

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/1349/2024
MOTION NO: FCT/HC/GAR/M/1377/2024
DELIVERED: ON THE 12/03/2025**

BETWEEN:

1. PANCAKE HOUSE (NIG) LTD
2. MRS. IFEYINWA UMUNNAKWE-OKEKE }CLAIMANTS/RESPONDENTS

AND

1. KHALIQUES GLOBAL INVESTMENT SERVICES LTD } DEFENDANTS/ APPLICANTS
2. MR. ALIERO MUSTAPHA UMAR }

RULING

The Plaintiffs filed this suit vide a writ of summons dated the 21st day of February, 2024 on the 22nd day of February, 2024 accompanied with a joint statement of claim. The 1st Defendant filed a conditional appearance dated the 25th day of March, 2024 on the same date. The main claim of the Plaintiffs are as contained in both the writ of summons and the joint statement of claim. Specifically, the Plaintiffs applied for the following orders from this Honourable Court, namely:

- (a) **A DECLARATION** that the Defendants actions amount to a fundamental breach of the JVA entered into between the 1st claimant and the 1st Defendant on 21st August, 2020 and thereby justifying the termination of the agreement by the claimants on 20th November, 2023 and further entitling the

claimants to recover damages; Or in the alternative to claim (a) above,

- (b) **A DECLARATION** that the Defendants actions amount to a breach of the JVA entered into between the 1st claimant and the 1st Defendant on 21st August 2020 and thereby entitling the claimants to recover damages jointly and severally against the Defendants.
- (c) **A DECLARATION** that the 2nd Defendant is jointly and severally liable under the terms of the JVA as the alter ego and sole controlling mind of the 1st Defendant.
- (d) **AN ORDER** directing the Defendants jointly and severally to pay damages to the claimants for breach of the JVA in the various sums specified in the statement of claim including the cost of this action and solicitors fees respectively. The writ is also supported by the witness statement on oath of MRS. IFEYINWA UMMUNNAKWE - OKEKE.

The Defendants after filling a conditional appearance and without filling a statement of defence filed a motion on notice dated the 3rd July, 2024 on the same date.

The motion on notice seeks for the following orders from the court, namely:

1. **AN ORDER** of this Honourable Court directing the parties to proceed on Arbitration at the Mohammed Uwais settlement Centre of the FCT High Court in compliance with clause 16.3 of the Joint Venture Agreement entered into by the claimants and the Defendants.
2. **AND** for such further order(s) or other order(s) as this Honourable Court may deem fit to make in the circumstances.

The above orders being sought by the Applicant are based on the following grounds-:

- 1. That the parties upon entering into the Joint Venture Agreement pursuant to which the claimants instituted this suit, agreed in clause 16.0 of the Joint Venture Agreement that in the event of any differences/dispute, parties shall have recourse to arbitration after negotiation and mediation of the said difference/dispute.**
- 2. That the Claimants/Respondents made no recourse to Arbitration pursuant to the Joint Venture Agreement before instituting this suit.**
- 3. That this Honourable Court is empowered to direct parties to proceed on Arbitration in compliance with their agreement as contained in the Joint Venture Agreement.**

The motion on notice is supported with a seven-paragraph affidavit and an Exhibit referred to as annexure A. It is also accompanied with a written address adopted as the oral arguments of the learned counsel to the Applicant in support of the motion on notice.

The learned counsel for the applicants formulated a lone issue for determination by this Honourable Court to wit:

"Whether with reference to the facts of this case and most especially the failure of the claimants/respondents to first arbitrate their dispute with the defendants, this honourable court can grant the relief sought by the defendants/applicants".

In arguing the motion on notice the learned counsel to the applicant, BARTH OMOZOKPIA Esq submitted that where parties have in a

contract agreed among themselves the manner in which a dispute is to be resolved, the court must give effect to the consensual agreement of the parties. He referred to the case of **M. V. LUPE VS. N. O. C. S. LTD (2003) 15 NWLR (PT. 844) pg 469 at pg 491 paragraphs G - H** where the Supreme Court held thus:

"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".

