

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

ON THE 12<sup>TH</sup> DAY OF MARCH, 2025

SUIT NO.FCT/HC/CV/1783/2022

BEFORE HIS LORDSHIP:  
HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

BETWEEN:

CAPITOL DEVELOPERS & AQUISITIONS LTD---CLAIMANT/RESPONDENT

AND

1. HON. MR. TERNGU TSEGBA
2. RE-MAL VENTURES LTD
3. CHEN ATUME SAMUEL -----DEFENDANTS/OBJECTORS

**RULING**

INTRODUCTION

By a Notice of Preliminary Objection dated the 14<sup>th</sup> day of November, 2022 and filed on the 21<sup>st</sup> day of November, 2022 brought pursuant to Section 5 of the Arbitration and Conciliation Act, 2004 and Under the Inherent Jurisdiction of the Court.

The Objector prays this Court for the following Orders:

1. AN Order of this Honourable Court directing that the suit be referred to an Arbitrator.
2. And for such further orders or order as the Honourable Court may deem fit to make in the circumstances of this case.

The Grounds upon which this application is brought are:

1. That The Real Estate Joint Venture Agreement which creates the relationship between the Plaintiff and the Defendants contain an arbitration clause.
2. That clauses 25 and 26 of The Real Estate Joint Venture Agreement specifically provides for amicable resolution of disputes between the parties and failure to resolve disputes, same be subjected to an arbitrator.
3. That by the provisions of the Arbitration and Conciliation Act, CAP A18, LFN 2004 where an agreement contains a provision for arbitration and there is a breach, a party is required to submit to an arbitrator.

The Application is supported by a 6 paragraph affidavit deposed to by the 3<sup>rd</sup> Defendant/ Objector. The affidavit is attached with Exhibit CAS1. In line with the rules of this Court, the Applicant filed a written address as their legal argument in support of the application.

The Claimant/Respondent in reaction to the preliminary objection, filed a an 8 paragraph Counter-Affidavit deposed to by one Daniel Babatunde the manager of the Claimant/Respondent. In compliance with the rules of this Court the Claimant/Respondent file a written address as its legal submission in opposition of the application.

#### THE DEFENDANTS/PBJECTORS' CASE

The case of the Defendants/Objectors are contained in their affidavit in support, there would be no need reproducing same here as references would be made in the cause writing this ruling.

#### THE CLAIMANT/RESPONDENT'S CASE

The case of the Claimant/Respondent is contained in the Counter-Affidavit there would be no need reproducing them here as references would be made in the cause of this ruling.

#### COURT'S 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

Having carefully read through the averments of the Claimant/Respondent at paragraphs 7(a-k) of its Counter Affidavit, it is worthy to note that the said Power of Attorney which is the issue in the substantive case before this Court, was given birth by Exhibit CAS1, (the Joint Venture Agreement) and that Power of Attorney is subject to the Exhibit CAS1. Hence the Exhibit CAS1 contains an Arbitration Clause and the Claimant/Respondent does not deny that fact, it is just and fair to exhaust that provision agreed by the parties in that Joint Venture Agreement before

this Court can continue with this case. It is on this note that this Court would give effect on that Arbitration Clause.

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)**

Accordingly, parties in this suit are hereby referred to Arbitration at the Abuja Multi-Door Court to conclude same within Four (4) months beginning from the date of this ruling.

This is the ruling of this court.

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Hon. Justice Jude O. Onwuegbuzie

Appearances:

1.