

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

THISDAY OF FEBRUARY, 2025

BEFORE HIS LORDSHIP HON. JUSTICE JUDE.O.ONWUEGBUZIE

SUIT NO.: FCT/HC/CV/1516/2021

MOTION NO.: M/10446/2024

BETWEEN:

ARC. MOHAMMED JOMOH FAWORAJA -----CLAIMANT/RESPONDENT

AND

1. AVASTONE GLOBAL SERVICES LIMITED
2. PETER OKAFORDEFENDANTS/RESPONDENT

RULING

INTRODUCTION

By a Notice of Preliminary Objection dated 5th day of July, 2024 and filed on same day. The Applicant prays the Court for the following reliefs:

AN ORDER of this Honourable Court dismissing this Suit in limine for lack of jurisdiction.

The Grounds of the Preliminary Objection are as follows:

1. The subject matter of the instant suit falls squarely within the purview of a binding arbitration agreement, duly executed by all parties involved. This agreement, which forms an integral part of the contractual relationship between the parties, expressly stipulates that any and all disputes arising from or in connection with the underlying contract shall be resolved through arbitration. The existence of this valid and enforceable arbitration clause precludes the adjudication of the present dispute in the court of law.

2. In the light of the aforementioned arbitration agreement this honourable court is respectfully submitted to be devoid of requisite jurisdiction to entertain and determine the instant suit. The parties' mutual consent to arbitrate as evidenced by the clear and unambiguous language of arbitration clause, effectively outs the jurisdiction of the court. It is a well-established principle that where parties have agreed to submit to arbitration, the courts should give effect to such agreement and decline jurisdiction, save in exceptional circumstances not present in the case at bar.

The Preliminary Objection is accompanied with an eight paragraph affidavit in support, deposed to by one Raymond Abagu, the business manager of the 1st Defendant/Applicant. The supporting affidavit is attached with Exhibit A. In compliance with the rules of this court, the Applicant filed a written address as their oral argument in support of their application.

In opposition to the application, the Claimant/Respondent filed a Counter-Affidavit of 17 paragraphs deposed to by one Efe Ukpe, a legal practitioner in the law firm of Claimant/Respondent's Counsel. The Counter Affidavit is attached with Exhibits MJ1, MJ2, MJ3, MJ4 and MJ5 respectively. Also in compliance to the rules of this court, the Respondent filed a Written Address as their legal argument in support of their Counter-Affidavit.

THE DEFENDANT/OBJECTOR'S CASE

That the Claimant/Respondent entered into a joint venture agreement with the purpose of developing their property. That the said Agreement is attached as exhibit A. That with the Joint venture agreement, provisions were explicitly made for the resolutions of any dispute that may arise from the agreement. That Clause 17.4 of the agreement unambiguously states:

...any such dispute arising out of or in connection with this Agreement shall be finally settled under the rules of the Arbitration and Conciliation Act Cap. A18, Laws of the Federal Republic of Nigeria 2004 by an Arbitration Panel of (3) three appointed in accordance with Section 6 of the aforementioned rules.

That the Claimant/Respondent's decision to institute this suit contravenes the mutual agreement between parties to submit any disputes arising from the agreement to arbitration. That the Defendant/Applicants expresses their willingness to allow to the agreement and submit any dispute to arbitration as stipulated. That given the parties' agreement to submit to arbitration, that this Court lacks the jurisdiction over the matter.

THE CLAIMANT/RESPONDENT'S CASE

That he has read the Supporting Affidavit to this Preliminary Objection, that paragraphs 4,5,6 and 7 of the said Affidavit represents gross and perverse misrepresentation of the factual underpinning of the matter. That the express provisions of paragraphs 17.1, 17.2 and 17.3 of the Joint Venture Agreement between the parties dated the 2nd day of September, 2016, are manifestly clear as to their intendment, purport and objectives. That in conformity with paragraphs 17.1, 17.2 and 17.3 of the Joint Venture Agreement dated the 2nd day of September, 2016, the agreement makes specific provisions for the resolution of any dispute between the parties, first by a meeting of the legal representatives of each party holding within Seven (7) days of the declaration of dispute.

That the Agreement further stipulates that it is when the Legal representatives are unable to resolve the dispute within (14) FOURTEEN DAYS from the date of first meeting or if the resolution arrived at such meeting is unacceptable to either or both parties that recourse will be had to the provisions of the Arbitration and Conciliation Act, Cap A18, Laws of the Federal Republic of Nigeria 2004.

That the Claimant through his Solicitors wrote to the Defendants requesting for the nomination and appointment of their Legal Practitioner for purposes of deliberations on the resolution of disputes between the parties. Now shown to me and attached as EXHIBITS MJ1 AND MJ2 are correspondences written to the Defendants by the Claimant's Solicitors drawing attention to the putative breaches of the terms of the Joint Venture Agreement. The letters are respectively dated the 31st day of January, 2018 and 28th day of November, 2019.

That attached as EXHIBITS MJ3 AND MJ4 are correspondences written to the Defendants by the Claimant's Solicitors requesting for the appointment of their Legal Practitioner to act in mediating the dispute between the parties as contained in paragraph 17.3 of the Agreement.

That attached as EXHIBIT MJ5 is a copy of the RED STAR EXPRESS COURIER by which the above stated letters were dispatched and sent to the Defendants.

