IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 06TH DAY OF FEBRUARY, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/2071/2023

BETWEEN:

STICKS & STONES HOMES LIMITED **APPLICANT**

AND

MRS EXPERANZA MOMOH **RESPONDENT**

JUDGMENT

This Judgment is principally on the jurisdiction of this Court to recognize or otherwise set aside an arbitral award.

By an originating Motion on Notice filed on the 23rd of January, 2023, the Applicant brought an application pursuant to sections 29, 30 and 32 of the Arbitration Act, 2004, section 36 of the Constitution of the Federal Republic of Nigeria, 1999, Order 43 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Honourable Court seeking the following reliefs:-

1. *An Order of this Honourable Court setting aside the final arbitral award of the Sole Arbitrator (Mohammed Musa Sakaba) dated 21st of November, 2022 in the arbitral reference between Mrs Experanza Momoh v. Sticks & Stones Homes Limited.*

Or, in the alternative,

2. *An Order of this Honourable Court refusing to recognize or enforce the said final arbitral award stated in paragraph 1 above.*
3. *And such other Order(s) that this Honourable Court may deem fit in the circumstances.*

The application was founded on four grounds. Principally, the Applicant claims that the Sole Arbitrator misconducted himself when he failed to abide by the agreement of the parties that the arbitral award would be delivered within one month of the close of proceedings; that the Sole Arbitrator breached the Applicant's right to fair hearing when he refused to allow the Applicant to respond to a fresh issue raised by the Respondent and upon which the Sole Arbitrator reached a finding; that the Sole Arbitrator displayed bias when he secretly invited only the Respondent to adumbrate on her written address without according the Applicant the same opportunity; and that the Sole Arbitrator relied on and acted on an email printout which was never served on the Applicant notwithstanding the fact that the attention of the Sole Arbitrator was drawn to same.

In support of this originating application, the Applicant deposed to a fifty (50)-paragraph affidavit. This Affidavit was deposed to by Isioma Ezenwa. She is the Practice Manager in the law office of Cromwell & Okeke, Counsel to the Applicant. A Written Address was filed along with the originating application in compliance with the Rules of this Court. The Applicant attached thirteen documents as exhibits to

the Affidavit in support of the Originating application. The exhibits were marked **Exhibits A, B1, B2 C, D, E, F, G, H, I, J, K and L**. Correspondingly, these are a copy of the Contract of Purchase of a one (1) unit of 6-bedroom partly finished fully detached duplex with a boys' quarters at the Applicant's Grove Estate situated and located at Cadastral Zone B14, Dutse, Apo District, Federal Capital Territory, Abuja, copy of the letter of appointment of a Sole Arbitrator; copy ofthe letter from the Sole Arbitrator inviting the parties to a meeting; Arbitral Proceedings Order for Direction No. 1; a copy of the Uwais Dispute Resolution Centre (UDRC) Rules; the Respondent's application to amend her processes and to re-hear the matter dated the 21st of July, 2022; the Sole Arbitrator's ruling on the application designated as Procedural Order No. 2 wherein the Sole Arbitrator granted the Respondent leave to amend and re-hear the matter; an application by the Applicant to set aside the arbitral proceedings on the ground of breach of fair hearing dated the 23rd of August, 2022; Procedural Order No. 3 wherein the Sole Arbitral ruled that he would determine the Applicant's application to set aside the proceedings concurrently with the substantive matter and ordered the parties to file and exchange their final addresses; Procedural Order No. 6 wherein the Sole Arbitrator declared the proceedings closed and adjourned for the delivery of a final award;the final arbitral award; Applicant's letter to the Sole Arbitrator demanding for the transcript of the entire proceeding and certified true copies of the transcripts of the entire proceedings.

On the 31st of May, 2023, the Respondent filed three Counter-Affidavits to the Applicant's Originating Motion on Notice. David Yakubu deposed to the first Counter-Affidavit which is made up of five (5) paragraphs with multiple sub-paragraphs. He is the Litigation Secretary in the law office of Oluwaseyi Bamigboye & Co., Counsel representing the Respondent in this suit. Mayowa Mogbujuri deposed to the second Counter-Affidavit. She is a Counsel in the same law office of Oluwaseyi Bamigboye & Co. Her Counter-Affidavit has twenty-one (21) paragraphs. Vincent Adodo deposed to the third paragraph. He is also a Counsel in the law office of the Respondent's Counsel. His Counter-Affidavit has thirteen (13) paragraphs. In support of the Counter-Affidavit, the Respondent filed a Written Address as stipulated in the Rules of this Court. Twenty exhibits were attached to the Counter-Affidavit. These are the Applicant's Notice of Preliminary Objection before the Honourable Justice K. N. Ogbonnaya; the Respondent's letter dated 18th June, 2021 to the Applicant demanding that the matter be referred to Arbitration; the Respondent's letter to the Applicant reminding the Applicant about the meeting for the appointment of an arbitrator; Uwais Dispute Resolution Centre Notice of Arbitration; a letter from the Centre dated the 18th of October, 2021; the Centre's list of arbitrators also called the Panel of Neutrals on Arbitration; the Respondent's letter to the Centre asking that an arbitrator be appointed for the parties; the Respondent's letter to the Applicant making similar request; the Centre's letter to the parties notifying them that an Arbitrator had been appointed for them; the Arbitrator's letter to the parties inviting them for a preliminary meeting; the Record of

Proceedings No. 2 (Pre-Hearing Review); the Respondent's letter dated 19th of May, 2022 to the Applicant; the Respondent's letter to the Registrar of the Arbitral Panel dated the 19th of May, 2022; Procedural Order No. 2 dated the 18th of August, 2022; the Applicant's letter of demand for the payment of the cost of ₦50,000.00 (Fifty Thousand Naira only) from the Respondent; evidence of payment of ₦50,000.00 to the Applicant's Counsel; Procedural Order No. 6 dated the 31st of October, 2022; Final Award dated the 21st of November, 2022; Record of Proceedings No. 3 (Adoption and Adumbration of Written Addresses) and the Respondent's Reply of the Applicant's Statement of Defence wherein the email print-out is attached as **Annexure EM12**. These documents were respectively marked as **Exhibits EM1, EM2, EM3, EM4A, EM4B, EM5, EM6A, EM6B, EM7, EM8, EM9, EM10A, EM10B, EM11, EM12, EM13, EM14, EM15, EM16 and EM17**.

On the 28th of November, 2023, the Claimant filed a Further Affidavit and a Reply on Points of Law to the Counter-Affidavit of the Respondent.

On the 10th of October, 2023 the parties through their Counsel proceeded to adopt their respective processes and concluded the said adoption on the 29th of November, 2023.Counsel also exercised their rights to adumbrate on their legal arguments. The Court heard them attentively and subsequently adjourned for Judgment.

The disputation is quite straightforward. It is the case of the Applicant that it entered into a contract for the sale of a 6-bedroom partly finished fully detached duplex with

a boy's quarters at its Grove Estate situate and located at Cadastral Zone B14, Apo-Dutse District, Federal Capital Territory, Abuja with the Respondent. The purchase price of the property was fixed at ₦65,000,000.00 (Sixty-Five Million Naira only) and the Respondent, pursuant to the Letter of Offer, was required to pay the above sum in four instalments in the following order: ₦19,500,000.00 (Nineteen Million, Five Hundred Thousand Naira only) upon acceptance of the offer, ₦19,500,000.00 (Nineteen Million, Five Hundred Thousand Naira only) within four months from acceptance of the offer, ₦13,000,000.00 (Thirteen Million Naira only) within eight months from acceptance of the offer and the last instalment of ₦13,000,000.00 (Thirteen Million Naira only) within twelve months from the date of acceptance of the offer. The Respondent accepted this offer, evinced in the Letter of Offer (attached as **Exhibit A**) on the 3rd of July, 2019.

