executed by the parties contained no clause for arbitration in the event of dispute between the parties.
5. That the two contractual instruments made on 1st July, 2021 and 22nd September, 2021 and nothing else constitute the bedrock for the adjudication of dispute of all descriptions arising therefrom between the Claimant/Applicant and the Defendant/Respondent.
6. That the core mandate of the Claimant/Applicant is the professional training of aspiring Nigerians to qualify as certified accountants.

7. That the Claimant/Applicant is neither a member or affiliate to any construction regulating body nor did the Claimant/Applicant subscribe to the operational guidelines of such construction regulating body for the Claimant/Applicant to be bound by the rules of construction engagement peculiar to the Defendant/Respondent including arbitral proceeding in the event of dispute between the Defendant/Respondent and non-affiliate persons/entity such as the Claimant/Applicant.
8. That the Claimant/Applicant received a notice of arbitration vide the Defendant/Respondent's Solicitors' letter dated 3rd May, 2024.
9. That the Claimant/Applicant subsequently received emails made on 20th July, 2024 and 22nd July, 2024 from one Mr. Michael Cover with address in London, informing the Claimant/Applicant of his appointment as the sole Arbitrator in the dispute between the Claimant/Applicant and the Defendant/Respondent.
10. That the Claimant/Applicant through its Solicitors letter dated 22nd July, 2024 protested vehemently about the seemingly ambushed unilateral invocation of arbitral

proceeding by the Defendant/Respondent in spite of the fact that the contractual instruments executed by the parties are destitute of any clause for reference to arbitration in the event of dispute.

11. That the facts and/or series of facts that culminated in the suit before this honourable court, as well as the proceedings before the purported sole arbitrator took place exclusively within the Federal Republic of Nigeria arising out of contractual instruments executed in Nigeria and for implementation in Nigeria.
12. That the constitutional right of the Claimant/Applicant will be grossly compromised if hearing in the purported construction arbitration proceeding is not stayed pending the hearing and determination of the suit before this Court as the Claimant/Applicant.
13. That the Claimant/Applicant will suffer great injustice as the Defendant/Respondent who has received the total sum of **N1,081,772,401.42 (One Billion, Eighty-One Million, Seven Hundred and Seventy Two Thousand, Four Hundred and One Naira, Forty Two Kobo)** from the Claimant/Applicant and failed to discharge its contractual

obligation will simply be utilizing the Claimant/Applicant funds for the arbitration that is alien to the contractual instrument executed by the parties herein.

14. That the Claimant/Applicant as a responsible and law-abiding citizen chartered by the Act of the National Assembly of Nigeria is committed to diligent prosecution of its pending lawsuit before the honourable court in furtherance of the Sovereignty of the 1999 Constitution of the Federal Republic of Nigeria and due process of the law.
15. That the Defendant/Respondent will not be prejudiced by the grant of this application as the subject matter of the suit is squarely within the authority and power of the Court to adjudicate upon.

The application is supported by 23 paragraph affidavit deposed to by John .O. Amah Esq., Legal Practitioner and Director Legal of the Claimant/Applicant in this matter.

It is his deposition that on 1st July, 2021, the Claimant/Applicant and the Defendant/Respondent executed a contract for the construction of an administrative block within the premises of the Claimant/Applicant's training institute at Jos Plateau State for the

total sum of **N850,000,000.00**. A copy of the said contract is herein attached and marked as Exhibit "A".

That on 22nd September, 2021, the Claimant/Applicant entered into another agreement with the Defendant/Respondent for the construction of a gatehouse and one-kilometre fence at the Claimant/Applicant's training institute at Jos, Plateau State for the total sum of **N290,000,000.00**. A copy of the said contract is herein attached and marked as Exhibit "B".

That out of the total contract sum of **N1,387,464,895.95 (One Billion, Three Hundred and Eighty Seven Million, Four Hundred and Sixty Four Thousand, Eight Hundred and Ninety Five Naira and Ninety Five Kobo)** for the two projects inclusive of the subsequent Variations and Fluctuations claims, the Claimant/Applicant has paid to the Defendant/Respondent, the total sums of **N1,081,772,401.42 (One Billion, Eighty-One Million, Seven Hundred and Seventy Two Thousand, Four Hundred and One Naira and Forty-Two Kobo)**.