The learned counsel also referred to the case of **CHUBA CHUKWUOGOR & 3 ORS VS. CHUKWUMA CHUKWUOGOR & 1 OR (2007) ALL FWLR (PT. 349) pg 1168 Para F** where the Court of Appeal held that:

"Non-compliance with a condition precedent is not a mere technical rule but it goes to the root of the case".

He equally referred to section 5(1) of the Arbitration and Conciliation Act and Order 19 Rule 1 of the Rules of this Court as well as section 4(1) of the Arbitration and Conciliation Act, all to bring home the point that a condition precedent agreed upon by the parties ought to be respected by the court and therefore enforced.

It is therefore necessary to consider the content of paragraphs 3 of the supporting affidavit and annexure A attached thereto.

In a further reply to the counter affidavit of the Respondents the applicants also filed another seven (7) paragraph reply affidavit in support of the motion on notice. It is important to observe at this stage that paragraph 3(a) and (d) of the reply affidavit of the Applicant is very germane to the just determination of this application.

The learned counsel finally urged this Honourable Court to discountenance the counter affidavit and grant their application.

On the other hand, the learned counsel to the Respondents MARX IKONGBEH filed a counter affidavit and a written address in opposition to the Defendant's motion on notice filed on the 03/07/24. There is no doubt that by virtue of paragraphs 2(ii)(v)(vi) of the counter affidavit the Respondents admitted having consented to the content of the entire Joint Venture Agreement but that a non - existent Mohammed Uwais settlement centre of the High Court of FCT cannot arbitrate on this matter. As a result, the learned counsel to the Respondents raised one issue for the determination of this court to wit: "**Whether this application can succeed as currently framed**".

According to him, this present application is brought under the wrong law. He submitted that instead of the application being headed and reference made to the FCT, High Court Civil Procedure Rules 2018, the application appears to have been made pursuant to sections 4 and 5 of the ACA 2004 which has been repealed. He further submitted that the prayer is misconceived as instead of praying for a stay of proceedings it is seeking for a transfer or reference of the parties to Arbitration.

The learned counsel also submitted that the application ought to have been brought under section 5 of AMA 2023 and not sections 4 & 5 of the repealed ACA 2004.

He equally submitted that the content of clause 16.0 is a pathological Arbitration clause which was inelegantly drafted and incapable of precisely conferring jurisdiction on the arbitral tribunal. He therefore urged this Honourable Court to dismiss the present application and order the parties to execute and present a submission Agreement that precisely refers the entire dispute to Arbitration.

Having thus paraphrased the submission of the learned counsel to the parties vide their written addresses and respective processes filed before this Honourable Court it is important to observe that the gravamen of the case of the parties lies in the content of clause 16 of the Joint Venture Agreement duly signed by the parties. It will be necessary to restate the content of clause 16 of Joint Venture Agreement for the Development of Five (5) units of Terraced Town Houses dated the 21st August 2020.

Clause 16.1 states as follows:

"All differences/disputes in connection with this agreement between the parties arising from the interpretation or the performance of any act under this Agreement shall be settled first by negotiation between the parties".

Similarly, by clause 16.2:

"If no settlement of a difference/dispute is reached after negotiation by the parties in accordance with clause 16.1 above, then mediation shall be carried out for parties and by both parties at the Mohammed Uwais settlement centre of the High Court of FCT upon the application of any/either party".

Again, by clause 16.4 of the JVA:

"In the event of an Arbitration, all differences/disputes shall be referred to the determination and award of a single Arbitrator appointed by the Chief Judge of the High Court of the Federal Capital Territory, Abuja.

And finally by clause 17.0 of the JVA:

"This agreement shall be binding upon the parties hereto and shall constitute subsisting obligations of each party".

It is apparently clear that both parties consented to the content of Joint Venture Agreement. The question as to whether it was poorly drafted or not is not a matter to be decided by this Hon. Court since a court is not to redraft an agreement for the parties.

In my view, the vital question to be answered by this court is "*whether or not it has jurisdiction to entertain this suit as presently constituted.*"

It is not in doubt that by the combined understanding of the content of both the affidavit in support and the reply in support of the motion on notice as well as the content of the counter affidavit the parties entered into a Joint Venture Agreement dated the 21st August, 2020. It is also true that both parties agreed that no action should be taken before any court of law without first being referred to an arbitrator to be appointed by the Chief Judge of FCT High Court, Abuja.

