

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. 22

CASE NUMBER : SUIT NO: CV/2450/19

DATE: :WEDNESDAY 6TH JANUARY, 2021

BETWEEN

**ZUBAIR AHMED PLAINTIFF/
(Trading Under the Name } RESPONDENT
And Style Of Triad Associates) }**

AND

**1. BAZE UNIVERSITY LIMITED DEFENDANTS/
2.DATTIYUSUFBABA-AHMEDAPPLICANTS
3. DAVID OGBONNA }**

RULING

The Defendants/Applicants approached this Honourable Court vide its Motion on Notice dated 20th March, 2020 praying the Court for the following:-

1. An Order of this Court dismissing this Suit for being an abuse of Court Processes.
2. Alternative, an Order of this Honourable Court striking out this Suit for lack of jurisdiction to entertain same.
3. Such Further or Other Orders as the Honourable Court may deem fit to make in the circumstances.

In support of the Motion is an affidavit of 23 paragraph duly deposed to by One Peter Agu, a

Litigation Secretary in the Law Firm of the Applicant.

It is the deposition of the Applicants that the agreement subject matter of this Suit contained an Arbitration clause to the effect that in event of failure to reach amicable settlement the parties agree to refer any dispute or difference to arbitration in accordance with the Arbitration and Conciliation Act. The Agreement is hereby attached and marked as Exhibit 'B1'.

That upon application for an appointment of Arbitrator, which was not opposed by the Respondent, this Honourable Court CORAM Hon. Justice S.C Oriji J. appointed Hon. Justice Abdullahi Mustapha as sole Arbitrator but due to distance and location he could not preside over the proceeding

and Applicant filed Motion on Notice which was served on the Respondent's Counsel for appointment of a substitute Arbitrator, Dr. Nuraen T. H. Dindi was appointed by Honourable Justice O.A. Musa of this Honourable Court. The copy of the Record of Proceeding appointing Dr. Nuraen T. H. Dindi is hereby attached and marked as Exhibit 'B2'.

Applicant avers that following the appointment of Dr. Nuraen T. H. Dindi as the sole Arbitrator, Preliminary hearing took place on the 14th January, 2019, wherein, counsel representing the Applicants and Respondent confirmed to the appointment of the Arbitrator. The proceeding of the preliminary meeting with the parties held on Monday 14th January, 2019 was contained in the award which the Respondent/Applicant through its erstwhile counsel, caused a Motion seeking to set aside the

appointment of Dr. Nuraen T. H. Dindi as the sole Arbitrator and the proceeding conducted on the 22nd November, 2018 to be filed before Hon. Justice O.A. Musa of this Honourable Court. Motion dated 5th April, 2019 and filed same date is attached as Exhibit 'B3'.

That following the reluctance of the Respondent/Plaintiff to appear and defend the claim against them, a final award was delivered on the 11th June, 2019. The copy of the award is hereby attached and marked as Exhibit 'B4'.

Dissatisfied with the ruling of the Honourable Justice O.A. Musa of this Honourable Court delivered on the 2nd July, 2019, the Applicant appealed the ruling by filing Notice of Appeal and thereafter transmitted record of Appeal and filed its

Appellant's brief and caused same to be served on the Respondent. The filed copy of the Appellant's brief is hereby attached and marked as Exhibit 'B5'.

That the Respondent/Plaintiff filed the instant suit during the pendency of Appellant/Applicants' Appeal, and **Suit No. FCT/HC/M/7965/2018** currently pending before Bwari High Court No. 12 before Justice O.A. Musa with Motion No. **M/7569/19** seeking to set aside an arbitral award filed on the 25th June, 2019. The Motion dated 24th June, 2019 and filed on 25th June, 2019 is hereby attached and marked as Exhibit 'B6'.

In line with law a written address was filed wherein the following issues were formulated for determination.