According to the Applicant, the Respondent defaulted in complying with the timeline for the payment of the purchase of the property as stipulated in **Exhibit A**. Accordingly, the Applicant exercised its right under the contract and repudiated the contract. The ensuing disputation found the parties approaching the Uwais Dispute Resolution Centre (hereinafter in this Judgment referred to as "UDRC") for arbitration pursuant to the terms of the contract after this Court *coram* Ogbonnaya, J. had found in his Ruling on the Notice of Preliminary Objection that the reference to arbitration was a condition precedent before the jurisdiction of the Court could be properly activated.

At the arbitration, the Applicant through its deponent averred in its affidavit in support of the Originating Motion on Notice, the Sole Arbitrator, Mohammed Musa Sakaba, called a meeting for the 16th of December, 2021 where the parties agreed to be bound by the Rules of Procedure of UDRC and that the arbitral proceeding would be documents-based. In the course of the proceedings at the arbitral tribunal, however, the Sole Arbitrator departed from the Rules of Procedure of UDRC as agreed by the parties when it failed to deliver its arbitral award within the period of one month from the close of argument or at the most after a period of three months. It further swore that on the 21st of July, 2022, more than three months after the close of arguments, the Respondent brought an application to re-open its case. Notwithstanding the Applicant's vehement objection, the Sole Arbitrator granted the application and re-heard the matter. Its application to the Sole Arbitrator dated the 23rd of August, 2022 to set aside the arbitral proceedings on the ground of lack of fair hearing was not considered as the Sole Arbitrator declared that he would rule on it in the course of delivering the arbitral award.

Though the Sole Arbitrator did not invite the parties to adumbrate on their filed Final Addresses in respect of the re-opened proceedings as seen from Procedural Order No. 6 attached as **Exhibit I**, the Applicant asserted that it was shocked when it heard, in the course of the delivery of the Arbitral Award on the 21st of November, 2022, that the Sole Arbitrator had indeed invited only the Respondent to adumbrate on her Final Address. The same grace, it was averred, was not extended to the Applicant. Upon a perusal of **Exhibit L** which is the record of the arbitral

proceedings, the Applicant claimed it found that the only time adumbration took place was on the 4th of April, 2022 before the Respondent opened her case. The Applicant also challenged the reliance by the Sole Arbitrator on a document that was never before him but which he designated as **Exhibit CD12** and proceeded to rely upon in arriving at his decision. It was on these factual grounds that the Applicant has brought this application to this Court seeking the reliefs contained on the face of the originating processes.

The case of the Respondent, to a large extent, followed in the trajectory of the case of the Applicant, except that the Respondent had approached the High Court of the Federal Capital Territory, Abuja *coram* Ogbonnaya, J. to challenge the repudiation by the Applicant of the contract for the sale of the property in question. It was in that Court that the Applicant raised a Preliminary Objection challenging the competency of the suit in the light of the arbitration clause in the contract. The Court heard the application and referred the parties to arbitration.

The Respondent insisted that due process was followed in the arbitral proceedings from the composition of the arbitral panel through the arbitral proceedings to the delivery of the arbitral award. The deponent of the first Counter-Affidavit, David Yakubu, attached **Exhibit EM9** which is the record of proceeding showing where the twelve documents admitted by the Sole Arbitrator were marked as **Exhibits CD1 – CD12**, thereby challenging the assertion of the Applicant that it was not aware of the admittance of the document titled **Exhibit CD12** in evidence by the Sole Arbitrator.

The Respondent also confirmed that it wrote a letter dated the 19th of May, 2022 to the Applicant and the Registrar of the arbitral panel seeking a resolution of the dispute. These letters were attached to the Counter-Affidavit and marked as **Exhibits EM10A and EM10B**. He denied that the letters were specious. He added that the parties met severally but could not make headway, thereby leading the Respondent to re-open her case while the Court awarded a cost of ₦50,000.00 (Fifty Thousand Naira only) against the Respondent and in favour of the Applicant. He exhibited the receipt of transfer of the money to the Applicant as evidence that the Applicant participated actively in the re-hearing. The deponent also confirmed that the arbitral award was delivered on the 21st of November, 2022 but he denied that the Respondent was invited secretly to adumbrate on her Final Address in the reheard proceedings. He stated that the statement credited to the Respondent's Counsel in the arbitral award was made by the Respondent's Counsel in the proceedings of 4th of April, 2022.

The supporting Counter-Affidavits were deposed by lawyers from the law firm of the Respondent's Counsel and who participated in the arbitral proceeding alongside the lead Counsel for the Respondent, Oluwaseyi Bamigboye, Esq. The purpose of the two Counter-Affidavits is to lend credence to the averment in the principal Counter-Affidavit that the Applicant's Counsel were present at the proceeding where **Exhibit CD12** was admitted in evidence.

In the Written Address in support of the Applicant's originating process, learned Counsel for the Applicant formulated this sole issue for determination: "*Whether the*

Applicant has placed sufficient grounds before this Honourable Court to be entitled to the reliefs sought?" in his argument on the sole issue, learned Counsel premised his argument on section 30 of the Arbitration and Conciliation Act, adding that the grounds for setting aside an arbitral award were grounds of fact. He referred the Court to the depositions in the affidavit and insisted that the facts pointed to gross misconduct by the Sole Arbitrator vis-à-vis the standard arbitral procedure as provided for in the UDRC Rule which he highlighted. He invited the Court to take note that the Sole Arbitrator failed to deliver his arbitral award within the time stipulated by the law which irregularity emboldened the Respondent to re-open her case which occasioned gross breach of the right to fair hearing of the Applicant. He maintained that this irregular procedure amounted to exceptional circumstances that should lead to the setting aside of the entire proceeding and the consequential award.

It was the case of the Applicant that the Sole Arbitrator discountenanced its submissions on the illegality of re-opening a case after the deadline for the delivery of the arbitral award, adding that the Sole Arbitrator acted *ultra vires* when it abandoned the agreement of the parties that the proceedings would be bound by the UDRC Rules, highlighting that the Sole Arbitrator could not claim not to be bound by the Rules of the UDRC when, in fact, the application to re-open the case of the Respondent and which application he granted was brought pursuant to the same Rules he claimed not to be bound by. He referred to **Exhibits E and F**.

Learned Counsel further submitted that the Sole Arbitrator relied on a document that was not before it – that is, the letter of 19th May, 2022 – to arrive at its decision to allow the Respondent to re-open her case without affording the Applicant the opportunity to respond to the fresh issue evinced by the said letter. He added that the conduct of the Sole Arbitrator was at variance with the provisions of section 36(2) of the Constitution of the Federal Republic of Nigeria 1999. He emphasized that the purpose of a Reply was to address a fresh issue raised by the other party and not to raise a fresh issue, adding that having raised a fresh issue in the said Reply, the Applicant was entitled to reply to same but was shut out by the Sole Arbitrator. He insisted that the breach of the fundamental right of the Applicant was a misconduct that had the effect of tainting the proceeding which, as a result, ought to be set aside.