By paragraph 3(e) of the Applicant's affidavit in support of this application reference was made to the content of clause 16.3 of the Joint Venture Agreement, that is, Annexure 1 which specifically states as follows:

"If no settlement of a difference/dispute is reached after such difference/dispute has been first negotiated and mediated as

provided for in this agreement, then arbitration will be carried out in accordance with the Arbitration and Conciliation Act, Cap. A 18 Laws of the Federation of Nigeria, 2004 and any subsequent amendment thereof".

The existence and essence of the above clause was equally admitted in paragraph 2(ii) of the counter affidavit of the Respondents wherein it states as follows:

"The Claimants/Respondents admit that the Joint Venture Agreement contains a clause suggestive of mediation/arbitration but the said clause is imprecisely drafted".

Furthermore, in paragraph 2(v) of the counter affidavit the Respondent states as follows:

"A look also at clause 16.0 of the agreement makes it doubtful as to the institution mandated for the mediation as no mediation institution called "Mohammed Uwais Settlement Centre of the High Court of FCT" exists to his knowledge. Rather the proper name of ADT Centre connected to the FCT High Court is the 'Uwais Dispute/Resolution Centre'.

On the other hand, the content of paragraph 3(d) of the applicant's reply affidavit in support of the motion on notice seems to have settled the issue as it provides that:

"That paragraph 2(v) of the Respondent's counter affidavit is an attempt to misrepresent facts. The Uwais Dispute Resolution Centre has been called via several nomenclature before adopting its current name and the Respondents nor

their counsel can feign ignorance of that fact. Before now upon establishment, it was known as the Abuja Multi - Door Court House (AMDCH). It was later changed to Mohammed Uwais Settlement Centre before it was changed to its current name; Uwais Dispute Resolution Centre. Despite the nomenclature, it remains one and the same institution owned and managed by this Honourable Court for all alternative dispute resolution endeavors".

Thus, it could be concluded from the respective processes filed before this Honourable Court and the brilliant submission of the learned counsel for the parties that there is a consensus that the parties duly executed a Joint Venture Agreement dated the 21st August, 2020. It is also a notorious fact as contained in clause 6.0 and 6.3 of the said Joint Venture Agreement that in the event of any dispute reference must first be made to an arbitrator to be appointed by the Chief Judge of FCT, High Court Abuja before any suit can be instituted by any of the parties.

It is the humble position of this Honourable Court that the parties having duly and freely executed such an agreement more so that the court is enjoined not to redraft the content of agreement for the parties. It is therefore not for any of the parties to now seek to give a different interpretation to the content of the agreement, whether brilliantly or poorly or inelegantly drafted. It is trite law that parties are bound by their agreement and a court of law is only enjoined to give effect to the agreement freely executed by the parties and not to draft the agreement for them. This being the position of the law this court is compelled to agree with the Supreme Court decision cited by the learned counsel for the Applicant, that is: **M. V. LUPEX VS. N. O. C. S. LTD (Supra)** wherein the Supreme court enjoined parties to adhere strictly to the

clause requiring them to refer their differences first to an arbitrator. In the same vein, the Court of Appeal decision in the case of **CHUBA C. & 3 ORS V. CHUKWUMA C. & 1 OR (Supra)** also cited by the learned counsel for the Applicants is instructive as it specifically states: "*Non - Compliance with a condition precedent is not a mere technical rule but it goes to the root of the case*".

The totality of the above analysis is that the jurisdiction of this Honourable to entertain this present suit is being questioned. It is trite law that jurisdiction is a threshold matter, a question of law and can be raised at any stage of the proceedings. Infact, it is the heart and soul of a case, and no matter how well a case is conducted and decided, if the court had no jurisdiction to adjudicate, the whole exercise would amount to a nullity. see the cases of **MADUKOLU V. NKEMDILIM (1962), ALL NLR pg 587, BRONIK MOTORS LTD & ANOR V. WEMA BANK LTD (1983) 1 SCNLR pg 296 and USMAN DANFODIO UNIVERSITY V. KRAUS THOMPSON ORGANISATION LTD (2001) 15 NWLR Pt. 736 pg 305** respectively.

