IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

HON. JUDGE HIGH COURT NO. 12

COURT CLERKS: T. P. SALLAH & ORS

DATE: 23/09/2020

FCT/HC/M/5149/2020

BETWEEN

ABUJA URBAN MASS TRANSPORT COMPANY LIMITED....APPLICANT

AND

AUTOCORP IMPEX PTE LIMITED…… RESPONDENT

RULING

The Applicant herein brought the instant application by motion on notice dated and filed on 7th February,2020 pursuant to the provisions of Order 19 Rule 13 of the Abuja FCT High Court Civil Procedure Rules 2018, Section 31(1) & (2) of the Arbitration and Conciliation Act and under the inherent jurisdiction of this Court, praying for the following reliefs:-

1. An Order of this Honourable Court granting leave for the recognition and enforcement of the arbitral award dated 6th day of November, 2019.
2. And forsuch order or further order as the Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 10 paragraphs deposed to by one TemiladeOjo, a litigation clerk in the Applicant's Counsel's law firm with two exhibits marked 1 and 2 respectively. Applicant's Counsel also filed his Written

Address dated and filed on 7th February,2020 and same was adopted by him as his oral submission in support of the application.

The Respondent in opposition to the grant of theapplicationfiled a 5 paragraphs Counter Affidavit with Exhibits AC1, AC2, AC3, AC4, AC5 and AC6 as well as its Counsel's Written Address dated and filed on 24th February,2020.

In response to the counter affidavit of the Respondent,the Applicant filed a further affidavit of 18 paragraphs with one exhibit and Counsel's supporting address.

It is very relevant to note for the record that the Respondent herein had brought an application by Originating Motion on Notice No. CV/1018/2020 dated and filed on 5th Februay,2020 seeking to set aside the same arbitral award dated 6th Novenber,2019 now sought to be recognized and enforced through the instant application. The said application to set aside the award was heard, argued by parties and has been dismissed in a considered Ruling delivered by this Honourable Court.
Be it as it may, the Applicant's Counseldid not formulate or highlight any issue for determination in his Written Address. However, the Respondent's learned Senior Counsel distilled a sole issues for determination as follows:-

> *"Whether in the circumstances of this case, recognition and enforcement of the Award dated 6th November, 2019 made by the Arbitral Tribunal comprised of Dr. Alex A. Izinyon, SAN as the Sole Arbitrator in the arbitration between the Parties ought not to be refused."*

I adopt this issue as mine as formulated by the Respondent's Counsel.
Thus, having set out the issue for determination, it is important to consider the affidavit evidence of both parties in

its affidavit in support of the instant application, the Applicant avers that arbitration proceedings were commenced at the Abuja MultidoorCourt House in line with clause 18 of a Development Agreement between the Applicant and the Respondent herein. That the Arbitrator published his Award on 6th November,2019 which was partly in the Applicant's favour but the Respondent has since done nothing in compliance with the Award. That the certificate of occupancy which the Respondent was directed by the Award to return to the Applicant is still in the Respondent's custody. Exhibits 1 and 2 attached to the affidavit in support are the Development Agreement dated 18th June, 2009 and Final Award dated 6th November,2019 respectively.

On the otherhand, in its Counter-Affidavit, the Respondent admitted that there was a development agreement between parties pursuant to which arbitration proceedings were commenced before an Arbitral Tribunal comprised of Dr. Alex A. Izinyon who gave his Award (i.e. the subject matter of the instant application before this Court). The Respondent avers that parties participated at the arbitration by filing their points of claim, points of defence/counter claim and replies. That parties further gave oral and documentary evidence at the arbitration proceedings. Exhibits AC1, AC2, AC3, AC4, AC5 and AC6 were all attached to the Respondent's Counter Affidavit as copies of processes filed by parties at arbitration, record of the arbitral proceedings and documents admitted in evidence thereat. The Respondent avers that it was clear that the Applicant had breached a fundamental term of the development agreement between parties which required it to facilitate the funding of the project, delivery and permission to the Respondent to deposit the Applicant's certificate of occupancy in respect of the property with a bank as security for loan. That it was also clear that the Applicant had breached the duty under the development agreement requiring it not to use its title over the property in any way prejudicial to the Applicant's interest. That despite this evidence before the sole arbitrator that the Applicant had breached fundamental clauses

of the development agreement, the sole arbitrator proceeded to give award in the Applicant's favour granting its first and third reliefs.