That the terms and conditions as contained in the two contractual Instruments made on 1st July, 2021 and 22nd September, 2021 respectively executed by the parties contained no clause for arbitration in the event of dispute between the parties.

That the two contractual instruments made on 1st July, 2021 and 22nd September, 2021 and nothing else constitute the bedrock for the adjudication of dispute of all descriptions arising therefrom between the Claimant/Applicant and the Defendant/Respondent.

That the Claimant/Applicant is neither a member or affiliate to any construction regulating body nor did the Claimant/Applicant subscribe to the operational guidelines of such construction regulating body for the Claimant/Applicant to be bound by the rules of construction engagement peculiar to the Defendant/Respondent including arbitral proceeding in the event of dispute between the Defendant/Respondent and non-affiliate persons/entity such as the Claimant/Applicant.

That the Claimant/Applicant received a notice of arbitration vide the Defendant/Respondent's Solicitors' letter dated 3rd May, 2024. A copy of the said notice of arbitration is herein attached and marked as Exhibit "C".

That Claimant/Applicant subsequently received emails made on 20th July, 2024 and 22nd July, 2024 from one Mr. Michael Cover with address in London, informing the Claimant/Applicant of his appointment as the sole Arbitrator in the dispute between the Claimant/Applicant and the Defendant/Respondent. Copies of the

said letters from Mr. Michael Cover are herein attached and marked as Exhibits "D" and "E" respectively.

That the Claimant/Applicant through its Solicitors letter dated 22nd July, 2024 protested vehemently about the seemingly ambushed unilateral invocation of arbitration by the Defendant/Respondent stressing that the Defendant/Respondent has rebuffed all entreaties to supply the Claimant/Applicant the foundational document signed by the parties that is the basis of the purported appointment of the purported Sole Arbitrator (Mr. Michael Cover) since the contractual instrument between the parties made on 1st July, 2021 and 22nd September, 2021 are destitute of any clause for reference to arbitration in the event of dispute. A copy of the said protest letter is herein attached and marked as Exhibit "F".

That the facts and/or series of facts that culminated to the suit before this honourable court and the purported sole arbitrator sitting in London took place exclusively within the Federal Republic of Nigeria and the said facts pertain to contractual instruments executed in Nigeria and for implementation in Nigeria.

That the Defendant/Respondent's unilateral invocation of the purported construction arbitration proceeding, in the absence of an arbitral clause is strange, contrary to public policy and

potentially undermines the constitutional right of the Claimant/Applicant that its relationship with the Defendant/Respondent is subject only to the adjudicatory powers of the courts established by the laws of the Federal Republic of Nigeria.

That the Constitutional Right of the Claimant/Applicant will be grossly compromised if hearing in the purported construction arbitration proceeding is not stayed pending the hearing and determination of the suit before this Honourable Court. The Claimant/Applicant has already expended substantial resources in financing the construction contract that the Defendant/Respondent abandoned and therefore will be exposed to huge costs and grave hardship to sponsor the purported arbitral proceeding billed in Great British Pounds, a foreign currency that imposes undue financial burden beyond the terms of the contractual instruments executed by the parties.

That the Claimant/Applicant will suffer great injustice as the Defendant/Respondent who has received the total sum of **N1,081,772,401.42 (One Billion, Eighty-One Million, Seven Hundred and Seventy-Two Thousand, Four Hundred and One Naira, Forty-Two Kobo)** from the

Claimant/Applicant and failed to discharge its contractual obligation will simply be utilizing the Claimant/Applicant funds for the arbitration that is alien to the contractual instrument executed by the parties herein.

That the Claimant/Applicant as a responsible and law-abiding citizen chartered by the Act of the National Assembly of Nigeria is committed to diligent prosecution of its pending lawsuit before the Honourable Court in furtherance of the Sovereignty of the 1999 Constitution of the Federal Republic of Nigeria and due process of the law.

That the Defendant/Respondent will not be prejudiced by the grant of this application as the subject matter of the suit is squarely within the authority and power of the Court to adjudicate upon.

