

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : SUIT NO: CV/845/2020
DATE: : TUESDAY 3RD NOVEMBER,2020

BETWEEN

1. AHMED SANI BELLO
2. MUSTAPHA SANI BELLO
3. MUHAMMED SANI BELLO } **CLAIMANTS**

AND

1. UMAR I. MOHAMMED
2. COMRADE AIR SERVICES LTD
3. COMRADE GROUP LLC } **DEFENDANTS**

RULING

The Claimants commenced this action under the undefended list procedure by a Writ of Summons filed on 17th January, 2020 for:

“An Order for the payment of the sum of \$2,008,000 (Two Million, Eight Thousand Dollars) only to the Claimants against the Defendants being the sum loaned from the Claimants in several instalments to the Defendants, which the Defendants undertook to refund the claimants.”

Immediately the action was instituted, a terms of settlement was filed on 11th February, 2020. After the Terms of Settlement was filed, the Defendants filed a Notice of Intention to defend as well as an Affidavit disclosing a Defense on the Merit and a

Counterclaim. This was filed on 3rd June, 2020. The Defendants in the Affidavit and Counter Claim filed:

- a. Noted that this action is not a simple dispute/contract involving money but an aviation matter presented like a simple contract.
- b. Made serious allegations of fraud and forgery against the Claimants.
- c. Made allegations of intimidation and duress against the claimants.
- d. Prayed the Court, amongst other reliefs in the counter – claim for an order setting aside the Terms of Settlement filed in this case.

The matter came up in court on 19th October, 2020 where the court directed the parties to address the court on the jurisdiction of the court to make the

Order prayed for in the Terms of Settlement, hence this address.

Learned counsel for the Defendant formulate a sole issues for determination to wit:-

Whether an Order granting relief 3.2 in the Terms of Settlement filed on 11th February, 2020 which determines and decides the claima of the parties regarding, arising out and pertaining to 1 aircraft bombardier challenger 604 with serial No. 5427 can be made by the FCT High Court.

Arguing on the above, counsel contended that, jurisdiction is the threshold of Judicial Power and the backbone of any adjudication. This judicial power is donated to a court by its enabling Act and that by settled judicial authorities, where a court lacks jurisdiction to make an Order, all proceedings,

Orders of judgments made come to nothing. The authority of *MADUKOLU VS NKEMDILIM (1962) 2 SCNLR 341*. Was referred to counsel further argued that Section 251(g) of the 1999 Constitution (as amended) vests exclusive jurisdiction to entertain “*any admiralty jurisdiction*” in the Federal High Court. Section 1 of the Admiralty Jurisdiction Act Cap A5 LFN 2004 provides:

The admiralty jurisdiction of the Federal High Court (in this Act referred to as the court included the following, that is:-

- a. Jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Act Section 19 of the same Act (AJA) provides:

“Notwithstanding the provisions of any other enactment or law, the court shall as from the commencement of this Act, exercise exclusive jurisdiction in admiralty causes or matters, whether civil or criminal.”

Upon service, the Plaintiff filed their response wherein the issue whether this Honourable Court has the jurisdiction to enter the Terms of Settlement filed on 11th February, 2020 before it in this matter as consent and final Judgment in this matter was formulated for determination.

Arguing on above, counsel stated where parties and concerned members of the community elect that a dispute be settled out of court, and in furtherance of the same there was mediation and the terms of settlement announced, which are acceptable to the

parties, the Court of Justice should not treat such mediation lightly. Since agreements are meant to be honoured and equity acts in personam, the law and equity will act in unison to estop a party to such mediation or out of court settlement who had accepted the terms of settlement from reneging and acting to the contrary of what he had accepted. That the only option available to the Defendants to dissuade this Honourable Court from giving effect to the contents of the Terms of Settlement is where they plead fraud or misrepresentation, see ***GALADANCHI VS ABDULMALIK (Supra) at P. 408 and SALIHU VS MINISTRY OF EDUCATION GOMBE STATE (Supra)*** where the Court, at Page 125 held that.

Counsel also argued that, assuming but not conceding that the Terms of Settlement raises issues

or matter relating to aviation law which were generally within the purview of the Federal High Court, it can also be safely interpreted to be intended to include and refer to issues of simple contract and damages, etc where the subject matter of said contract is aviation-related over which this Honourable Court exclusively has jurisdiction. As such, this Honourable Court can validly exercise jurisdiction and give effect to the Terms of Settlement. It was held by the Court in ***KLM ROYAL DUTCH AIRLINES VS TAHER (2014)2 NWLR (Pt. 1393) Page 137 at Paragraph 191.***

On the whole, counsel urged the court to enter judgment as per the Terms of Settlement.