The proceeding was further tainted, according to the Applicant, when the Sole Arbitrator invited the Respondent to adumbrate on her Final Address without extending the same favour to the Applicant. This, he contended, amounted to a breach of the Applicant's right to fair hearing. He insisted, too, that the email printout was never availed the Applicant, yet the Court relied on it to arrive at a decision, notwithstanding that the Applicant pointed out in its Reply to the Respondent's final address that the document served on it did not have the said document. He submitted further that the Sole Arbitrator was intentional when he designated the entire documents tendered by the Respondent as 'a bundle of

documents' instead of designating them individually.He urged the Court to set aside the entire proceedings and the said arbitral award.

For all his submissions on the sole issue he formulated, learned Counsel cited, quoted and relied on the following authorities: ***Ace Int'l Training Centre Ltd & Anor v. Eucharia (2022) LPELR-57308 (CA); Taylor Woodrow (Nig.) Ltd v. Suddeutsche Etnawerk GMBH (1993) 4 NWLR (Pt. 286) 127 at 142-144 A-E; Nicon Insurance Ltd v. Brighthouse Estate Ltd (2022) LPELR-58498(CA); Deduwa & Ors v. Okorodudu & Ors (1976) LPELR-936 (SC); Nyawen v. Badon & Ors (2016) LPELR-40825(CA); Akole & Ors v. Alonge & Anor (2013) LPELR-21129 (CA); Triana Ltd v. Universal Trust Bank Plc (2009) LPELR-8922(CA); Azuokwu v. Nwokanma & Anor (2005) LPELR-690 (SC); Zedici Capital Ltd v. Govt of Cross River State of Nig. & Anor (2021) LPELR-55826 (CA) and Savioa Ltd v. Sonubi (2000) 7 S.C.N.J 122; (2000) 12 NWLR (Pt. 682) 539***. He cited, quoted and relied on the following constitutional and statutory provisions: section 30 of the Arbitration and Conciliation Act; Rules 1, 26 of the UDRC Rules; sections 1(1) and 36(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999.

In her Written Address as settled by her Counsel, the Respondent through her Counsel, formulated the following issue for determination: "***Whether, in the circumstances of this case, this Honourable Court may grant the application of the Application.***"

In his argument on this sole issue, learned Counsel for the Respondent submitted that none of the grounds upon which an arbitral award might be set aside existed in the circumstances of this application. He cited sections 29 and 30 of the Arbitration and Conciliation Act in this regard. He enumerated the grounds as where the award contained decisions on matters which were beyond the scope of the arbitrator, where the arbitrator had misconducted himself and where the award/arbitral proceedings had been improperly procured. Since, according to learned Counsel for the Respondent, the Act did not define the word 'misconduct', recourse had to be made to judicial pronouncements. In this regard, he relied on ***Statoil Nig. Ltd. V. Stardeep Water Petroleum Ltd & Ors (2018) LPELR-50836 (CA); Mekwunye V. Imovkyode (2019) LPELR-48996; Arbico (Nig.) Ltd v. Nigeria Machine Tools Ltd (2002) LPELR-10982(CA) at 26, paras D)***.

Identifying the grounds of the Applicant's complaint to be the failure of the arbitrator to deliver the award within the time prescribed by the Rules of the UDRC; the denial of the Applicant of its right to fair hearing; bias on the part of the Arbitrator in inviting only the Respondent to adumbrate on her Final Address; reliance on documents that were not before him in reaching his decision and the arbitrator's refusal to provide the transcript of the proceedings to the Applicant upon request for same, Counsel proceeded to address them individually.

On the first complaint of the Applicant, Counsel for the Respondent submitted that the provisions of Order 26 of the UDRC Rules was not sacrosanct, as the time might be extended where it became necessary so to do. He went on to quote Order

25 which allowed the parties to modify any period of time by mutual agreement. Counsel reiterated the facts leading up to the re-opening of the case of the Respondent and urged the Court to note that the Respondent re-opened her case before the Sole Arbitrator delivered his award following the adoption of addresses on the 4th of April, 2022. He relied on **Exhibits EM10A, EM10B and EM11**. He further contended that the Applicant accepted the order of the Sole Arbitrator and acquiesced to the re-opened proceedings when it demanded for the cost of ₦50,000.00 (Fifty Thousand Naira only) from the Respondent. He insisted that the action of the Applicant amounted to reprobating and approbating, adding that the Applicant was caught up by estoppel by conduct. He referred to **Exhibits EM12 and 13**. He relied on ***Okunade v. Olawole (2014) LPELR-22739 (CA), Adedeji v. Oloso (2007) 5 NWLR (Pt. 1026) 133, Akanni & Ors v. Makanju & Ors (1978) LPELR-322(SC), Mufex (Nig.) Ltd & Anor v. FTB Plc (2012), Alao v. VC, University of Ilorin (2008) 1 NWLR (Pt. 1069) 421 at 463, Globe Motors Holdings Nig. Ltd v. Ibraheem (2021) LPELR-54550(CA) at 45-46, paras F), Nyako v. Adamawa State House of Assembly (2016) LPELR-41822(SC), Odeh & Anor v. Ahubi & Ors (2015) LPELR-41783 (CA) at 47, paras B-E and Senator Ali Modu Sheriff & Anor v. People's Democratic Party & Ors (2017) LPELR-41805(CA)***.

On the claim of the Applicant that the arbitral tribunal denied it fair hearing, Counsel for the Respondent submitted that the letter of 19th May. 2022 by which the Respondent sought for amicable resolution of the dispute, marked as **Exhibit**

EM10A was served on the Applicant through Vershima Adagasu, a lawyer in the law firm of the Counsel for the Applicant by Mayowa Mogbojuri, a lawyer in the law firm of the Respondent's Counsel. Referring to **Exhibit EM9**, Counsel contended that the Applicant could not have denied knowledge of the letter. He cited the case of ***Zamol Merchant & Investment Ltd v. Unity Bank (2015) LPELR-40872 (CA) at 19, paras A***. He argued that the Applicant ought to have replied the letter if it knew it was not conceding to attempt at amicable settlement. He also argued that the Applicant participated actively in the re-opened hearing. He denied that the right to fair hearing of the Applicant was breached in any way. He cited the case of ***Elemchukwu Ibator & Ors v. Chief Babakuro & Ors (2007) LPELR-1384 (SC) at 20, paras A-C*** in support of his argument that there was no breach of fair hearing when the outcome of the proceeding flowed from the method adopted by a party in the prosecution or defence of a case.

In his submissions on the allegation of the Applicant that the arbitrator was biased when he invited only the Respondent for final adumbration, Counsel for the Respondent pointed out that apart from the excerpt quoted by the Applicant's Counsel in his written address, there was no place the Sole Arbitrator mentioned the issue of adumbration, adding that the adumbration contained in the said excerpt was the adumbration that was made by the parties on the 4th of April, 2022. He insisted that all references to adumbration were references to the proceedings of 4th of April, 2022. He referred to **Exhibit EM15**.