That the issues submitted to this Honourable Court for adjudication will resolve the same series of facts that the Defendant/Respondent submitted to the sole arbitrator that the Defendant/Respondent unilaterally invoked.

Respondent's counter affidavit in opposition to the Application.

Upon service, Defendant/Respondent filed 21 paragraph counter affidavit in opposition to the Claimant/Applicant's motion duly deposed to by Arinze Christopher, Managing Director of the Defendant/Respondent.

It is his deposition that all paragraphs of the Applicant's affidavit are denied and if laid out and traversed seriatim.

That he has no knowledge of the facts deposed in paragraphs 1, 2, 3, 4, 5 and 6 of the Applicant's affidavit, as they relate solely to the deponent's personal credentials, employment history, and the Applicant's internal functions.

In response to paragraph 9, he states that the sums paid in the project have been paid in compliance with construction milestone attainment and general construction procedures.

As to paragraphs 10, 11 and 12, he refers to the letter of award (page 6 of NCCL1) sent by the Applicant to the Respondent, dated 7th July, 2021 in the second paragraph of the letter. That the Applicant made compliance with the Joint Contract Tribunal (JCT) standard form contract mandatory for the execution of the contract.

That the second article of agreement dated 22nd day of September 2021, was issued as a job order in variation of the initial contract award dated 1st July, 2021. (Job order - page 7 of NCCL1).

In further response, he refers to the JCT incorporated into the contract and attached to the letter of award (page 8 & 9 of NCCL 1), specifically in Article 5.

That the notice of arbitration was sent on the 3rd day of May, 2024 and the Respondent applied to the Royal Institute of British Architects (RIBA) for appointment of a sole Arbitrator on the 5th day of July, 2024 (Application for appointment and appointment of arbitrator form on page 11 of NCCL1).

In further response, he states that the Claimant did not respond to the Notice of Arbitration, which sought concurrence on the appointment of an arbitrator, between 3rd May, when the notice was received, and 18th May, 2024, as required under the arbitration clause.

That he is aware that the Respondent submitted an application to the Royal Institute of British Architects (RIBA) on the 26th day of May, 2024, requesting the appointment of an Arbitrator, subsequently, on the 3rd day of July, 2024, the Applicant applied

for a 21-day extension of time to appoint an Arbitrator. The Respondent strongly opposed this application (Letter Opposing Application for Extension of Time to Appoint an Arbitrator, page 17 & 18 of NCCL1).

With respect to paragraphs 15, 16, and 17 of the Applicant's affidavit, he relies on paragraphs 10-13 and further states that the arbitration between the parties is governed by the Arbitration and Mediation Act, 2023, which is the Nigerian legislation that applies to the resolution of their dispute.

In response to paragraphs 18 and 19, he further states that the issues contained in those paragraphs pertain to the substantive issues of dispute between the parties which can be submitted before the Arbitral Tribunal.

That he has no knowledge of the facts deposed in paragraph 20 of the Applicant's affidavit, as they relate solely to the deponent's opinion/knowledge of the Claimant's character and tendency to abide by the law, which he do not know.

In response to paragraphs 21 and 22, he referenced paragraphs 10, 12 and further states that the Arbitration was instituted in compliance with the Joint Contracts Tribunal (JCT), which was attached to the letter of award.

In line with the law, learned counsel for the Defendant/Respondent filed written address wherein sole issue was formulated for determination to with;

In view of the entirety of the facts, documents, and contractual provisions governing the relationship between the parties and considering the established principles of law, should this Honourable Court grant the Applicant's motion seeking an anti-arbitration injunction?

Arguing on the above issue, learned counsel answered this question in the negative by reason of, the articles of Agreement presented as Claimant's Exhibits "A" and "B", do not represent the entirety of the contractual relationship between the parties and that the Legal jurisprudence strongly disfavors the granting of anti-arbitration injunctions where there is an agreement to arbitrate.