It is well settled that it is one of the cardinal principles of judicial system to allow parties to

amicably resolve the dispute between them. By so doing, the otherwise hostile relationship between the parties would be resolved. It is this amicable settlement that is termed settlement and shall be referred to as Terms of Settlement once reduced into writing and shall become judgment of court once filed before the court.

COURT:I have carefully read through the legal arguments contained in the respective written addresses filed by both Claimants and Defendants. The kernel of Defendants’ counsel argument is centered on the “1 aircraft bombardier challenger 604 with serial number 5427”.

Aremu of counsel, argued in his written address on behalf of the Defendants that this court can’t assume jurisdiction simply because parties executed Terms

of Settlement. Learned counsel argued that the said terms of settlement executed by the parties has changed the character of the claim of the Claimants and posited that this court does not have jurisdiction over aviation matters.

It is not his argument, Aremu posited, that parties are bound by the agreement they freely enter into but that the subject matter of the agreement has to be within the jurisdiction of the court.

Counsel relied on sections 251(g) of the Constitution of the Federal Republic of Nigeria 1999 as amended, 1(a) of ACJA, ***ONI VS CODBURY NIG. PLC.(2016) 9 NWLR (Pt. 1516), S.P.M LTD VS ADETONYI (2009) 13 NWLR (Pt. 1159)*** to drive home his point that this court should not allow relief 3.2 adopted as its judgment on the strenght of the

position of the law. Counsel for the Defendant of equal importance drew the attention of the court to the position of the Court of Appeal in ***IGWEH & ANOR VS IGWEH & ORS (2019) LPELR – 48724*** where the court stated that court cannot grant reliefs on matters not within its jurisdiction.

On their part, learned counsel for the Claimants, Abdullahi Esq., argued on the bindingness of terms of settlement and the consequence of its repudiation without having to embark on a journey of no return, Permit me to state that all the authorities and argument of learned counsel for the Claimant are apt on the bindingness of Terms of Settlement or agreement and the attendant consequences of repudiation.

I am however quick to observe that Aremu and Abdullahi of counsel for the Claimants and Defendants seem to be dwelling on two different things... whereas Abdullahi is of the firm view that Defendants are bound by the said terms and cannot blow hot and cold at the same time, Aremu of counsel is in agreement that the said Terms of Settlement though signed by the Defendants, but that this court cannot assume jurisdiction over a subject matter it does not originally have jurisdictions.

As I stated from the preceding part of this ruling, I wish to also state that terms of settlement does not on its own crystalise into consent Judgment until the court enter it as its Judgment. To my mind, the court has a discretion to enter terms of settlements as its Judgment or not, particularly where such terms of

settlements are not ascertainable or the rights acquired or abandoned nor clearly spelt out.

This is so important because in view of the fact that a terms of settlement entered as consent Judgment has the tune of final Judgment of the court.

In the instant case, the terms of settlement as contained in paragraph 3.2 as follows;

That this Terms of Settlement determines, decides and settles all pending or contemplated claims, actions and or petitions, by whatever name called or described, arising from any transaction or relationship between the parties and or third parties against any of the Claimants, their agents, proxies, representative or assigns in Nigeria or Abroad in relations to any right or enforcement involving any of the parties regarding to, arising out of, associated

with or pertaining to 1 aircraft bombardier Challenger 604 with Serial No 5427.A careful reading of the said paragraph 3.2 of the said term of settlement shows that same is so vague, ambiguous and un-ascertainable to warrant this court to enter such terms as its Judgment. I am indeed fortified by the Constitutional Provision of Section 251 which deals with the exclusive jurisdiction of the Federal High Court on aviation matters.

I rely on the case of ***STAR PAPER MILL LTD. & ANOR VS ADETONYI & ORS (2009) LPELR – 3113 (SC)***.

I find the said paragraph 3.2 of the said terms of settlement not just vague and misleading, but very violent to the jurisdiction of the FCT and Federal High Courts.

I am not unmindful of the fact that this Court under certain simple contractual relationship, has the jurisdiction to determine simple contractual matter regardless of where it arise from i.e Aviation, Oil and Gas, Federal Government Agency etcetera.

Relief 3.2 as contained in the term of settlement clearly does not fall under the category.. I can't give what I do not have.

The argument of Aremu of counsel on jurisdiction is apt and accordingly upheld.

Paragraph 3.2 as contained in the said Term of Settlement is accordingly struck – out.

Justice Y. Halilu
Hon. Judge
3rd November, 2020

APPEARANCES

U. ODIGBO with I. M. MAJINDADI – for the Claimants.

AKINYEMI AREMU with YEMISI A. AREMU– for the Defendants