It therefore behooves this Honourable court to painstakingly consider the present suit as it relates to the jurisdiction of this Honourable court to entertain this case. In the case of **NNEJI V. ZAKHEM COM. (NIG) LTD (2006) LPELR - 2059 (SC) TOBI (JSC)** said:

"Where the intention of the parties to a contract are clearly expressed in a document, the court cannot go outside the document in search of other documents not forming part of the intention of the parties".

Similarly, in the case of **AFROTEC TECHNICAL SERVICES (NIG) LTD V. MIA & SONS LTD & ANOR (2000) LPELR - 219 (SC)** IGUH JSC observed that:

"The pathological Arbitration clause referred to and conceded by the Respondent's learned counsel is more probable and likely the literal and the best interpretation to be given in this matter. Any other interpretation as given by the lower court will work out absurdity and antithetical to the intention of the parties".

Furthermore, in the case of **AGBULE V. WARRI REFINERY & PETROLEUM CO. LTD (2012) LPELR - 20625 SC OGUNBIYI** JSC stoutly held and nailed the matter thus:

"It goes without saying therefore that a Defendant/Respondent who did not protest against the name used and infact filed processes using such interchangeably cannot now be heard to complain at this stage. This is because he is deemed to have waived his right and is therefore estopped from contending the contrary as rightly submitted by the learned Appellant's counsel. The wrong use of the name did not overreach or put the Respondents to any form of disdain in the absence of any earlier complaint thereof. The use of the name in my view is, at best, a misnomer and which did not occasion any negative effect".

In the same vein, in the case of **MAXIMUM INSURANCE CO. LTD VS. QWONIYI (1996) 1 MCLC (NIGERIAN COMMERCIAL LAW CASES) (Pt. 1) pg 141 at 141** it was held that:

"The Cardinal principle of interpretation of documents is that parties are presumed to have intended what is contained in a

document to which they have subscribed. This is because it is not the function of the court to make a contract between the two parties or to rewrite the one already made by them but it is the court's duty to construe the surrounding circumstances including written and oral statements to effectuate the intention of the parties".

It is equally important to refer to the case of **MR. CHARLES MEKWUNYE V. MR. CHRISTIAN IMOUKHUEDE (2014) SC 85** wherein reference was made to the case of **NNEJI V. ZAKHEM COM. (NIG) .LTD (2006) LPELR - 2059 (SC)** where TOBI JSC observed that:

"The argument is that 'the Chartered Institute of Arbitrators, London, Nigeria's chapter' is non - existent, making the referral to a non-existent body unenforceable. Indeed, parties are bound by their contract. However, where such terms or expression will not be absurd or is unambiguous, the intention of the parties is read into the contract. The Respondent has conceded to the fact that judicial notice has been taken that only 2 bodies of Arbitrators exist in Nigeria which are:the Chartered Institute of Arbitrators (CIArb(UK)), Nigeria Branch and Chartered Institute of Arbitrators of Nigeria. What is basically missing or misnomered or interchanged is "London" instead of 'UK' which the trial court inferentially and literally interpreted, "London is a city and not a country, reference to United Kingdom must be more correct. Can the fact that 'London' was used and not 'UK' necessarily, mean and be inferred that it is a non-existent body? I cannot imagine that. It is reasonably inferable that this was a

misnomer or a mistake, which must be read to bring in the intention of the parties".

This Honourable court has taken the pains to quote extensively the above decision by TOBI JSC to bring home the issue that was so seriously canvassed by the Respondents that 'Mohammed Uwais Settlement Centre of the High Court of FCT' is a non-existent body.

This Honourable court is therefore of the humble view that whether the said body in question is known as 'Uwais Dispute Resolution Centre or Abuja Multi - Door Court House or Mohammed Uwais Settlement Centre', it remains one and the same institution owned and managed by the High court of the FCT, Abuja for all the alternative dispute resolution endeavours. It is also the humble view of this Honourable Court that it is the same institute referred to in clause 16.3 of the Joint Venture Agreement duly executed by the parties. It is further held that any of the parties ought to have complained about the nomenclature before affixing his signature on the said JVA, that is, Annexure 1 attached to the affidavit in support of the motion on notice.