On whether the Sole Arbitrator relied on a document that was not placed before him in reaching his award, learned Counsel submitted that the Respondent tendered twelve documents in the course of the arbitral proceeding, with the Applicant informing the tribunal that it would rely on the documents tendered by the Respondent. He added that the twelfth document, marked as **Exhibit EM17**, was attached to the Respondent's Reply to the Applicant's Statement of Claim. he also referred to **Exhibit EM9** as proof that Counsel for the Applicant were in attendance when it was admitted in evidence and marked as **Exhibit CD12**, adding that the Applicant lied on oath when it denied the existence of the document.

Arguing further on whether the arbitrator refused to avail the Applicant with a transcript of the proceedings, Counsel for the Respondent noted that the Applicant never advanced any argument in support of this contention. He therefore urged the Court to discountenance the submissions of learned Counsel for the Applicant and dismiss the suit. He relied on **Dunlop Nig. Plc (now DN Tyre & Rubber Plc) v. Gaslink Nig. Ltd) (2018) LPELR-43642(CA) at 39-41, paras D and Ogbuehi v. Nnaji & Ors (2015) LPELR-25992(CA) at 19-20, paras F**.

In the Reply on Point of Law, Counsel for the Applicant, Counsel for the Applicant submitted that the acceptance of the cost of ₦50,000.00 (Fifty Thousand Naira only) awarded by the Sole Arbitrator against the Respondent and in favour of the Applicant did not constitute estoppel as argued by the Respondent. He insisted that the payment of the cost was obligatory, adding that estoppel did not extend to judgments and orders of Courts. He further submitted, on the powers of the Sole

Arbitrator to extend time, that the time allowed by the Rules for the Arbitrator to have delivered his award had long elapsed at the time he purported to have allowed the Respondent to re-open her case, adding that the application to re-open her case ought to have been brought within the currency of the time allowed for delivery of the award. He highlighted the fact that the Sole Arbitrator never purported to extend the time, but, rather, what he ordered was for the Respondent to re-open her case.

Though he conceded that the parties had the privilege to modify the time allowed for doing anything under the Rules, Counsel for the Applicant submitted that there was nothing in the records that suggested even remotely that both parties agreed that the time for the delivery of the award should be modified. He maintained that the Applicant's right to fair hearing was breached when it was not accorded the opportunity to address the fresh issue the Respondent raised in her Reply. He added that even if it was conceded that the parties were involved in any negotiated settlement, the time for doing anything under the Rules could not be suspended for that purpose.

On the effect of the re-opened proceedings, Counsel submitted that the proceedings which terminated on the 4th of April, 2022 were no longer in existence; adding that it was strange for Counsel to the Respondent to have submitted that the adumbration mentioned in the arbitral award was the adumbration that was made on the 4th of April, 2022. He also asserted that **Exhibit CD12** was a Reply on Point of Law and not an email print-out.

For all his submissions, learned Counsel cited and relied on ***Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 217, State v. Solomon (2020) LPELR-55598(SC), Isa v. NNPC (2020) LPELR-49772 (CA), Ndukwe v. Ndukwe (2015) LPELR-25604(CA), and Lucky v. State (2016) LPELR-40541(SC)***.

I have tried to capture, as precisely as possible, the facts and legal arguments of both the Applicant and the Respondent before me. The issue that easily lends itself for determination, upon a due consideration of the facts of the case is this: "***Whether the Sole Arbitrator,Mohammed Musa Sakaba,did not misconduct himself in the course of the arbitral proceeding before him and whether the arbitral proceedings before him and the arbitral award he delivered were not tainted by substantial irregularity as to enable this Court set it aside***." In the resolution of this issue, this Court will consider the averments and the documents annexed to both the affidavit in support of the application and the counter-affidavits in opposition to same.

That the parties entered into a contract for the sale of a one (1) unit of 6-bedroom partly finished fully detached duplex with a boys' quarters at the Applicant's Grove Estate situated and located at Cadastral Zone B14, Dutse, Apo District, Federal Capital Territory, Abuja is not in doubt. That a dispute ensued between the parties over the mode of payment is not in dispute. That the Respondent instituted an action in the High Court of the Federal Capital Territory, Abuja challenging the rescission of the contract by the Applicant is a fact that is before this Court. That the Applicant filed a Notice of Preliminary Objection challenging the competency of the

suit and that the Court *coram* Ogbonnaya, J. upheld the Preliminary Objection and referred the parties to arbitration is a fact that the parties are in concurrence. The gravamen before me, is whether the arbitral proceedings beforethe Sole Arbitrator Mohammed Musa Sakaba was conducted in substantial compliance with the law, rules and practice governing arbitration and whether the conduct of the Sole Arbitrator inspired confidence in his neutrality. The *terminus a quo* to the answering of this question is a consideration of the relevant law and Rules.

Section 14 of the Arbitration and Conciliation Act CAP A18 Laws of the Federation of Nigeria 2004 (the extant law at the time the arbitral proceedings which is the subject of this suit commenced) provides that "***In any arbitral proceedings, the arbitral tribunal shall ensure that the parties are accorded equal treatment and that each party is given full opportunity of presenting his case***." section 15 provides that "***(1) The arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the first schedule to this Act. (2) Where the rules referred to in subsection (1) of this section contain no provision in respect of any matter related to or connected to any particular arbitral proceedings, the arbitral tribunal may, subject to this Act, conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure fair hearing. (3) The power conferred on the arbitral tribunal under subsection (2) of this section, shall include the power to determine admissibility, relevance, materiality and weight of any evidence placed before it***."

The Applicant attached **Exhibit B2** (Invitation for a Preliminary Meeting) – same as **Exhibit EM8** attached by the Respondent to her Counter-Affidavits. Ithas the sub-heading "*Under the Auspices of Uwais Dispute Resolution Centre Abuja, Nigeria (UDRC)*". **Exhibit EM7** (Appointment as Sole Arbitrator) was made "*sequel to the Claimant Counsel's letter dated 23rd November, 2021 and in compliance with Rule 13(c) of the Uwais Dispute Resolution Centre (Arbitration Procedure Rules) 2018*". The said letter quoted above is **Exhibit EM6A**. The Sole Arbitrator was appointed from the UDRC's panel of neutrals on arbitration attached as **Exhibit EM5**. By necessary implication, it follows that the parties agreed that they would be bound by the UDRC's Arbitration Procedure Rules, 2018. Indeed, all communications prior to and during the pendency of the arbitral proceedings were issued on the letterhead of the UDRC.

Article 13 of the Practice Direction made by the then Honourable Chief Judge Honourable Justice Ishaq Usman Bello on the 30th day of November, 2018 states that "***Upon referral to any of the ADR doors, the ADR Sessions shall be administered in accordance with the Uwais Dispute Resolution Centre Mediation Procedure Rules (2018) or the Uwais Dispute Resolution Centre Arbitration Procedure Rules (2018) as applicable.***" Rule 1 of the Uwais Dispute Resolution Centre (Arbitration Procedure) Rules, 2018 provides that "***Whenever, by mutual agreement or contract, the parties have provided for or agreed to arbitration of existing or future disputes under the auspices of the UDRC or under these Rules, they shall be deemed to have made these Rules, as***

amended and in effect as of the date of the submission of the dispute, a part of their agreement. The parties, by written agreement, may vary procedures set forth in these Rules."

As stated above, the Applicant complains that the Sole Arbitrator breached its right to fair hearing when it failed to mark the exhibits and therefore surreptitiously admitted one **Exhibit CD12** without the knowledge of the Applicant. It also complained that the Sole Arbitrator breached the Rules of UDRC under whose auspices the proceedings were conducted when it failed to deliver its award within the time allowed for such. Finally, it complains that the Sole Arbitrator misconducted himself and displayed bias when it invited only the Counsel for the Respondent to adumbrate on her final address in the re-opened hearing, thus, breaching the Applicant's right to fair hearing.