Learned counsel argues, that multiple documents define the obligations and terms between the parties. Therefore, the Court should consider all documents relating to the contract before determining what constitutes the terms and conditions binding the parties. He cited the case of ***NITEL TRUSTEES LTD..***

***SYNDICATED INVESTMENT HOLDINGS LTD. (2023) 5
NWLR (Pt. 1876) 93 at 119 Paragraphs B-D.***

Learned counsel submits that the Articles of Agreement, presented as Claimant's Exhibits "A" and "B". do not constitute the entire documents making up the transaction between the parties. The Letter of Award, found on page 6 of this document, expressly incorporates the Joint Contracts Tribunal (JCT), Standard Form of Contract which the parties are required to adhere to in executing the works under the Articles of Agreement.

Learned counsel further contends that the incorporation by reference makes the Joint Contracts Tribunal (JCT), conditions an integral part of the contractual relationship between the parties, contrary to the Claimant's assertion that the Article of Agreement are the sole documents governing their relationship.

The primary documents governing the transaction between the parties are the Letter of Award, which confirms the award of the contract to the Respondent, the Job Order and the two Articles of Agreement. Notably, the Letter of Award not only references the Joint Contracts Tribunal (JCT) but also includes it as an attachment. The Respondent reviewed the terms of the Letter of

Award and the contents of the Joint Contracts Tribunal (JCT) and accepted them within the stipulated time frame.

Learned counsel submits that an arbitration agreement/clause can take several forms whether embedded within a contract or a separate document. He refers this Court to Section 2(5) of the Arbitration and Mediation Act 2023.

Learned counsel further submits, that the referenced arbitration clause is valid accordingly, the ongoing arbitration between the parties is both proper and in full compliance with their agreement in this matter. The legal jurisprudence in Nigeria, coupled with statutory provisions strongly disfavors the granting of anti-arbitration injunctions. This principle is well established in both case law and statutory authority. He cited section 64 of Arbitration and Mediation Act.

Learned counsel submits, that granting the Applicant's motion for an anti-arbitration injunction would contravene well-established principles of Nigerian legal jurisprudence and statutory provisions.

It is further the learned counsel's contention, that injunctive relief is an equitable remedy that requires the Applicant to approach the Court with clean hands. The Applicant's conduct raises serious concerns about its good faith. The Applicant has also shown an

intention to stall the dispute resolution process, recall that the notice of Arbitration was dated 3rd May, 2024 and served on Applicant on the same day in which the Respondent nominated an arbitrator and requested a concurrence from the Respondent. Having waited long after the required window of 14 days, the Applicant then wrote to RIBA as the appointing authority to make the appointment of the sole arbitrator on the 5th day of July.

The Applicant after delaying and ultimately refusing to respond on the appointment of the sole Arbitrator, then wrote to RIBA for an extension of 21 days for the appointment of an Arbitrator, all of these points which were concealed in its application to the Court does not reflect a clear intention of genuine interest for the resolution of the dispute between parties. On this, the case of ***OILFIELD SUPPLY CENTRE LTD. VS. JOHNSON (1987) 2 NWLR (Pt. 58) 625 at 6400D*** was cited.

In conclusion, learned counsel contends that the Applicant has not approached the court with clean hands, having concealed critical information, employed delay tactics in the resolution of dispute between the parties as shown a lack of respect for the observance of contractual terms between the parties.

COURT:-

The gamut of the respective applications touches on stay of proceedings pending conclusion of Arbitration on the one hand, and staying Arbitral proceedings pending the hearing and determination of the instant suit pending before this court.

Permit me to note that parties generally are bound by the Terms of Contracts freely entered into.

Above therefore underscores the importance of sanctity of contract.

See ***FEDELITY BANK PLC. VS. MARCITY CHEMICAL INDUSTRIES LTD. & 2ORS. (2022) ELC 7695 Page 1 (SC);***

A.G. RIVERS STATE VS. A.G. AKWA-IBOM STATE; A.G. FEDERATION NSCQR Vol. 45 (2011) Page 1041 (4707).

In view of the fact that Defendant/Applicant's counsel, Kehinde, SAN, raised the issue of Arbitration in the contract in issue, I shall first and foremost attempt to consider the said application to unravel the mystery... this is so because the moment the Court decides there's no such Arbitration contained in the contract document, there would not be any need to stay proceeding in the suit before the Court, on the one hand, not to talk of staying any

such uncontemplated Arbitral Proceeding as contemplated in the motion filed by the Claimant/Applicant, on the other hand.