This Honourable Court having thus arrived at the conclusion that clause 16.3 makes it mandatory for any of the parties to first refer any dispute to an Arbitrator before resorting to a court of law, the present suit cannot be said to have been properly filed before this Honourable Court as reference to an Arbitrator before embarking on any court proceedings is a condition precedent to the filing of this suit.

Thus, the Claimant/Respondents cannot depart from the Express agreement duly entered into by the parties by way of Joint Venture Agreement with the provisions in clause 16.0 which is a condition precedent before this Honourable Court can assume jurisdiction in this

case. Infact, in the earlier cited case of **CHUBA CHUKWUOGOR & 3 ORS VS. CHUKWUMA CHUKWUOGOR & 1 OR** (Supra) the court of Appeal held thus:

"Non - compliance with a condition precedent is not a mere technical rule but it goes to the root of the case".

In view of the foregoing judicial authorities it is the humble opinion of this Honourable court that the present suit is not competent before this court as it robs this court the requisite jurisdiction to entertain same. This being the case, it cannot rightly be held that this Honourable Court can grant any order asking the parties to submit a fresh agreement that precisely refers the entire dispute to arbitration as canvassed by the Respondents. This will amount to rewriting the agreement for the parties which does not form part of the functions of any court. Finally, on the submission of the learned counsel to the Respondents that the present application is made under a wrong law it will be in the interest of justice to refer to the case of **FALOBI V. FALOBI (1976) N. N. L. R. pg 169 at pg 177** where the Supreme Court held that:

"If a relief or remedy is provided by law, a relief or remedy which is properly claimed by a party cannot be denied that party simply because he has applied for it under a wrong law. Afortiori, if the application has merits, the Applicant cannot be denied the reliefs he claims because he has not stated the order under which he has made the application or has stated a wrong one. It may be a ground for an amendment on such term as the court may deem fit. It ought not be a ground for denial of Justice".

Similarly, in the case of **ADAKA V. IKOT ABAS T. R. C. (1991) 6 NWLR (Pt. 198) pg 450** it was held thus:

"It is well settled that failure to state the particular rule of court under which an application is brought does not ipso facto vitiate the application provided that the text of the prayer is intelligible and discloses a legal or equitable relief.

Per NASIR in the same case above, "It is now settled that this court will not allow an otherwise valid right to be subsumed in procedural technicalities like failure to put the correct number of Rules of Court at the top of a motion paper".

Again, in the case of CONT. Pharm. Ltd V. Scan Pharm A/S (1994) 2 NWLR (Pt. 326) at pg 337 it was held that:

"Where a relief is sought under a wrong law or rule of court, the court is competent to grant it provided such relief is properly claimed by the party seeking it and is known to law. This is because if it is denied the party seeking it simply because he had applied for it under the wrong law; it would amount to perpetrating a latent injustice".

In conclusion, it is the humble opinion of this Honourable court that the present suit is not properly constituted before the court for failure to comply with a condition precedent provided on clause 16.3 of the Joint Venture Agreement duly executed by the parties on the 21st August, 2020. The failure of the Respondents/Claimants to comply with the condition precedent provided by the parties has robbed this court of any jurisdiction to entertain this suit as presently constituted. Furthermore, since this court lacks the jurisdiction to entertain this suit, abinitio, it also lacks the jurisdiction to stay proceedings and refer the matter to the Chief Judge of High court, FCT let alone to appoint a sole Arbitrator for the parties. The only available order that would be made by this Honourable court at this stage is that of striking out to enable the

parties comply with condition precedent before any suit could be filed at all.

In the circumstances therefore, this suit is hereby struck out for lack of jurisdiction.

**SIGNED:
HON.JUDGE
12/03/2025**

APPEARANCE:

Alexander A. Hassan, Esq, for the Claimants/Respondents

Barth Omozokpia, Esq, with T. F. Ajibuku, Esq, for the Defendants/Applicants