The Respondent further avers in its Counter Affidavit that the sole arbitrator failed to consider the valuation report by JideTaiwo Estate Surveyors and Valuers (tendered and admitted in evidence by consent of parties at the arbitration) in arriving at the sum of ₦7,000,000.00 as the value of the improvements made by the Respondent. That the reason given by the sole arbitrator in his award for refusing to rely on the valuation report was that it was not addressed to the Respondent but to First Bank of Nigeria who was not a party to the proceedings. That the sole arbitrator also refused to rely on the said valuation report (showing value of work done as ₦724,380,207.00) in ascertaining the sum due to the Respondent on quantum meruit nor did he invite/call any expert evidence on the sum due as quantum meruit. That the sole arbitrator is neither a quantity surveyor nor estate valuer and therefore had no basis for arriving at the sum of ₦7,000,000.00 awarded as quantum meruit to the Respondent as value of work done by it. That the sum of ₦7,000,000.00 which the sole arbitrator arrived at based on quantum meruit is unfair and a clear mistake of fact with no factual basis. According to the Respondent, the sole arbitrator was wrong to have arbitrarily held in his award that the structures on ground at the Kaura site was not up to 30% as required by the development agreement without any expert evidence. It is the Respondent's averment that the arbitral tribunal did not act fairly towards the parties by failing to rely on the valuation report before it and also failing to call for expert opinion to assess the value of improvements made by the Respondent on the site. That the sole arbitrator misconstrued the construction on the site to be DCP level despite personal physical visit and inspection of the project on ground. The Respondent averred that the Award of the Sole Arbitrator, Dr. Alex Izinyon, SAN made on 6thNovember,2019 is bad on the face of it and its recognition and enforcement ought to be refused by this Court

as the Award is contrary to public policy. That if the Applicant's instant application is granted, the huge resources expended by the Respondent on the Kaura Bus Terminal would go to waste with no remedy to the Respondent.

In its further affidavit, the Applicant denied that the valuation report admitted in evidence at the arbitral proceedings was admitted by consent of parties as it (the Applicant) had objected vehemently to its admissibility. That the Applicant had addressed this in its final written address and the sole arbitrator had made his findings on this and other issuesin his final award. That the Applicant made attempt to comply with directives in the Award but the Respondent is trying to frustrate the Award.

Arguing in support of the instant application, the Applicant's Counsel submitted in his address that this Court has powers to make an order of recognition and enforcement of any arbitral award upon an application for same. Counsel relied on Section 31(1) & (2) of the Arbitration and Conciliation Act. He also relied on documents attached as exhibits to the affidavit in support. He urged this Court to grant the instant application to enable the Applicant commence the process of reaping the benefit of the fruit of its judgment.

Arguing par contra, learned Counsel to the Respondentreferred this Honourable Court to Section 32 of the Arbitration and Conciliation Act which he submitted empowers the Court to refuse enforcement or recognition of an award. He also cited the authors Orojo and Ajomo in their book 'Law and Practice of Arbitration and Conciliation in Nigeria'. He posited that the Respondent's counter-affidavit has shown that the Award in this case is bad on the face of it and there are apparent errors therein which warrant the refusal of its recognition and enforcement by this Court. He said the Supreme Court has held that a Court would refuse an application for leave to enforce an arbitral award if the Judge finds that the validity of the award is doubtful as in the instant case. He cited the case

of ***RAS PAL GAZI CONST. CO. V. FCDA (2001) 10 NWLR (PT.722) P. 599.***He further referred this Court to Section 52 of the Arbitration and Conciliation Act which he says also empowers this Court to refuse recognition and enforcement of awards. Counsel argued that there is an underlying public policy consideration in the instant case and contended that the Sole Arbitrator's decision arriving at ₦7,000,000.00 as quantum meruit in favour of the Respondent is unfair and brings this to fore. He argued that the failure of the sole arbitrator to place reliance on the valuation report admitted in evidence and his further failure to call expert evidence are clear mistakes which shows the Sole Arbitrator's failure to act fairly towards parties. He urged this Court to resolve the sole issue for determination in the Respondent's favour and refuse the recognition and enforcement of the Award in this case.

Responding in his further address, the Applicant's Counsel submitted that the case of ***RASPALGA CONST. CO. V. FCDA (2001) 10 NWLR (PT.722) 559*** is not relevant to the instant case as the validity of the instant Award is not in doubt. He contended that the valuation report admitted in evidence at the arbitral proceedings was not relevant to the case. He urged this Court to grant the instant application as the condition for recognition of the award has been satisfied by the Applicant while the Respondent failed woefully to satisfy the conditions for refusal.

