

Defendant/Objector is seeking an Order staying proceedings in this matter pending arbitration.

The plaintiffs are opposed to the grant of this application on the sole ground that the 1st Defendant/Objector is not a party to the agreements which formed the foundation of the application for referral to arbitration. On this sole ground the Court was urged to refuse and dismiss this application.

I have read the processes put forward by parties as well as the pleadings filed by the plaintiffs. The first contract document front loaded by the plaintiffs is between the 1st defendant and the 2nd defendant. None of the plaintiffs herein was a party to the agreement dated 1st February, 2014. It is also interesting to note that clause 15.6 of the agreement read as follows:

“No term of this Agreement shall be enforceable by any person who is not a party to this Agreement, nor shall any such person have any right under this Agreement.”

Although clause 14 of the Agreement provides for arbitration it can only be invoked against parties to the said agreement. The plaintiffs herein are not parties to the agreement and the Court would therefore be re-writing the express agreement of parties if the aforesaid clause 14 is enforced against the plaintiffs who are total strangers to the arbitral clause. The doctrine of privity of contract precludes the Court from enforcing terms of contract against a total stranger to the contract.

In **OGUNDARE & ANOR V. OGUNLOWO & ANOR (1997) 6 NWLR (PT.509) 360** Onu, JSC stated this principle as follows:

“In law, there is privity of contract. It is always between the contracting parties who must stand or fall, benefit or lose from the provisions of their contract. Their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit there-under.”

See also:

1. IKPEAZU V. AFRICAN CONTINENTAL BANK (1965) 1 NMLR 374 AT 378;

EBHOTA & ORS V. PLATEAU INVESTMENT AND PROPERTY CO.LTD (2005) 7 S.C (PT.III) 8; (2005) 15 NWLR (PT.948) 266.

The second agreement pleaded and front loaded by the plaintiffs and dated 26th June, 2014 is between the 1st Defendant/Objector and one Messrs Milton House Capital Partners Limited who is not a party to this suit. It therefore follows that clause 11 of this particular agreement on dispute resolution vide arbitration cannot be invoked in this case. The reason being that clause 9 of the agreement expressly excluded third party interest.

The third and last frontloaded Agreement which provides for arbitration is the one dated 15th June, 2015 and executed between the 1st and 2nd

plaintiffs. Again the 1st defendant/objector who is not a party to the Agreement cannot take benefit of same based on the doctrine of privity of contract set out above. There is nothing to add on this point.

From the fact and circumstances of this case, I must agree with the Plaintiffs' counsel that the application for stay of proceedings pending arbitration presented by the 1st Defendant/Objector is misconceived as it has no legal foundation. The application is liable to be and hereby dismissed for want of merit.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
03/06/2020