- 1. Whether having regard to the Arbitration Clause contained in the head of agreement this Suit is competent to cloak the Honourable Court with the requisite jurisdiction.*
- 2. Whether having regard to the pending Appeal and application to set aside the Arbitral Award filed by the Plaintiff/Respondent, the suit is not an abuse of Court Processes and therefore robbed this Honourable Court of jurisdiction to entertain this Suit.*
- 3. Whether having regard to Section 573 and 574 of the Companies and Allied Matters Act, the Plaintiff can trade or carry out business under unregistered business name other than those exempted by the Sections.*

On issue one, *whether having regard to the Arbitration Clause contained in the head of agreement this Suit is competent to cloak the Honourable Court with the requisite jurisdiction.*

Learned Counsel submit that from the Plaintiff/Respondent statement of claims, this suit is premature as no cause of action has yet arisen by virtue of the Plaintiff's failure to fulfill a condition precedent to the commencement of the Suit.

Counsel contended that Plaintiff/Respondent though has a constitutional right to access the court, it has not complied with condition precedent to which is subscribed to be bound as a signatory to the contract.

OMALIKO VS AWACHIE (2001) FWLR (Pt. 43) 209.

That failure of the Plaintiff to comply with the clause in the agreement robbed this Honourable Court with the jurisdiction to entertain this Suit.

On issue two, *whether having regard to the pending Appeal and application to set aside the Arbitral Award filed by the Plaintiff/Respondent, the suit is not an abuse of Court Processes and therefore robbed this Honourable Court of jurisdiction to entertain this Suit.*

Learned Counsel submit that the instant Suit constitute an abuse of the process of this Honourable Court as the fact constitute as abuse of Court Process because the facts given rise to the instant Suit and Suit No. **FCT/HC/M/7965/2018** currently pending before High Court Bwari is same.

BUKOYE VS MAGAJI (2017) ALL FWLR (Pt. 877) at 357 – 358 Para E – C.

Counsel submit that the recent ploy of using Ahmed Zubair Trading under the Name and Style of Triad Associate as Plaintiff in the instant suit is misleading and a deliberate attempt to create confusion regarding the personalities that participated in the contract agreement and the proceeding after the occurrence of the dispute between them.

OTUNBA FATAI SOWEMNO VS OTUNBA DAYO AWOBAJO & ORS (1999) LPELR – CCN/1/26/99.

On issue three, whether having regard to Section 573 and 574 of the Companies and Allied Matters Act, the Plaintiff can trade or carry out business

under unregistered business name other than those exempted by the sections.

Learned Counsel submit that Business name should be registered with the exception of very few circumstance.

Learned counsel cited and relied on Section 573 (1) CAMA to driven how it point.

Upon service, the Plaintiff/Respondent filed a counter affidavit of 5 paragraph deposed to by One Elizabeth Usman a Legal Practitioner in the employment of Messers J.B Dauda& Co.

It is the deposition of the Respondent that Triad Associates is a business name duly registered in Nigeria on 4th day of March, 1988. And that Triad Associates is not a juristic personality instead Zubair

Ahmed the proprietor of Triad Associates is the only lawfully recognized juristic personality.

That the Defendants/Applicants acted in error of misnomer when it commenced an Arbitration proceeding against the Claimant/Applicant before this Honourable Court Coram Hon. O.A. Musa J. and that Court Coram Hon. S.C. Oriji J. appointed the Hon. Justice Abdullahi Mustapha OFR, FCI, ARB (RTD) as sole Arbitrator vide Exhibit 'A1'.

Respondent aver that due to reasons relating to distance and location, a Motion was filed by the Applicant before Hon. O.A. Musa J. who appointed Dr. Nuraen T. H. Dindi as substitute sole Arbitrator, but same was challenged and while the Arbitrator proceeded with the hearing of the dispute/matter

regardless of Respondent's objection to its composition vide Exhibit 'ZA2'.

That on the 2nd July, 2019 Hon. O.A. Musa J. deliver Ruling granting leave for substitution of Arbitrator was declared a nullity vide Exhibit 'ZA3'.

That this Suit was not commenced during the pendency of Defendant's Appeal rather it is the Defendants Appeal that was filed on the 2nd August, 2019.