After a perusal of the written address of both Counsel and the arguments either for or against the grant of the present application,there is no dispute that there was an arbitration agreement between the Applicant and the Respondent pursuant to which they submitted their dispute to arbitration at the end of which an arbitral Award was made by the Sole Arbitrator on 6th November,2019. The Respondent has not denied that it has not complied with the said Award by handing over a certificate of occupancy as directed under the Award. The Applicant now seeks an order of this Court for the recognition and enforcement of that Award.

Section 31 of the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria 2004 provides as follows:-

> *31. Recognition and enforcement of Awards.*
>
> *(1) An arbitral award shall be recognized as binding, and subject to this section and section 32 of this Act, shall, upon application in writing to the Court be enforced by the Court.*
>
> *(2) The party relying on an award or applying for its enforcement shall supply –*
>
> *(a) The duly authenticated original award or a duly certified copy thereof; and*
>
> *(b) The original arbitration agreement or a duly certified copy thereof.*
>
> *(3) An award may by leave of Court or a judge be enforced in the same manner as a judgment or order to the same effect.*

The Applicant in this case has attached duly certified copies of the Development Agreement dated 18th June, 2009 between the Applicant and the Respondent as Exhibit 1. I have looked at the said agreement. It does contain an agreement at Clause 18 that parties shall submit any dispute arising under Exhibit 1 to arbitration to be held in Nigeria. The Applicant has also attached a certified true copy of the Final Award published on 6th June,2019in the arbitration proceedings between parties as Exhibit 2. I have looked at Exhibits 1 and 2 and must find that the Applicant herein has done all that it is required to do under the law for the recognition and enforcement of the said Award.

The Respondent has however filed a counter-affidavit and address opposing the application for recognition and enforcement of the Award. The Respondent has urged this Court to refuse the recognition and enforcement of the Award. I find the provisions of **Sections 32 and 52 of the Arbitrationand Conciliation Act** to be very relevant. They are hereunder reproduced.

"32. Any of the parties to an arbitration agreement may, request the Court to refuse recognition or enforcement of the award."

Section 52 provides:-

"52.

1. *Any of the parties to an arbitration agreement may, request the Court to refuse recognition or enforcement of the award.*

2. *The Court where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement thereof is brought may, irrespective of the country in which award is made, refuse to recognise or enforce an award-*

   A. *If the party against whom it is invoked furnishes the Court proof-*

      (i) *That a party to the arbitration agreement was under some incapacity; or*

      (ii) *That the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the law of the country where the award was made; or*

      (iii) *That he was not given proper notice of the appointment of an arbitrator or of the proceedings or was otherwise not able to present his case; or*

      (iv) *That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or*

      (v) *That the award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award*

which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(vi) That the composition of the arbitral tribunal,or the arbitral procedure, was not in accordance with the agreement of the parties; or

(vii) Where there is no agreement between the parties under sub-paragraph (vi) of this paragraph, that the composition of the arbitral tribunal,or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place; or

(viii) That the award has not yet become binding on the parties or has been set aside or suspended by a Court of the country in which, or under the law of which, the award was made; or

B. If the Courtfinds-

(i) That the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria; or

(ii) That the recognition or enforcement of the award is against public policy of Nigeria.

3. *Where an application for the recognition or enforcement of an award has been made to a Court referred to in subsection (2)(a)(viii) of this section, the Court before which the recognition or enforcement is sought may, if it considers it proper, postpone its decision and may on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security."*

While this Honourable Court has the power to refuse the recognition and enforcement of an arbitral award, the grounds

upon which the Court may exercise such power are copiously set out under Section **52(2) of the Arbitration and Conciliation Act**, which provisions I have reproduced above. See also decision ofCourt of Appeal in the cases of ***NORTH POLE NAVIGATION CO. LTD V. MILAN (NIG) LTD (2015) LPELR-25865(CA) and SUNDERSONS LTD & ANOR V. CRUISER SHIPPING PTE LTD & ANOR (2014) LPELR-22561(CA).***The onus is thus on the Respondent to establish any of these grounds, as the party requesting this Court to refuse the recognition and enforcement of the Award of 6th November, 2019.