It is instructive to note that arbitration being a choice made by parties in their Contract Agreement or appointed by the Court, it then becomes necessary to dwell on the meaning of Arbitration.

What is Arbitration?

Halsbury's Law of England 4th Edition, Paragraph 501 at Page 255, gave the meaning of Arbitration as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a Court of competent jurisdiction.

The person to whom a reference to Arbitration is made is called Arbitrator.

See ***KANO STATE URBAN DEVELOPMENT BOARD VS. FANS CONSTRUCTION COY. LTD. (1990) LPELR – 1659 (SC).***

It is given that in the Arbitration and Mediation Act, 2023 which has been applied that a Court shall not intervene in any matter governed by the Arbitration and Mediation Act, except where so provided.

See section 64 of the Arbitration and Mediation Act, 2023.

See also the case of ***AEPB VS. MAHAS (NIG.) LTD. (2021) LPELR – 55590 (CA).***

I shall now juxtapose above settled position of law with relation to the reliefs sought by the Defendant/Applicant's as contained in the Application as ably reproduced in the preceding part of this Ruling.

To arrive at justice in this case, it is pertinent to state here that the kernel of the Defendant/Applicant's case is predicated on the letter of Award dated 7th July, 2021, pursuant to which Article of Agreements were executed by the parties for the construction of Administrative Block, Gate House and 1 kilometer fence at the Nigerian College of Accountancy Kwall, Jos, Plateau State.

Defendant/Applicant's case shows that it relies on Article 5.1 of the Joint Contract Tribunal (JCT) for the Standard form of Building Contract which reference was made to it in the Letter of Award dated 7th July, 2021 between the parties and urges the Court to invoke the provision of section 5 (1) of the Arbitration and Mediation Act, to stay the proceedings by referring the matter in dispute to arbitration. Applicant contends that the Respondent by filing this action in the circumstances did not

comply with the said terms which constitute condition precedent to the institution of the action.

The thrust of the Claimant/Respondent's contention is that no clause in the Articles of Agreement between the Applicant/Respondent expressly or impliedly references Joint Contracts Tribunal (JCT), and that the Nigerian College of Accountancy Board cannot by a letter make the conditions in the Joint Contract Tribunal (JCT) for Standard form of building Contract mandatory for the execution of a contract it never entered into.

Claimant/Respondent further deposed to the fact that it at all times maintained its stance that there is no Arbitration Clause in the Article of Agreements executed between the Claimant/Applicant and has refused to give its consent or partake in any arbitral proceedings on the subject matter.

I have given due consideration to the foregoing contentions. Both parties are settled, they have in place Letter of Award with Joint Contracts Tribunal (JCT) for the Standard form of Contract attached and two Articles of Agreements.

It is trite law that contract willingly entered into by parties are sacrosanct and binding on them and it is not part of the duties of the Court while interpreting or construing same where the words

are plain and unambiguous to read into them words or meanings or things not manifest therein. It cannot also re-write it for the parties. The words are to be given strict construction. **See *MARYAM VS. IDRIS (2000) FWLR (Pt.23) Page 1237;***

ALI VS. HASSAN (2004) FWLR (Pt. 194) Page 496.

It is pertinent to state at this juncture that the details of the contract are contained in the Letter of Award dated 7th July, 2021. I hereby reproduce the said Letter of Award to the Defendant/Applicant by the Claimant/Respondent for the purposes of clarity.

***"The Managing Director,
Nathan Christopher Construction Ltd.,
Plot 84, Abuja Estate,
Awka,
Anambra State.***

Sir,

***AWARD OF CONTRACT FOR THE CONSTRUCTION OF
ADMINISTRATIVE BUILDING AT NIGERIAN COLLEGE OF
ACCOUNTANCY, Kwall-JOS***

The college Board after due consideration of your quotation hereby award your company the contract for the construction of the Administrative Building at the total contract sum of N850,000,000.00 (Eight Hundred

and Fifty Million Naira) only and a completion period of six months.

You are to execute the works and complete same in accordance with the contract conditions as in Joint Contract Tribunal (JCT) form of contract 1980 with quantities. You should forward your acceptance letter to the undersigned within two weeks from the date of this letter.