I have taken my time to highlight the above provisions to show that the Applicant, the Respondent and the Sole Arbitrator were bound by the provisions of the Arbitration and Conciliation Act and the Rules of the UDRC when they submitted themselves to arbitration under the auspices of the UDRC. I shall proceed to examine the documents before me to determine whether the Sole Arbitrator conducted the proceedings in compliance with the provisions of the Act and the Rules in relation to the grouse of the Applicant herein.

Exhibit L attached to the affidavit in support of the originating Motion on Notice is the record of proceedings before the Sole Arbitrator. It is the same as **Exhibit EM9**

attached to the Respondent's Counter-Affidavits – except that it (that is, **Exhibit L**) is more comprehensive as it contains Record of Proceedings No. 1, that is, the record of proceeding for the Preliminary Meeting where the parties agree *inter alia* on the applicable law and the method of arbitration. I note that **Exhibit L** (same as **Exhibit EM9**) is not paginated. I have, however paginate same manually to assist me in the inevitable references to portions thereof. So, at page 7, the parties agree that the arbitral proceedings would be governed by the Arbitration and Conciliation Act, CAP A18 Laws of the Federation of Nigeria 2004 and the Rules made thereunder.They also agreed that the proceeding would be documents-based arbitration. In Record of Proceedings No. 1, the Applicant in this suit was represented by Ogozy Amarachi, Esq. The Respondent, on the other hand, was represented by Oluwaseyi Bamigboye, Esq. and Mayowa Mogbojuri, Esq. At page 8 of the Record of Proceedings, the Sole Arbitrator informed the parties that "*We have to meet again for pre-hearing review to mark the exhibits, so that the tribunal shall be on the same page with the parties…*" The tribunal adjourned proceedings thereafter adjourned the proceedings to the 31st of January, 2022 at 12:30pm.

Again, I note with dismay that the Sole Arbitrator did not date the Record of Proceedings No. 1. This Court has to rely on the depositions of the parties to arrive at the finding that the Preliminary Meeting was held on the 16th of December, 2021. See paragraph 7 of the affidavit in support of the application and paragraph 4(xiii)(a) of the Counter-Affidavit of David Yakubu for the Respondent. In Record of Proceedings No. 2 (Pre-Hearing Review), it is recorded that it was held on the 31st

of January, 2022. Counsel present were Oluwaseyi Bamigboye, Esq., Vincent Adodo, Esq. and Mayowa Mogbojuri Esq. for the Respondent herein who was the Claimant thereat; and Vershima Adagusu, Esq. and Enoima Usoro, Esq. for the Applicant who was the Defendant thereat. See pages 9 and 10 thereof. Pages 10, 11, 12, and 13 were dedicated to the business of identifying the documents attached to the claim of the Respondent. The Applicant did not attach any document to its processes. It informed the tribunal at page 11 that "*We are relying on their own because they are basically the same*." At this point, the Sole Arbitrator announced thus: "*Okay, let's mark them now*." The tribunal marked each document as it was identified by Counsel for the Respondent beginning from **Exhibit CD1** to **Exhibit CD11**.

At this point, Counsel for the Respondent informed the tribunal that "*Then we have an exhibit attached to the Reply on Points of Law*." The Sole Arbitrator clarified, "*That's Exhibit CD12. Are you with us?*" To this question Counsel for the Applicant replied "*Yes sir*". There was no objection from Counsel for the Applicant (as Counsel for the Defendant thereat) as to the propriety of attaching an exhibit to a Reply. I note that Counsel for the Applicant informed the Sole Arbitrator at page 10 of the record of proceedings that "*We filed our points of defence. I don't think there is a further reply after their reply. So we have also settled issues with them*". On the 4th of April, 2022 when the parties adopted their processes, learned Counsel for the Respondent informed the tribunal in his introductory remarks that the Respondent had a total of twelve exhibits – eleven attached to the Statement of Claim and one

attached to the Reply on Points of Law. See page 17 of the record of proceedings. Learned Counsel for the Applicant, Enoima Usoro, Esq. in answer that the Applicant would be relying on the documents presented by the Respondent. She did not challenge the document attached to the Reply. See page 18.

What is the purpose of a reply on point of law? A Reply is used to address a fresh issue that has been raised in the Defendant's Statement of Defence.A Defendant who believes that a Reply contains a deposition or a document that introduces a fresh issue ought to traverse same. Such traverse must be made within the time stipulated for same. Where the Defendant is aware of the fresh issue or document in a reply but fails to exercise his right to challenge such fresh issue or document, he cannot be heard to complain that his right to fair hearing has been breached. See ***Ogugu v. State (1994) 9 NWLR (Pt. 366) 1 S.C. at 39, paras. B-D; 40, para. A;Egesimba v. Onuzuruike (2002) 15 NWLR (Pt. 791) 466 S.C. at 519, paras. A-E; Sylva v. I.N.E.C. (2018) 18 NWLR (Pt. 1651) 310 S.C. at 352, paras. F-H; 381-382, paras. G-A; Adedayo v. Christine (2021) 9 NWLR (Pt. 1780) 148 C.A. at 180, paras F-G; Adedeji v. C.B.N. (2023) 5 NWLR (Pt. 1878) 531 S.C. at 548-549, paras G-A*****.

The Applicant's Counsel was in Court on the 31st of January, 2022 when the documents were identified individually and marked accordingly. He was aware of the exhibit that was attached to the Reply. It was brought to his attention and he did not raise a whimper of objection to its admissibility. It was well within his right to seek for an adjournment to enable him study the said document and, if need be,

respond to the Reply but he did none of that. He cannot come at this stage to complain of a procedural irregularity that he ought to raise timeously.His failure to raise the objection to **Exhibit CD12** amounted to a waiver. See ***Edem v. Canon Ball Ltd (1998) 6 NWLR (Pt. 553) 298 at p. 311 paras E – F; Julius Berger (Nig.) Plc v. Almighty Projects Innovative Ltd & Anor (2022) 11 NWLR (Pt. 1841) 201 at p. 232, paras. G-H***.

It is in view of this therefore that I disagree with the Applicant that it was not aware of the existence of **Exhibit CD12** and that its admission was a breach of its right to fair hearing. In admitting **Exhibit CD12** the Sole Arbitrator properly exercised the power conferred on him by section 15(3) of the Arbitration and Conciliation Act to "***determine admissibility, relevance, materiality and weight of any evidence placed before it***". I so hold that. Besides, section 243(1) of the Evidence Act, 2011 provides that "***The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.***" I do not see how the admission of **Exhibit CD12**by the Sole Arbitrator in the circumstances I have described above affected the decision of the Sole Arbitrator. I so hold. Having said that, I shall proceed to address the other conducts of the Sole Arbitrator the Applicant complained of.

The Applicant is not happy that the Sole Arbitrator failed to deliver his award within the time allowed by the UDRC Rules and that the Sole Arbitrator allowed the Respondent to re-open her case in the face of vehement objection after he had closed proceedings on the 4th of April, 2022. On the other hand, the Respondent contended that there was nothing sacrosanct about the timelines provided for under the UDRC Rules.