I have carefully read through the Respondent's counter-affidavit and the documents attached as exhibits. The facts and reasons which the Respondent had earlier (in its Originating Motion on Notice No. CV/1018/2020) relied upon to ask this Court to set aside the Award are the very same facts and reasons upon which it is now relying to ask this Court to refuse recognition and enforcement of the Award. In the determination of the said Originating Motion on Notice No. CV/1018/2020 between the same parties as the instant application, this Court has held that such facts and reasons adduced by the Respondent is insufficient to set aside the Award of 6th November,2019. The relevant question is; are the same facts (and reasons) sufficient to refuse the recognition and enforcement of the Award? I think not.There is no mistake or error on the face of the Award and the Respondent has yet again, in the instant application, failed to convince this Honourable Court otherwise just as it failed with Originating Motion No. CV/1018/2020.

I have read the decision of the Supreme Court referred to by the Respondent in the case of ***RAS PALGAZI CONSTRUCTION COMPANY LTD. FCDA (2001) LPELR-2941(SC*)** where the apex Court held that the only jurisdiction conferred on the Court is to give leave to enforce the award as a judgment *unless there is real ground for doubting the validity of the award*. The Supreme Court held that where, upon an

application to enforce the award, the Judge finds that the validity of the award is doubtful, he can refuse leave.

Now, I have read the Final Award in this case (Exhibit 2). It is sound and in accordance with the law. The sole arbitrator gave his reasons for his decisions and applied relevant positions of the law to the facts. There is nothing on the face of it that shows that it is invalid and the mere fact that the Respondent is not contented with same does not make it invalid. The Award itself does not flout any extant provisions of the law and the Respondent has failed to establish same.

In an attempt to bring his reasons for seeking the refusal of the recognition and enforcement of the Award under one of the known grounds i.e. under **Section 52(2)(B)(ii) of the Arbitration and Conciliation Act**, the Respondent has alleged that the Award is contrary to public policy. Under that provision, the Court may refuse to recognise or enforce an Arbitral award where it finds that that the recognition or enforcement of same is against public policy of Nigeria.

The phrase 'public policy' has been defined by the Supreme Court as the ideals which for the time being prevail in any community as to the conditions necessary to ensure its welfare. Consequently, anything is treated as against public policy if it is generally injurious to the public interest, public welfare or public good. – See the case of ***OKONKWO V. OKAGBUE (1994) 9 NWLR (PT 368) P. 301***. See also the cases of ***STATOIL NIG. LTD V. INDUCON (NIG.)LTD. & ANOR (2012) LPELR-7955(CA)*** *and* ***CONOIL PLC V. VITOL S.A. (2011) LPELR-19951(CA)***.

While from its counter-affidavit, the Respondent clearly appears to be dissatisfied with the outcome of the arbitral proceedings as published in the Final Award of 6th November,2019, this Court cannot find anything contrary to public policy in the Award as alleged by the Respondent. The Respondent's reasons for asking this Court to refuse the

recognition and enforcement of the Award are self-serving and clearly not in public interest. The Respondent has failed to establish that the Award, its recognition or enforcement is against public policy thus requiring that it should not be recognized or enforced.

The Respondent is dissatisfied with the Award. That is understandable. That however does not make the decision rendered in the Award bad (and indeed it is not) or against public policy. I must therefore find that the Respondent has failed to establish any of the grounds for the refusal of the recognition and enforcement of the Final Award (Exhibit 2) of 6th November,2019.

It is a well settled principle of law that parties who have both consensually chosen to go to arbitration are bound by the arbitral award. – see the case of ***TRIANA LTD. V. UTB PLC (2009) 12 NWLR (PT. 1155) P. 313 at P. 343***.

Where parties have chosen their own arbitrator to be the judge in the dispute between them, they cannot when the award is good or otherwise, object to its decision either upon the law or the fact. That is the general rule. See the case of***COMMERCE ASSURANCE LTD V. ALLI (1992) 3 NWLR (PT.232) P. 710***.

The parties in this case submitted their dispute to arbitration in accordance with their arbitration agreement. A Final Award was made on 6th November,2019 at the end of the arbitral proceedings. See Exhibits 1 and 2 to the affidavit in support. TheRespondent has failed to establish cogent reasons for the refusal of the recognition and enforcement of the Award. Accordingly, leave of this Courtis hereby granted to the Applicant for the recognition and enforcement of the Final Award (Exhibit 2) published on 6th November,2019 by Dr. Alex A. Izinyon, SAN, sole arbitrator in the arbitral proceedings between the Applicant and the Respondent. The sole issue for determination of the instant application is hereby resolved against the Respondent and in favour of the Applicant. The

instant application succeeds and the relief sought therein is hereby granted.

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HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
23/09/2020

Parties:- Absent
Ola Ibitoye: For the Applicant
AmezeOkparah:- With me is AdedapoAdewuyi for the Respondent.

Sign
Judge
23/09/2020