

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/CV/189/18**

**BETWEEN:**

**MESSRS XCESS STRENGTH NIGERIA LIMITED**

.....**CLAIMANT/RESPONDENT**

**VS**

**1. THE HONOURABLE MINISTER OF POWER, WORKS AND  
HOUSING**

**2. FEDERAL MINISTRY OF LAND HOUSING AND URBAN  
DEVELOPMENT.....DEFENDANTS/APPLICANTS**

**RULING**

Before this court are two (2) Motions filed by the Defendants/Applicants, the court will determine the Motion No: M/7614/2020 wherein the Defendant seeks to regularize their processes and thereafter consider the application/Motion No:M/7615/2020 seeking to stay proceedings in this Suit.

By a Motion on Notice with Motion No:M/7614/2020, brought pursuant to Order 49 Rule 4 of the Rules of Court and under the inherent jurisdiction of court. The Defendants/Applicants seek the following reliefs;

- (1) Order of this Hon. Court extending the time within which the Defendants/Applicants may file its Notice to Defend the above Suit.
- (2) An Order of Court deeming as properly filed and served the Defendant/Applicant's Notice to Defend marked as Exhibits "A".
- (3) And the Omnibus Relief.

The Motion is supported by a Five (5) Paragraph affidavit deposed to by one Kanabe Shaka a staff the Defendants in this Suit also filed a Written Address in compliance with the Rules of court and adopts same as oral argument in urging the court to grant the reliefs sought.

In response, the Claimant/Respondent filed a four (4) paragraphs counter – affidavit deposed to by one Emmanuel Uneze Secretary in the law firm of Claimant/Respondent's counsel. Also filed a Written Address, adopts same and urge court to refuse the application.

In their Written Address Defendants/Applicants; counsel formulated a sole issue for determination, that is;

“Whether the court has unfettered discretion to extend time within which a party may take certain procedure steps”.

Submits that the court has the powers to grant an order for extension of time. Refer to Order 49 Rule 4 of the FCT High Court (Civil Procedure) Rules 2018 and the case of Long-John Vs Black ( 1998) 6 NWLR (PT. 555) 524 Paras F – G, submits further that a court only exercise its discretion

upon materials placed before it. Refer to *Odutola Vs Lawal* (2002) 1 NWLR (PT.749) 633 @ 660 Para C.

Submits that the facts relied upon for court to consider in the grant of this application is stated in Paragraph 4 of their supporting affidavit. That granting this application will satisfy the provision of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) which provides for fair hearing. Refer to the case of *Jang Vs INEC* (2004) 12 NWLR (PT. 886) 46 @ 67 Paras E H.

Finally urge court to grant the prayers of the Defendants/Applicants.

In the same vein, Claimant/Respondent's counsel formulated a sole issue for determination in their Written Address which is;

"Whether the Defendants/Applicants have made out a good case to be entitled to Orders sought herein, having regards to their antecedents in this matter brought under the Undefended List Procedure of the Honourable Court".

Submits that it is not in doubt that this Honourable Court has the powers under the Rules of Court to grant the application, however same is not granted as a matter of right but the power is exercised upon consideration of material facts placed before the court. That the Applicant must show sufficient cause. Referring to the record of court, submits that the Applicant had not entered appearance in this case and did not file defence but came to court on the day case was fixed for Judgment asking for adjournment for the parties to discuss and settle the matter out of court,

the Claimant agreed and the court magnanimously granted the adjournment for settlement, but Applicant abandoned settlement and filed this application to delay the course of justice in the matter.

Submits further that the grant of the application will defeat the course of justice as the matter is brought under the Undefended List procedure of this court which is bound. That the aim of the applications to arrest the Judgment about to be delivered by this court and such act is unknown to the jurisprudence, same is therefore incompetent misconceived in law and fact. Refer to the cases of Ukachujkwu Vs PDP (2004) 10 WRN 1 @ lines 12 – 13 and News Watch Communication Ltd Vs Attah (2006) 34WRN 1 SC. Urge court to refuse the application.