Again, I shall have resort to the contents of the record of proceedings before the Sole Arbitrator. Pages 17 through to 32 were dedicated to the adoption of their respective processes by the Counsel and the adumbrations thereto. At page 32, the Sole Arbitrator announced: "*Thank you. The tribunal will go through all the submissions and all the papers. As you all know, the arbitration hearing is by documents only. I will go through all the processes before me and come out with the final award. The parties shall be communicated about the publication of the award*." By implication, hearing on the evidence and the legal documents were concluded on that day and the only outstanding business of the tribunal was the delivery of the arbitral award.

Now, by virtue of the proceeding of the 16th of December, 2021 and the fact that the parties agreed to be bound by the provisions of the UDRC Rules as well as the Arbitration and Conciliation Act and the Rules made thereunder, the provisions of these enactments relating to the time for delivery of the arbitral award become applicable. The Arbitration and Conciliation Act does not make provision for the time within which an award may be published. Though section 15(1) of the Act provides

that "***The arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the first schedule to this Act***", the Arbitration Rules does not also make provision for the time within which an arbitral award may be published. The Uwais Dispute Resolution Centre (Arbitration Procedure) Rules, 2018 however, provides a solution. Rule 26 stipulates that

(a) The time within which the Arbitral Tribunal must render its Final Award is 1 month and not exceeding 3 months in exceptional circumstances. Such time limit shall start to run from the date of the last signature by the Arbitral Tribunal declaring the proceedings closed.

(b) ***The UDRC may extend this time limit pursuant to a reasonable request from the Arbitral Tribunal or on its own initiative if it declares it is necessary to do so.***

Rule 25 of the UDRC Rules provide that

"The Parties may modify any period of time by mutual agreement. The UDRC or the Arbitrator may for good cause extend any period of time established by these Rules, except the time for making the Award. The UDRC shall notify the parties of any extension."

Article 29 of the Arbitration Rules made pursuant to the Arbitration and Conciliation Act provides thus:

"1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the hearings at any time before the award is made."

The above provision is lucid and requires no further illumination. However, to remove every scintilla of abstruseness, dubitability or ambiguity of whatever form or shade, I shall highlight the fundamental features of the above provisions. First, upon the close of the proceedings, the Arbitral Tribunal must render its Final Award within one month. Second, where exceptional circumstances exist, the tribunal is permitted to deliver the award within a period of time not exceeding three months from the date the Arbitral Tribunal declares the proceedings closed. Third, to determine that the arbitral proceedings has closed for the purpose of computation of the time within which the Final Award will be delivered, recourse must be had to the last date the signature of the Tribunal was appended on the record of proceedings. Fourth, where there is need for additional business of the tribunal, the time may be extended. Fifth, the time may be extended by the UDRC only upon a reasonable request from the Tribunal. If the Tribunal seeks to extend the time *suo moto*, it must declare that it is necessary so to do. Of course, questions of the circumstances that are a necessity are questions of facts and can be determined only by a judicial and judicious examination of the prevailing circumstances at that material time. Sixth,

where the parties want to modify any provision of the UDRC Rules, including the time for doing anything under the Rules, it has to be by mutual agreement and the agreement must be in writing, Seventh, the provisions relating to extension of time are discretionary. In other words, the Tribunal is not obligated to grant every application for extension of time. Eighth, the period of time to be extended does not extend to the time for making the Award. Ninth, and by no means the least, the UDRC under whose auspices the proceedings are conducted shall be involved in every proceeding for extension of time. In fact, Rule 25 provides that "***The UDRC shall notify the parties of any extension***."

The question that calls for answer at this material time is whether the Sole Arbitrator complied with the provisions of the UDRC Rules under whose auspices the arbitral proceedings was conducted and, for that matter, the provisions of Article 29 of the Arbitration Rules? Again, I shall consider the depositions of the parties herein and the documents attached as exhibits in this case in order to arrive at an answer to this monolithic conundrum.

At page 32 of the record of proceedings, the Sole Arbitrator, after announcing that the parties would be communicated with the date on which the Final Award would be published, asked the Registrar of the Tribunal, "*Registrar, any other thing?*" The Registrar, in response, answered, "*No, sir*." That was on the 4th of April, 2022. From this date, the Tribunal had one month within which it must deliver the award. One month from the 4th of April, 2022 was 4th of May, 2022. If exceptional circumstances existed, then, the Tribunal ought to have delivered the award on or before the 3rd of

July, 2022. It must be noted that the language of Rule 26(a) of the UDRC Rules is mandatory and not discretionary. The use of the word “must” in statutes discloses the intendment of the draughtsman that the provision in which it is used be complied with without question by the person or authority concerned. On the other hand, the use of the word “may” in both Rules 25 and 26 of the UDRC Rules and Article 29 of the Arbitration Rules presupposes, as in any statute, the use of discretion by the person or authority concerned.

I have observed the cavalier submissions of learned Counsel for the Respondent that the UDRC Rules were not sacrosanct and compliance with the provisions thereof was not a condition precedent to the validity of an arbitral proceedings conducted under the auspices of the UDRC. He had also contended that the parties mutually agreed to re-open the hearing after the 4th of April, 2022. In support of this submissions he relied on Rule 25 of the UDRC Rules. These submissions, I find, are not supported by the evidence before me. There is no evidence – oral or written – that the parties mutually agree to extend the time or to re-open proceedings. On the contrary, there are multiple evidence that the Applicant challenged the application to re-open proceedings. It also challenged Procedural Order No. 2. I cannot therefore find an ounce of mutuality in the Applicant’s conduct. Laws and the Rules made thereto are meant to be obeyed. They are not fripperies to be displayed on the mantelpiece of our jurisprudence. They command compliance, especially where they touch on the rights and obligations of other parties.

From the depositions and documents before me, the Sole Arbitrator did not comply with the above mandatory provisions of the Rules by delivering his award on or before the 3rd of July, 2022. In paragraph 16, 17, 18, 21, 22, 23, 24, 26, 27, 29, 30 and 31. of the affidavit in support of the application and **Exhibits E, F, G, H and I**, the deponent averred that the Respondent brought an application to re-open her case on the 21st of July, 2022. The Sole Arbitrator heard the application on the 18th of August and granted the reliefs sought therein and proceeded to re-hear a matter on which he had adjourned for the delivery of the Final Award. The Respondent confirmed these facts in paragraphs 4(xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), and (xxiii) of the Counter-Affidavit of David Yakubu and **Exhibits EM10A, EM10B, EM11, EM12, EM13, EM14 and EM15**.

Now, the Rules 25 and 26(b) of the UDRC Rules and Article 29(2) of the Arbitration Rules permit an arbitral tribunal to extend the time for doing a thing under the Rules and to re-open the hearing before the delivery of the final award. This is however subject to the condition that the extension and the re-hearing must be made owing to the existence of exceptional circumstances. Further, there must be the element of mutuality between the parties and this agreement must be in writing. Though the expression 'exceptional circumstances' was not defined in the two Rules, the Courts have provided an idea of what the expression encapsulates. The germane question that naturally arises is whether the letter dated 19th of May, 2022, that is, **Exhibits EM10A and EM10B**attached to the Respondent's Counter-Affidavits and the purported attempt at settlement amount to exceptional circumstances.I ask this

question because the Sole Arbitrator in **Exhibit F**(same as **Exhibit EM11**), that is, Procedural Order No. 2 relied on the said communication, that is **Exhibit EM10A** and **EM10B** to re-open the hearing.