That I was informed by MR. SEGUN FAWORAJA, the son of the Claimant and a witness to the Joint Venture Agreement of 2nd day of September, 2016 at a meeting held in our office on Wednesday the 4th day of September, 2024 at 2pm and I verily believe him as follows:-

- i. That the said MR. SEGUN FAWORAJA variously engaged the 2nd Defendant in several verbal conversations on issues relating to the dispute and urging the 2nd Defendant to take ameliorative steps towards redressing the anomalies and breaches of the Agreement all to no avail.
- ii. That the 2nd Defendant never took heed neither did he take the desired ameliorative steps towards redressing the several complaints and breaches noticed in the Agreement from 2018 to date.
- iii. That the said MR. SEGUN FAWORAJA also posted and sent the letters referred to as EXHIBITS MJ3 AND MJ4 to the 2nd Defendants through WhatsApp Number 08165769366 owned and belonging to the 2nd Defendant.
- iv. That I was informed by the said MR. SEGUN FAWORAJA that the Defendants never exhibited any interest whatsoever in the settlement and resolution of the matter giving rise to the institution of this matter.

That I know for a fact that the Defendants having stopped all building and construction activities at the portion of the development belonging to the Claimant as far back as 2018 are not in a hurry to have the matter resolved and have exhibited want and lack of interest in the amicable resolution of the matter giving rise to the institution of this case in Court.

That I know for a fact that a Counsel acting for the Defendants in this matter once informed the Honourable Court of their willingness to settle this matter amicably but nevertheless failed to follow through on their purported resolve.

That this Honourable Court has the vires, competence and Jurisdiction to entertain this matter in view of the contingent unwillingness of the Defendants to engagingly and robustly participate in settlement discussions prior to the institution of this matter.

That the condition precedent to the invocation of the Arbitration and Conciliation Act being the meeting between the Legal Practitioners of the contracting parties have not been met making the recourse to the Arbitration Act not only premature but also disturbingly unnecessary.

That the balance of convenience and the interest of Justice is for the Honourable Court to assert its wide discretionary powers in favour of the continuation of the proceedings in this matter which commenced in 2021 with the full and active participation of the Defendants and their Solicitors.

COURT ANALYSIS

The effect of an arbitration clause in an agreement was well stated in: **Royal Exchange Assurance v. Bentworth Finance (Nig.) Ltd. (1976) 11 SC (Reprint) 96 @ 107 lines 22-30** where the Court held thus:

An arbitration clause in a written contract is quite distinct from the other clauses. Whereas the other clauses in a written contract set out obligations which the parties undertake towards each other, the arbitration clause merely embodies the agreement of both parties that if any dispute should occur with regard to the obligations which the other party has undertaken to the other, such dispute should be settled by a tribunal of their own constitution or choice. The appropriate remedy therefore for a breach of a submission is not damages but its enforcement. I draw my strength from *Obembe v. Wemabod Estates Ltd.* (1977) 5 SC (Reprint) 70. In *Magbagbeola v. Sanni* (2002) 4 NWLR (Pt. 756) 193

It was held in this case that an arbitration clause is only procedural in that a provision whereby parties agree that any dispute should be submitted to arbitration does not exclude or limit rights or remedies but simply stipulates a procedure under which the parties may settle their differences. In other words, the existence of an arbitration clause in a contract merely postpones the right of the contracting parties to resort to litigation. I derive my authority from **PER KEKERE-EKUN, J.S.C in ONYEKWULUJE & ANOR V. BENUE STATE GOVT & ORS (2015) LPELR-24780(SC) (PP. 65 PARAS. A).**

COURT'S DECISION

I have noted the averments of the Claimant/Respondent especially paragraphs 4,5,6,7,8, and 9 of his Counter-Affidavit, together the annexed Exhibit MJ1,MJ2,MJ3,MJ4 and MJ5 respectively. The Court has also taken consideration of the arguments of the Claimant/Respondent's Counsel at paragraph 4.1 to paragraph 4.15 in his written address. The Respondent is enjoined to note that the law is also settled that the mere fact that a dispute is of a nature eminently suitable for trial in a Court is not a sufficient ground for refusing to give effect to what the parties have, by contract, expressly agreed to. So long as an arbitration clause is retained in a contract that is valid and the dispute is within the contemplation of the clause, the Court ought to give due regard to the voluntary contract of the parties by enforcing the arbitration clause as agreed to by them. I derive my authority from **PER IGUH, JSC, in OWNERS OF THE M V. LUPEX V. NIGERIAN OVERSEAS CHARTERING AND SHIPPING LTD (2003) LPELR-3195(SC)**

(PP. 23-24 PARAS. D), and PER ABBA AJI ,J.S.C in NNPC V. FUNG TAI ENGINEERING CO LTD (PP. 110-111 PARAS. F).

Therefore, the Court is inclined in given the parties opportunity to exhaust the alternative dispute resolution mechanism through arbitration as clearly stated in their Contractual Agreement which is Exhibit A.

Accordingly, parties in this suit are hereby referred to Arbitration at the Abuja Multi-Door Court.

This is the ruling of this court.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Bright Egualona Esq., for the Claimant/Respondent
2. Onome Ebietomire Esq. for the 1st and 2nd Defendant/Objector.
3. O.S Robert holding the brief of Paul E Atayi Esq., for the 3rd and 4th Respondent.