Having carefully considered the affidavit evidence of the parties, the submission of counsel as well as judicial authorities cited, the court finds that only one (1) issue calls for determination that is;

“Whether the Defendant/Applicant has made out a ground so as to be entitled to the reliefs sought”.

The grant of an application for extension of time to do an act is at the discretion of court. In Amgbare Vs Sylvia (2008) ALL FWLR (PT. 419) 576 @ 600 Paras D – E the court held;

“In granting or refusing an application for enlargement or extension of time in which to file a process, the court is called upon to exercise its discretion and that is to say the discretion must be exercised judicially and judiciously and not on the whim and fancy of the

Judge. Judicially and Judiciously means in this context the exercise of discretion with sufficient correct and convincing reasons”.

Thus Applicant’s affidavit must disclose sufficient materials before the court which can establish good and substantial or exceptional reasons that can explain the delay in not taking appropriate step at the time they ought to have been taken.

In the instant case contained in paragraph 4 (a) –(d) are reasons which occasioned the delay in Applicant taking the appropriate step at the time it ought to have taken it. On the other hand Claimant/Respondent states the reasons why the court should refuse the application in her counter-affidavit and a careful consideration of the said counter-affidavit reveals that the entire paragraph 3 (b) (c) (d) (e) (f) (g) (h) (i) and (k) offends the Provisions of Section 115 (2) of the Evidence Act as same is replete with extraneous matters, legal argument and conclusion and the said offending portions of the counter-affidavit are hereby struck out .

The pertinent question is whether the reasons contained in the affidavit in support of the application for extension of time are cogent to warrant the grant of the application?

I have considered the depositions contained in Applicant’s affidavit in support of the Motion and I find them not cogent and sufficient as Applicant failed to disclose the said “fundamental issue” that occasioned the delay. However in the interest of justice and the need to grant fair hearing to the Applicant who has now come forward to be heard and because it is not the business of court to shut out litigants from being heard and to promote

and preserve the constitutionally guaranteed right to fair hearing I shall grant the reliefs as prayed and accordingly ordered as follows:-

- (1) An Order of this Hon. Court extending the time within which the Defendants/Applicants may file its Notice to Defend the Suit.
- (2) An Order of Court deeming as properly filed and served the Defendants/Applicant's Notice to Defend marked as Exhibits "A".

I now turn to the Defendants/Applicants' Motion No: M/7615/2020.

The said Motion on Notice with Motion No:M/7615/2020, brought under the Sections 4 and 6 of the Arbitration and Conciliation Act 2004, Order 19 Rules 1 and 2 of the High Court of the Federal Capital territory Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Hon. Court. The Defendants/Applicant prays the court the following Orders;

- (1) An Order of this Honourable Court staying proceedings in this Suit and refer the parties to Arbitration in accordance with Arbitration Clause contained in Exhibit "A" annexed to this application.
- (2) And the Omnibus relief.

The Motion is supported by a 3 Paragraph affidavit with one Exhibit attached deposed to by one Kanabe Shaka a staff of the Defendants. Also filed Written Address and adopts same in urging the court to grant the reliefs.

Responding in opposing the Motion, Claimant/Respondent filed a 5 Paragraphs counter-affidavit deposed to by Emmanuel Uneze a secretary in the law firm of Claimant/Respondent's counsel, attached to the said counter-affidavit Exhibit "A" and also filed a Written Address in compliance with the Rules of court and adopt same as oral argument in urging the court to refuse the application.

The case of the Defendants/Applicant in brief is that the parties vide Article 12 (2) of Exhibit "A", entered into an Agreement that the parties subject themselves to amicable settlement in the event of any dispute arising from the implementation and interpretation of the Agreement and where it fails parties refer to any Arbitration under the provisions of the Arbitration and Conciliation Act.