I have dedicated enough time to **Exhibit F** (same as **Exhibit EM11**). I have pondered on the findings of the Sole Arbitrator. The Sole Arbitrator recognized the limitations imposed on him by virtue of the provisions of Rules 25 and 26 of the UDRC Rules. He relied on Rules 9 and 24 of the UDRC Rules in making the orders re-opening the proceedings. Article 20 of the Arbitration Rules provide that "***During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim cannot be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement***." Again, the operative words are '***during the course of the arbitral proceedings***', '***unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it***' or if it will '***prejudice … the other party***' or '***any other circumstances***'. Again, this is an invitation to the tribunal to exercise its discretion.

Did the Sole Arbitrator exercise his discretion properly in re-opening the proceedings? The Courts have pronounced on how discretion must be exercised. In **Ibrahim v. Usman (2023) 16 NWLR (Pt. 1911) 515 S.C. at 533, paras G-H**, the

Court held that "***Courts are enjoined to exercise their discretion judicially and judiciously, based on the materials placed before them.***"

I note with concern that the Sole Arbitrator did not declare the proceedings closed on the 4th of April, 2022. He merely announced that "*I will go through all the processes before me and come out with the Final Award. The parties shall be communicated about the publication of the Award*." Now, contrast this with **Exhibit I** (same as **Exhibit EM14**), that is, Procedural Order No. 6, which he issued after the conclusion of the re-opened hearing. I have taken the liberty to reproduce the contents of the exhibit:

"***Following the completion of the filing and service of all processes as ordered and directed by this Tribunal in its earlier procedural orders, and in light of the special nature of the evidentiary hearing which was agreed by the parties to be based on documents only,***

I hereby declare the proceedings in this reference closed and adjourn for the delivery of a reasoned final award in accord with the provisions of Article 32 of the Arbitration Rules, 1st Schedule to the Arbitration and Conciliation Act, CAP A18 LFN 2004.

Dated this 31st day of October, 2022."

The unanswered questionsare these: why did the Sole Arbitrator fail, neglect or omit to issue a Procedural Order declaring the proceedings which was concluded on the 4th of April, 2022 closed? Would a reasonable man standing by and watching the

proceedings conclude that the Sole Arbitrator was fair to all the parties before him? Did **Exhibits EM10A and EM10B and Exhibit E** (I note that the Respondent did not exhibit this process even though it was her application to the tribunal seeking leave of the tribunal to amend her Statement of Claim) disclose any exceptional circumstances to justify the re-opening of the proceedings? Was there any application for extension of time brought pursuant to Rule 25 and Rule 26 of the UDRC Rules and Article 29 of the Arbitration Rules? Did the parties mutually agree in writing to extend the time for doing anything under the UDRC Rules? Was the UDRC carried along in the purported extension of time as provided for under the UDRC Rules? The answers to all the above posers are in the negative.

Since the answers to the above posers are in the negative, it follows naturally that the Sole Arbitrator misconducted himself when he failed to deliver his Final Award within one month from the 4th of April, 2023 or, in the event of the existence of exceptional circumstances – which, by the way I have already found not to be in existence to justify the orders contained in **Exhibit F** (same as **Exhibit EM11**) – within three months thereof. More so, the purported re-opening occurred without an order extending the time for the delivery of the arbitral award pursuant to the provisions of Rule 26(b) of the UDRC Rules. Since there was no order for extension of time following the expiration of one month – or three months where exceptional circumstances are disclosed – from the 4th of April, 2022 after the Sole Arbitrator adjourned for publication of the arbitral award, on what basis was the re-opening done? The law is trite that one cannot put something on nothing and expect it to

stand. See***McFoy v. UAC (1961) All ER 1169***. Theseare sufficientgrounds for setting aside an arbitral award under sections 29(1) and 30(1) and (2) of the Arbitration and Conciliation Act. For the sake of immediacy, the above provisions provide that

"***29. (1) A party who is aggrieved by an arbitral award may within three months-***

(a) from the date of the award; or

(b) in a case falling within section 28 of this Act, from the date of the request for additional award is disposed of by the arbitral tribunal,

by way of an application for setting aside, request the court to set aside the award in accordance with subsection (2) of this section.

30. (1) Where an arbitrator has misconduct himself, or where the arbitral proceedings, or award, has been improperly procured, the court may on application of a party set aside the award."

In ***Mekwunye v. Imoukhuede (2019) 13 NWLR (Pt. 1690) 439 S.C. at 482-483, paras. G-F***, the Supreme Court held as follows:

"The Arbitration and Conciliation Act does not define what amounts to misconduct by an arbitrator. However, an act of misconduct by an arbitrator entails any of the following:

(a) Where the arbitrator fails to comply with the terms, express or implied, of the arbitrationagreement.

(b) When, even if the arbitrator complies with the terms of the arbitration agreement, the arbitrator makes an award which on grounds of public policy ought not to beenforced.

(c) Where the arbitrator has been bribed orcorrupted.

(d) Technical misconduct such as where the arbitrator makes a mistake as to the scope of the authority conferred by the agreement of reference. But every irregularity ofprocedure does not amount to misconduct;

(e) Where the arbitrator or umpire has failed to decide all the matters which were referredto him.

(f) Where the arbitrator or umpire hasbreached the rules of natural justice;

If the arbitrator or umpire failed to actfairly towards both parties, as for example by hearing one party but refusing to hear the other; or by deciding the case on a point not put by the parties."

Elsewhere in the Judgment, the Court reiterated its position when it stated ***at481-482, paras. H-C;501, paras. A-C of the Law Report*** thus:

"***An arbitral award is a final judgment on all matters referred to an arbitrator and as such courts are enjoined to, as much as possible, uphold or affirm and enforce arbitral awards when approached especially in view of the fact that***

parties had voluntarily resolved or agreed to submit to the jurisdiction of the arbitrator or arbitrators to resolve their dispute. However, there are grounds on which arbitral award can be set aside. The grounds as provided in sections 29 and 30 of the Arbitration and Conciliation Act are: *(a)* ***where the award is beyond the scope of thereference; (b) where the arbitrator has misconductedhimself; and (c) where the arbitral proceedings or award has been improperly procured, for example, where the arbitrator was deceived or materialevidence was fraudulently concealed; or (d) where there is an error of law on the face ofthe award.***"

While the issues of misdirection and misconduct vis-à-vis not delivering the Final Award within the time stipulated for same are enough grounds to set aside the award, the Sole Arbitrator in the Final Award published on the 21st day of November, 2022 referenced matters that, to a reasonable man who followed the arbitral proceedings from the 16th of December, 2021, that ought not to be contained therein. I refer to the content of paragraph 10.23 of the arbitral award found at page 24 thereof. The Sole Arbitrator had stated there that "*Let me quickly observe, anon, that the Claimant's Counsel in his oral adumbration confirmed and reiterated that they had paid the complete purchase price of the House (i.e., ₦65,000,000.00) as at the commencement of this reference and that is why the Respondent is also asking for the deduction of the sum of ₦6,500,000 being 10% penalty before refunding the money as per* ***Exhibit CD1****. I therefore find that the*

evidence of the Claimant is more probable and credible than the evidence of the Respondent. I so hold."

