IN THE HIGH COURT OF HE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT: COURT 10 JABI – ABUJA

DATE: 14TH OF JULY, 2020

BEFORE: HON. JUSTICE M.A. NASIR

SUIT NO: CV/1351/2018

MOTION NO: M/5687/2020

BETWEEN

JAIZ BANK PLC ---- CLAIMANT/RESPONDENT

AND

1. ALHAJI HASHIM AHMAN
2. INTERCOMMERCE RESOURCES LTD ---- DEFENDANTS/APPLICANTS
3. ALHAJI SULEIMAN MUHAMMED HAMIS

RULING

The claimant instituted this suit on the 28/3/2018 by way of Writ of Summons. The defendants on their part filed a Statement of Defence and a preliminary objection challenging the jurisdiction of the Court to entertain this suit. By the notice of preliminary objection, the defendants are seeking for an order referring this suit to Arbitration in accordance with Clause 15 of the Murabaha – Line Agreement mutually entered and executed by the parties.

The grounds of the objection are that the suit is irredeemably incompetent for failure to fulfill a condition precedent, thus the Court lacks jurisdiction to entertain the suit, and that the suit is an abuse of Court process.

In support of the objection is a 14 paragraphs affidavit and a written address duly adopted by **U.O. Mohammed Esq**. Counsel submitted that the failure of the claimants to refer the dispute to the Arbitration Committee, the substantive suit is incompetent. That having shown that an agreed precondition has not been fulfilled, and the jurisdiction of this Court having not been properly invoked, the only order to be made by the Court is that of striking out.

The claimant filed a 5 paragraphs counter affidavit dated 8/5/2020 and a written address duly adopted by **G.T. Amalu Esq**. Learned counsel submitted that the claimant has met every condition precedent to the institution of this suit. He referred the Court to page 4 of the letter of offer and clause 13 of the Murabaha – Line

agreement to submit that the entire gamut of the relevant documents forming the basis of the relationship of the parties have to be read so as to determine whether there is a condition precedent such as reference to a committee of Arbitrators before the Court could be seized of jurisdiction to determine this suit. He urged the Court to dismiss the preliminary objection.

Now it is not disputed that the defendants were given a loan facility and an Offer for Murabaha Finance Line was issued together with the Murabaha Line agreement executed by the parties. This Court has perused the several clauses of the agreement, and clause 15 deals with disputes arising between the Bank and its customers. The provision is as follows:

> *"In case of any dispute between the Bank and Customer which cannot be settled amicably, parties has mandated that such dispute shall be resolved through arbitration in accordance with Arbitration and Conciliation Act (as amended). An*

arbitration committee shall be appointed to resolve the dispute according to Islamic law principles and Islamic Commercial Jurisprudence. One member of this committee shall be selected by each party and the two members shall select the third. At least one of them must be experienced in Islamic Commercial and financial transaction jurisprudence as well as laws/customs governing banker customer relationship. The decision of the arbitration committee shall be binding on both parties."

The claimant/respondent has stated in paragraph 4(b) of the counter affidavit that the documents that regulate the relationship between the claimant and defendants include the offer letter for Murabaha Finance Line, Murabaha – Line Agreement and other correspondences. I have read through all these documents and it is instructive to state that parties were not mincing words when they entered into and drafted

the referred documents. The wordings are clear and unambiguous. It is noted that the entire transaction i.e. the offer of the finance facility itself is subject to the Murabaha – Line Agreement. This is clearly captured in the Murabaha – Line Agreement in Clauses 1 and 2 of the preamble as follows:

"WHEREAS:

1. *The Customer had expressed his desire via application letter dated 19/12/14 to import/acquire/procure the goods/assets described in Schedule 1 which are all Shari'ah permissible for several imports/procurements from time to time from several suppliers and wants to have them financed by the Bank and for subsequent sale to the Customer on Murabaha contract bases.*
2. *The Bank had agreed to provide this Murabaha – Line Finance upon agreed terms and conditions set out below:"*

Therefore the submission of learned counsel to the claimant/respondent in paragraph 4.14 is misconceived which is to the effect that the Murabaha – Line Agreement did not deal with the commencement of Court action upon default by the defendants, but rather it dwelt on issues of maximum amount of facility, tenor, mark up per annum, facility limit for the import of purchase of goods by the customer on behalf of the bank and the subsequent sale of the purchased goods/assets after taking full possession on behalf of the bank e.t.c. The claimants cannot severe the Murabaha Finance Line from the Murabaha – Line Agreement. The two documents must be read together.

The law is that the arbitration clause where embedded in a document constitutes an agreement of such parties concerned that if any dispute occurs with regard to the obligations which the parties have undertaken to each other, such dispute should be settled by a board or tribunal of their own constitution and

choice. See **Williams vs. Williams & ors (2014) LPELR – 22642 (CA).**

Once an arbitration clause is retained in a contract which is valid and the dispute is within the contemplation of the clause, the Court should give regard to the contract by enforcing the arbitration clause. See **Heyman & anor vs. Darwins Ltd (1942) A.C. page 356.** The Supreme Court in the case of **Owner of the M.V. Lupex vs. Nigerian Oversees Chartering and Shipping Ltd (2003) 6 SC (part 11) page 62** held a similar position and had this to say :

> *"The law is settled that the mere fact that a dispute is of a nature eminently suitable for trial in a Court is not 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 by them."

The claimant is in Court because there is a dispute that has arisen out of the Murabaha Finance Line and the Murabaha – Line Agreement. As stated earlier, it is not possible to severe the Murabaha – Line Agreement from the Murabaha Finance Line.

It is therefore the general policy of the Court to hold parties to the bargain into which they had entered unless there was a strong, compelling and justifiable reason to hold otherwise or interfere. See **Onward Enterprises Limited vs. M.V. "Matrix" & ors (2008) LPELR – 4789 (CA).** In this instance, there is nothing to show that the arbitration agreement was imposed on the claimants. Since both parties voluntarily entered into the agreement same should therefore be binding on them.

Where parties to an agreement make provision for arbitration before an action can be instituted in a Court of law, any aggrieved party must first seek the remedy

available in the arbitration. If a party thus goes straight to the Court to file an action without reference to the arbitration clause as contained in the agreement, the Court of law in which the action is filed is bound to decline jurisdiction in the matter. See **Kurubo vs. Zach – Motison (Nig) Ltd (1992) 5 NWLR (part 239) 102.**

The claimants are bound to adhere to Clause 15 of the Murabaha Line Agreement by resorting to Arbitration. I decline jurisdiction to proceed with the suit and direct parties to proceed to arbitration as per their agreement.

Signed

Honourable Judge

Appearances:

G.T. Amalu Esq – for the claimant/respondent

U.O. Mohammed Esq – for the defendants/applicants