In their Written Address, Applicant's counsel formulated a sole issue for determination that is;

"Whether the court has the powers to stay its proceedings in this Suit pending the outcome of the Arbitration as agreed by the parties".

Submits that the court encourages parties to refer to Alternative Dispute Resolution ADR in resolving their disputes before embarking on litigation. Refer to Order 19 Rules 1 and 2 of the Rules of Court. That since the parties have agreed vide Exhibit "A" to arbitrate before litigation, the consent of the parties becomes unnecessary as required by the Rules of court referred to. Submits further that Section 5 (1) of the Arbitration and Conciliation Act 2004 empower the court to stay proceedings for parties to go for Arbitration.

Submits by a Plethora of authorities that stay of proceedings is justice in this instant case and urge court to grant a stay of proceedings pending Arbitration. Refer to Fawehinmi Construction Co Ltd Vs OAU (1998) LPELR 1256, Kano State Urban Development Board Vs Fanz Construction Co Ltd (1990), and City Engineering (Nig) Ltd Vs FHA (1997) LPELR – 865 (SC) and Felak Concept Ltd Vs A.G. Ibom State (2019) 8 NWLR (PT.1675) 433 @ 454 Paras F – G.

On the other hand, the Claimant/Respondent in their counter-affidavit stated that, this application is belated and is overtaken by events and steps taken in this matter that the grant of the application will prejudice the Claimant/Respondent. That the Applicant refused and or neglected to yield to their request to refer their dispute to arbitration by their letter dated 16/8/2018 written to the Defendants/Respondents copy of the letter attached. And that they went further to appoint an Arbitration and also made request for the Defendants/Applicants to rectify same.

In their Written Address Respondent's counsel formulated a sole issue for determination that is;

“Whether having regards to the antecedent of the Defendants/Applicants herein, it is in the interest of justice to refer this matter brought under the Undefended List Procedure of the Honourable Court”

Submits that it is not in the interest of justice to refer this matter brought under the Undefended List Procedure of the of the court that the opportunity for the matter to be referred to arbitration is spent and



overtaken by events that the application is a distraction and brought in bad faith, targeted at arresting the Judgment of this Honourable Court and is an attempt to taunt the court. Refer to *Ukachuwku Vs PDP* (2014) 19 WRN 1 @ line 12 – 13 and *News Watch Communication Ltd Vs Attah* (2006) 34 WRN 1 SC.

Submits further that if the court is inclined to granting the application, urge court to enter Judgment in favour of the Claimant/Respondent in the sum of ₦16,075,576.95 (Sixteen Million, Seventy Five Thousand Five Hundred and Seventy Six Naira, Ninety Five Kobo) as admitted herein by the Defendants/Applicants in Paragraph 4 (C) and (d) of the Defendants/Applicants' affidavit in support of their Notice of intention to defend herein, pursuant to Order 20 Rule 4 of the Rules of Court before referring the aspect being disputed to the Multi-Door CourtHouse for settlement within a specified time.

Having given an insightful consideration to the affidavit evidence of the parties the submissions of counsel as well as the judicial authorities cited for and against the grant of the relief of the Applicant, I find that only 1 (One) issue calls for determination, that is;

“Whether the Applicant has made out a ground so as to be entitled to the reliefs sought”.

The grant or otherwise of an application of this nature is at the discretion of court and in the exercise of that discretion, the court overtime is urged to do so judicially and judiciously taking into cognizance the facts before it. In *Adeniyi Vs Akinyede* (2010) ALL FWLR (PT.503) 1257 @ 1323 the Court

had this to say on the discretionary power of court to grant or refuse an application for stay of proceedings thus;

“The grant or refusal of application for stay of proceedings is purely the exercise of the discretion powers of the court or Tribunal which discretion must exercise judiciously and judicially by discrete consideration of the peculiar facts and circumstances of the case, the materials placed before the court by the Applicant and the interest of the parties. Also, such an application is not granted just for the asking, but under exceptional circumstance”.

