

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO**

**CLERK: CHARITY**

**COURT NO. 16**

**SUIT NO: FCT/HC/M/5322/20**

**DATE: 08/06/2020**

**BETWEEN**

**MUTUAL COMMITMENT COMPANY LIMITED.....APPLICANT**

**AND**

**CLEAR CUT OIL AND GAS NIGERIA LIMITED..... RESPONDENT**

**RULING**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

A few minutes ago, learned counsel for the applicant in motion on notice M/5322/20 Mr. Aboki who took over from Miss Kachollom Peters informed the court that they have filed a counter-affidavit to the motion *ex parte* number M/6391/20. Learned counsel urged me to countenance the counter-affidavit even though it was filed this morning.

He went further to submit quite surprisingly, that their the motion *ex parte* is premature and cannot be heard since their own motion on notice has not been heard and determined. Learned counsel further informed the court that their motion on notice M/5322/20 would be amended since they have taken over from the former counsel.

Mr. Aboki however, said they would be ready to respond to the motion ex parte if the applicant to it inclining on being heard.

In a short reply, Mr. Innocent Lagi, submit in substance that under the provisions of the **Arbitration of Conciliation Act 2004** both parties are entitled to approach the court either for enforcing or setting aside an arbitral award. He relied on **S. 29 & 31 of the Arbitration and Conciliation Act 2004.**

And since both sides have filed and responded, he urged me to allow them move their motion ex parte M/6391/20.

I have listened and take cognizance of both submissions.

A little background of where we are coming from would be appropriate here.

On 18-5-20, when we discovered that there are pending motion on notice and motion ex parte on the same arbitral award that is, one seeking enforcement and the other seeking setting aside, I had ordered that the motion ex parte be served on the other party and then we consolidate the hearing of both motions.

By the next adjourned date of 3-6-20, the applicant to the motion on notice changed counsel and a new counsel surfaced.

I granted them an adjournment to enable them be properly seized of the matter. We fixed today for hearing.

And today, they informed the court that they just filed a counter-affidavit to the motion ex parte of the other party. That was this morning.

I perused the record file, and alas, that counter-affidavit is not yet in the file. But the learned counsel to the applicant confirmed that they have actually served them a copy of the counter-affidavit. This is where we are now.

It must be stated that motions generally are two; motion ex parte and motion on notice. A motion ex parte can transform to a motion on notice where court has ordered the service on the other party such as in this case. See **BAYERO VS FEDERAL MORTGAGE BANK OF NIGERIA PLC & ANOR. (1998) 2 NWLR (PT. 509) 529.**

To my mind, that counter-affidavit need to be considered along with this motion ex parte has now effectively being on notice.

But the clog here is that I have not seen it. It is not in this file. I think it is only appropriate that I take or consider an adjournment to enable the counter-affidavit to be filed properly in court and to then move the motion. I must emphasize that on the next adjourned date, I would consider this motion as a matter of priority in the light of the general circumstances of this case.

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Suleiman Belgore  
(Judge) 8-6-20