Congratulations.”

The best form of evidence is documentary evidence.. whereas the human mouth can out of mischief decide to sing and dance different songs at the same time, printed words are more permanent.

It is clear from the afore-reproduced document that JCT form of contract 1980 was contemplated in the said agreement.

It is the law that where parties have embodied the terms of their agreement or contract in a written document, extrinsic evidence is not admissible to add, vary, subtract or contradict the terms of the written contract.

LARMIE VS. DATA PROCESSING MAINTENANCE & SERVICE (2005) LPELR – 1756 (SC).

It is trite that the best form of evidence is documentary evidence.

In view of the fact that the myth of this argument is centered on Arbitration clause, I shall therefore reproduce the relevant Clause of the Joint Contract Tribunal (JCT) in which reference was made to it vide an Award letter dated 7th July, 2021.

Clause 5.1 (1) of the Joint Contract Tribunal (JCT) provides:-

5.1

"In case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the works, as...."

5.1.2.

"Any matter or thing of whatever nature arising hereunder or in connection herewith including any matter or thing left by this Contract to the discretion of the Architect or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the adjustment of the Contract Sum under clause 30.6.2 or the right and liabilities of the

parties under the clauses 27, 28, 32 or 33 or unreasonable withholding of consent or agreement by the Employer or Architect on his behalf or by the Contractor, but

5.1.3.

Excluding any dispute or difference under clause 19A, under clause 31 to the extent provided in clause 31.9 and under clause 3 of the VAT Agreement.

Then such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties to act as Arbitrator, or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an Arbitrator, a person on the request of either party by the President or Vice-President for the time being of the Royal Institute of British Architects.”

I am comforted and fortified by the said afore-reproduced clauses of the Joint Contracts Tribunal (JCT) which clearly has made provision for what a party to the contract shall do in the event of any misunderstanding.

It is very obvious, like the day and night that both Defendant/Applicant and Claimant/Respondent have constructively agreed to arbitration and not to resort to court in the event of any dispute arising from the contract. This court shall give value to the agreement entered into by the parties per the said Arbitration Clause.

Having willfully consented to resort to Arbitration in the event of any such misunderstanding arising from the performance of the said contract, parties are bound by the said agreement.

Indeed, the Arbitration Clause constitutes a bar, as it were, to the present action.

It is instructive to note that Nigerian College of Accountancy is an educational institution that is operated solely by the Association of National Accountants of Nigeria (ANAN). It is the training arm of ANAN. It is therefore my considered view that the letter of Award was properly issued and binding on ANAN as Nigerian College of Accountancy (NCA) and Association of National Accountants of Nigeria (ANAN) are one and the same. I so hold.

On the whole, therefore, the application moved by A.T. Kehinde, SAN., succeed and accordingly granted.

Next to be considered is the application filed by Sunny Ajala, SAN., for the Claimant/Applicant i.e **Motion No. M/16770/2024**.

The application filed by Claimant/Applicant is the opposite of the application filed by Kehinde, SAN., for the Defendant/Applicant.

Whereas Ajala, SAN, sought for stay of Arbitral Proceedings pending the determination of **Suit No. FCT/HC/CV/5048/2024**, A.T Kehinde, SAN, for the Defendant/Applicant on the other hand seeks Order for Stay of Proceedings in **Suit No. FCT/HC/CV/5048/2024** pending the determination of the Arbitral Proceedings.

Having granted the application moved by learned senior counsel for the Defendant/Applicant, it is then clearly unnecessary to attempt to give Claimant/Applicant's any such judicial patronage as same will be clearly academic.

The said application of the Claimant/Applicant at best shall be dismissed for being unnecessarily filed and argued.

Justice Y. Halilu
Hon. Judge
25th February, 2025

APPEARANCES

Chukwudi Maduka, Esq. – for the Claimant/Applicant with **Odera U., Esq., Francis N., Esq., Ifeanyi N., Esq., Mike Uche, Esq. and Kelvin N., Esq.**

A.T. Kehinde, SAN, - for the Defendant/Applicant with **Eloka J.O, Esq., O.S Kehinde, Esq., I.C. Nnamdi, Esq. and K.E Cyril – Ita, Esq.**