A written address was filed wherein three issues were formulated for determination to wit;

1. *Whether this Suit as presently constituted is properly commenced in the personal name of the Claimant for and on behalf of Claimant's registered business name Triad Associates?*

2. *Whether the Claimant's Suit is estopped by non fulfilment of condition precedent for the commencement of action against the Defendants?*
3. *Whether the purported Arbitral Award made 11th June, 2019 in favour of the Defendants by the Abuja Multi-Door Court House or any proceedings thereto or thereafter constitute a bar to the commencement and determination of the subject matter of the Claimants Suit?*

On issue one, whether this Suit as presently constituted is properly commenced in the personal name of the Claimant for and on behalf of Claimant's registered business name Triad Associates?

Learned Counsel argued that notwithstanding the Registration of Triad Associates with the Corporate Affairs Commission, that the juristic personality capable of suing or being sued on behalf of the company is the proprietor and not the company itself.

The case of *MONIER CONSTRUCTION CO. LTD. VS AZUBUIKE (1990)3 NWLR (Pt. 136) Page 70* was cited in support.

Counsel contended that Claimant cannot sue in the name or style of Triad Associates instead, Claimant can only sue as Zubair Ahmed as properly done in this Suit..Court was urged to so hold.

On issue two, whether the purported Arbitral Award made 11th June, 2019 in favour of the Defendants by the Abuja Multi-Door Court House or any

proceedings thereto or thereafter constitute a bar to the commencement and determination of the subject matter of the Claimants Suit, learned counsel equally contended that the doctrine of issue estoppel is applicable to a case where the issues are the same, parties are same and that in the case under consideration the parties are not the same.

***IKENI VS EFAMO (2001)10 NWLR (Pt. 720)
Page 1 at 15.***

COURT:- Read through the argument of Defendants/Applicants as carefully captured in the Preliminary Objection and the reactions of the Plaintiff/Respondent to the said objection on the issue of abuse of court process.

Abuse of court process, which has no precise definition, occurs, where there is an improper use of

Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of *N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A).*

When then does abuse of court process arise?

Supreme Court of Nigeria, *per Ogbuagu JSC* in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D - E*** stated thus;

“There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to include the following;-

- a. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.***

- b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*
- c. Where two similar processes are used in respect of the same right, for example a cross – appeal and respondent’s notice.*
- d. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.*
- e. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuses in the convenience and inequities involved in the aims and purposes of the action.*

To resolve this matter, the court has formulated only one issue for determination, viz;- “*whether Suit No FCT/CV/2450/2019 filed before High Court amounts to an abuse of court process.*”

It is instructive to state here that the facts given rise to the instant Suit and Suit No. **FCT/HC/M/7965/2018** currently pending before Bwari High Court Exhibit ‘B2’ before Justice O.A. Musa with Motion No. **M/7569/19** seeking to set aside an arbitral award filed by the Plaintiff/Respondent herein have same subject matter i.e the Construction and Enforcement of Head of Agreement between **Baze University Limited** abbreviated as **Baze University And Triad Associated Limited** abbreviated as **Triad Associate** as annexed as Exhibit ‘BI’ in the Notice of Preliminary Objection are same parties.

I must observe here that the Respondent/Plaintiff had filed application seeking an Order to set aside Arbitral Award with its complete and correct name Triad Associate Limited in Suit No. **FCT/HC/M/7965/2018** with Motion No. **M/7569/19** dated 24th June, 2019 vide Exhibit 'B6'.

From above, it is obvious that the dispute/subject matter which gave rise to the appeal pending before the Court of Appeal Abuja Division with Appeal No. **CA/A/879/2019** Exhibit 'B5' emanating from the Ruling of Justice O.A. Musa setting aside the appointment of an Arbitrator has same parties and therefore evidently an abuse of court processes.

The surreptitious and deceitful attempt of using Ahmed Zubair Trading under the Name and Style of

Triad Associates as Plaintiff in the present suit cannot fly.

An abuse of process remains an abuse no matter how well clothed and costumed.. I refuse to be cajoled.

Accordingly, I decline to assume jurisdiction to entertain the present Suit No. **CV/2450/19**. Consequently, same is hereby struck-out.

Justice Y. Halilu
Hon. Judge
6th January, 2021

APPEARANCE

C. E. Ogbozor with Elizabeth U. – for the Plaintiff/Respondent.

Samson O. – for the Defendants/Applicants.