The record before me shows that the only time an oral adumbration took place was on the 4th of April, 2022. That was before the Sole Arbitrator issued Procedural Order No. 2. To the Applicant, that was a breach of its right to fair hearing, because the Sole Arbitrator, by virtue of **Exhibit I** (same as **Exhibit EM14**), that is, Procedural Order No. 6which I have reproduced above declared the proceedings closed. Indeed, there is nothing before me that showed the parties were invited to adumbrate orally on the written addresses they filed after the Sole Arbitrator re-opened the proceedings. From whence, then, came the oraladumbration the Sole Arbitrator referred to in the Final Award published on the 21st of November, 2022?

Learned Counsel for the Respondent tried to find a way round this quicksand in his written address in support of the Respondent's Counter-Affidavits. In paragraphs 3.72, 3.73, 3.74, 3.75, 3.76, 3.77, 3.78 and 3.79, learned Counsel insisted that the oral adumbration the Sole Arbitrator referred to in his Arbitral Award was the adumbration that took place on the 4th of April, 2022. In making this submission, learned Counsel ineluctably sunk deep into the quicksand he sought to navigate. In making Procedural Order No. 2, and with the parties complying with same, the Sole Arbitrator could not have relied on an adumbration that was made on the 4th of April, 2022. This is because the filing of fresh written addresses subsequent to Procedural Order No. 3 attached as **Exhibit H** to the affidavit in support of the application (the Respondent did not attach this exhibit to her Counter-Affidavits) presupposes that

the adumbration made on the 4th of April, 2022 fell into disuse and the tribunal ought not to have reference it in the Final Award which was published on the 21st of November, 2022 following Procedural Order No. 3.

In paragraph 2 of the dispositive section of Procedural Order No. 3, the tribunal ordered the parties thus: "*The parties shall comply with the Procedural Order No. 2; and that the timetable for the filing of the mentioned processes in Items 3 and 4 of the said Order shall now be effective from the date of this Procedural Order (No. 3) mutatis mutandis*." Procedural Order No. 3 was dated the 9th of September, 2022. Items 3 and 4 of Procedural Order No. 2 states thus: "*(3)That I hereby make a consequential Order giving the Respondent an opportunity to also file a consequential amendment to its Point of Defence within five (5) days from the date of this Order, if the Respondent so desires. (4) The parties are hereby given fifteen (15) days from the date of this Procedural Order (inclusive of the 5 days in paragraph 3 above) to file their concurrent amended final written submissions/addresses; and three (3) days thereafter to file their concurrent Replies on Points of Law (if any)*."

One of the incidences of amendment of processes is that the adjudicating authority is foreclosed from relying on whatever was filed before the amendment in reaching its decision. See ***S.C.C. (Nig.) Ltd. v. Elemadu (2005) 7 NWLR (Pt. 923) 28 C.A. at 58. Para G; 80-81, paras G-B***. How this elementary law escapes the attention of the Sole Arbitrator remains a mystery. Yet, whether it is a mystery or not, and whether paragraph 10.23 of the Final Award was a Freudian slip, a reasonable man

is to be forgiven if he believes that the Respondent was invited behind the Applicant to adumbrate on her written addresses privately before the Sole Arbitrator and behind the Applicant. Whatever it is, this is a fundamental breach of proceeding that has tainted the entire proceeding and the award that flows therefrom with unmitigated and incurable illegality. It is a breach of the right to fair hearing of the Applicant. Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 provides that "***In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.***"

Even if arbitral proceedings and, indeed, other proceedings under the alternative dispute resolution mechanism are usually conducted with a relaxation of the stringent requirements of the law, it is no invitation to an arbitral tribunal to disregard the rules of natural justice constitutionally enshrined in section 36(1) of the grundnorm of Nigeria's jurisprudence. I so hold. Section 22(3) of the Arbitration and conciliation Act provides that "(***3) The arbitral tribunal shall not decide ex aequo et bono or as amiable compositeur unless the parties have expressly authorised it to do so***." In***Olayioye v. Oyelaran (2019) 4 NWLR (Pt. 1662) 351 S.C. at . 377, paras. F-G; 378, paras. A-B***, the apex Court held that "***The effect of failure to observe the principle of fair hearing in any proceeding is that the entire proceedings and any decision reached therein are a nullity, an***

exercise in futility and of no legal effect whatsoever. No matter how well conducted the proceedings are or how sound the decision may be, all will amount to nothing where it is shown that a party's right to fair hearing has been breached."

I note the attempt by Counsel for the Respondent to save himself from this quicksand by claiming that the Applicant having enjoyed the benefit of the cost awarded against her by virtue of Procedural Order No. 2 cannot be heard to complain of the re-opened hearing. He has attached **Exhibits EM11 and EM12** as evidence to prove that the Applicant derived benefit from Procedural Order No. 2. **Exhibit EM11** is a letter from the Applicant's Counsel to the Respondent demanding the payment of the cost. **Exhibit EM12** is the receipt of payment of the cost. The submissions captured in paragraphs 3.22, 3.23, 3.24, 3.25, 3.26, 3.27, 3.28, 3.29, 3.30, 3.31, 3.32, 3.33, 3.34, 3.35, 3.36, 3.37, 3.38, 3.39, 3.40, 3.41, 3.42 and 3.43 of the written address in support of the Counter-Affidavits covering an impressive expanse of six pages of legal arguments on estoppel and acquiescence go to non-issue for several reasons chief of which is that Procedural Order No. 2 was an order of a tribunal which the Respondent was bound to obey any way whether or not the Applicant demanded for the payment of the cost. It cannot be estoppel by any stretch of the rules of construction and certainly it cannot be considered an acquiescence by whatever rule of lexicon now in existence or later to be evolved!

In arguing estoppel and acquiescence, learned Counsel for the Respondent overlooked the fact that the Applicant had challenged her application to amend her processes which application was brought more than three months after the Sole Arbitrator had adjourned for publication of the Arbitral Award. See paragraph 25 of the affidavit in support of the application. The Applicant also challenged Procedural Order No. 2. See paragraph 29 of the same affidavit and **Exhibit G** attached thereto. Article 30 of the Arbitration Rules provides that "***A party who knows that any provision of, or requirement under, these rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object***." In effect, therefore, the Applicant cannot be said to have conceded to the re-opened hearing. I so hold.

It is for the reasons set out above that I find no difficulty in arriving at the ineluctable conclusion that the Applicant has set forth sufficient grounds that disclose misconduct on the part of the Sole Arbitrator to warrant this Court setting aside the arbitral award published on the 21st of November, 2022. I so hold. Accordingly, I hereby grant the main relief sought in this application and further make other consequential orders as follows:

1. **The Final Arbitral Award published by the Sole Arbitrator Mohammed Musa Sakaba dated the 21st of November, 2022 in the arbitral reference between Mrs Experanza Momoh v. Sticks & Stones Homes Limited is hereby set aside.**

2. **Further, the entire arbitral proceedings which commenced on the 16th of December, 2021 and which purportedly closed on the 31st of October, 2022 by virtue of Procedural Order No. 6 is hereby set aside.**
3. **The Arbitral Award and the entire proceedings leading to same having been set aside, parties are hereby ordered to return to the Court for a judicial determination of their controversy.**
4. **Parties shall bear their respective costs.**

This is the Judgment of this Honourable Court delivered today, the 06th of February, 2024.

HON. JUSTICE A. H. MUSA
JUDGE
06/02/2024

APPEARANCES:

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