In the instant case, the Applicant in bringing this application relies on Article 12 (2) of their Agreement dated 14/12/2012, which provides that parties subject their dispute to an Arbitration Panel on the other the Claimant/Respondent contends that having written to the Defendants/Applicants on 16/8/2018 to refer the matter to an Arbitration Panel and having also appointed an Arbitrator, this application is therefore overtaken by event same opportunity having been spent, in line with their Agreement.

From the above contention it is my opinion that this an occasion where the court is called upon to interpret Agreement between parties to a contract and this the court will do bearing in mind that parties are bound by their express Agreement See *Kaydee Ventures Ltd Vs The Hon. Minister of Federal Capital Territory* (2010) ALL FWLR (PT. 519) 1079 @ 1099 Paras D – F. The entire Article 12 of the said Agreement between the parties is hereby re-produced;

“If at any time a dispute or difference shall arise between the parties to this Agreement, either party shall as soon as reasonably practicable give to the other notice in writing of the existence of such a dispute or difference specifying the nature and the point in issue”.

12.1 All disputes arising from the execution of this Agreement shall be settled through amicable consultations between the parties.

12.2. “If the parties shall fail to reach a settlement within thirty (30) days after the receipt of such notice, the dispute or difference shall be referred to an Arbitration Panel in accordance with the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004 and any subsequent amendment thereto. The place of Arbitration shall be Nigeria”.

From the foregoing covenants the parties have agreed to bring their dispute before an Arbitration Panel, and any aggrieved party is expected to take certain steps before the dispute is referred to an Arbitration Panel, that is the party must give a notice in writing as soon as practicable the existence of a dispute, and thereafter if the parties fail to reach a settlement within thirty (30) days after receipt of the notice the dispute is then referred to an Arbitration Panel.

In view of these Provisions and given the fact from the deposition of the Applicant that they did not take any of those steps, but rather the Clamant/Respondent have by her Exhibit “A” taken the steps as agreed by

the parties before approaching this court, I am Agreement with the contention of the Claimant/Respondent that the Defendant/Applicant lost the opportunity to refer the dispute between the parties to an Arbitration Panel as their mutual covenant only require the parties to reach a settlement within thirty (30) days of the receipt of notice of dispute Now the Claimant/Respondent's Exhibit "A" dated 16/8/18 was received by the Defendants/Applicants on 20/8/2018, a computation of time reveals a period of more than Eighty Four (84) days between when the Defendants/Respondents acknowledged receipt of the Notice as required by their Agreement and when this Suit was filed. Thus Claimant/Respondent is well within her right to approach court for relief having taken steps to comply with the Agreement between the parties as they are not expected to wait forever for the Defendants/Applicants to settle their dispute before an Arbitration Panel. At this stage of hearing and in the circumstance and nature of the Suit between the parties, it will be contrary to the demand and interest of justice to exercise the discretion of court in favour of the Defendants/Applicants as the facts contained is not cogent enough to support of the relief for stay of proceedings, this position of the court is even more strengthen by the decision of the court in Adeniyi Vs Akinyede (Supra) 1323 Paras E – F where the court held thus;

"Stay of proceedings is a grievous grave, unusual interference with the rights of parties to expeditionary ventilate their grouses on the merits through the adjudicatory system of the law courts. Thus courts are almost always reluctant therefore to grant stay of proceedings".

From all of these and having found that the application lacks cogent grounds to grant a stay of proceeding, in this Suit, this application lacks merit and is hereby refused.

**HONOURABLE JUSTICE O.C. AGBAZA**

(Presiding Judge)

24/9/2020

I.A. NWALA ESQ FOR THE CLAIMANT/RESPONDENT

C.F. ADENIYI ESQ FOR THE DEFENDANTS/APPLICANTS