

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/234/2019

DATE: : TUESDAY 8TH DECEMBER, 2020

BETWEEN

NICON INSURANCE LIMITED...PLAINTIFF/RESPONDENT

AND

**1. THE HON MINISTER OF F.C.T DEFENDANT/
/RESPONDENT**

**2. BUREAU OF PUBLIC ENTERPRISES....DEFENDANT/
APPLICANT**

**3. PERSONS, NAME UNKNOWN DENFENDTANT/
RESPONDENT**

RULING

This Ruling is at the instance of the Defendants/Applicants who approached this Honourable Court for an Order striking out this suit herein on the ground that same is premature and therefore robs this Honourable Court jurisdiction to entertain same.

The grounds upon which the application was made is as follows:-

1. Clause 12 of the Share Sale and Purchase Agreement provides that disputes amongst parties shall be resolved by holding settlement meeting or through Arbitration, but no Arbitration has taken place in the instant case.

2. By virtue of the said Clause 12 of the Share Sale and Purchase agreement the jurisdiction of the court can only be invoked to enforce the Arbitrators' award.
3. Clause 7.4 of the Share Sale and Purchase Agreement reads.

“No action for any claims by the Purchaser shall lie against BPE for an amount not exceeding five percent (5%) of the purchase consideration”
4. By virtue of clause 7.4 the right of the Plaintiff to institute this action has not crystallised.

In support of the application is an affidavit of 5 paragraphs duly deposed to by one Omoha Godfrey, a litigation assistant in the law firm of the Applicant's counsel.

It is the contention of the Applicant as distilled from the affidavit in support that clause 12 of the share sale Purchase Agreement dated 17th December, 2005 provide that the disputes amongst the parties should be resolved by holding settlement meeting or Arbitration but the disputes in the instant case were never submitted to Arbitration. The share Agreement was annexed as Exhibit “A”.

That the Plaintiff monetary claims in this suit is less than 5% of the purchase consideration contrary to clause 7:4 of Exhibit “A” herein.

In line with law and procedure, a written address was filed wherein two issues were formulated for determination to wit;

- a. Whether this suit is not premature when the Plaintiff failed to submit the disputes to arbitration before approaching the court.
- b. Whether in the circumstance of this case, the Plaintiff's right of action has crystallised.

On issues one; i.e. Whether this suit is not premature when the Plaintiff failed to submit the disputes to arbitration before approaching the court.

Learned counsel argued that by virtue of Order 23 Rule 2 of the Rules of this Honourable Court the Defendant can raise a point of law in his pleading which may be argued before, during or after trial.

Learned counsel submit further that parties are bound by conditions and terms in their contract and that as long as an arbitration clause is in a valid contract, the court ought to give due regard to the

voluntary contract of the parties. *MV. LUPEX VS NOC & S LTD (2003) 15 NWLR (Pt. 844) or 469.*

On issue two; Whether in the circumstance of this case, the Plaintiff's right of action has crystallised.

Learned counsel submit that No action for any claims by the purchaser shall lie against BPE for an amount not exceeding five percent (5%) of the purchase consideration. And that the monetary claims of the Plaintiff in the instant suit is less than five percent.

Court was urged to strike out the suit of the Plaintiff.

The Defendant equally filed a further and better affidavit wherein Exhibit "A" was annexed.

Upon service, the Plaintiff filed a counter affidavit of 15 paragraphs deposed to by one Becky

IziomaDike Esq. a legal practitioner in the law firm of Plaintiff/Respondent's counsel.

It is the deposition of Respondent that the claims brought before this Honourable Court are challenging the invasion, trespass, forceful eviction, sale and interference with the claimant's right and title over its properties and that the share sale and purchase agreement has nothing to do with the claims before the court.

It is the deposition of the Respondent that the share sale and purchase Agreement is in respect of the acquisition of Federal Government of Nigeria share holdings in the Plaintiff as **Nicon Insurance Plc.** by **Assurance Acquisition Ltd.**

In line with law a written address was filed wherein a sole issue to wit; whether the claims before this

Honourable Court are within the contemplation of arbitration agreement.

Arguing on the above, learned counsel submit that jurisdiction of a court of law is a very hard matter of law which is donated by the constitution and enabling statute. ***GAFAR VS GOVT. OF KWARA STATE (2007) 4 NWLR (Pt. 1024) 3752.***

Learned counsel submit further that it is the claims of the Plaintiff that confers jurisdiction on court and not the statement of defence. ***PDP VS ADEYEMI (2002) 10 NWLR (Pt. 776).***

Counsel submit finally that the Applicant has not made sufficient case for reference of the claims for arbitration.

The Defendant upon service of the counter affidavit filed a reply on point of law wherein learned counsel

for the Applicant submit that parties are bound by their pleadings. And that the Plaintiff pleaded the share sale and purchase agreement in its statement of claim and frontloaded same.

Learned counsel submit that party cannot approbate and reprobate at the same time. *AKERE VS ADESANYA (1993) 4 WLR (Pt. 288) 484 at 495.*

Court:-I have gone through the Motion on Notice filed by the Defendant/Applicant and the reaction of the Claimants/Respondents. I shall be brief but exhaustive in addressing the issue of jurisdiction.

It is trite that the inherent jurisdiction of the court is not exercisable when the court lacks jurisdiction. What this means is that the inherent jurisdiction of a court only comes in where it has jurisdiction. Court shall of importance determine its jurisdiction first

before being called upon to exercise any inherent jurisdiction ***IWUJI & ORS VS GOVERNOR OF IMO STATE & ORS (2014) LPELR 22824 (CA)***.

In determining whether the court has jurisdiction or not what must be first considered are;

- i. The Plaintiff's claims as contained in the writ of summons and statement of claim, where the action is commence by a writ of summons or the affidavit in support of originating process and the relief sought where the action is commenced by an originating summons.
- ii. The statute creating the court. This is because court are a creature of statute and it is the statute that creates a particular court and that also confers its jurisdiction. ***PAM & ORS VS ABU & ORS (2013) LPELR 21486 (CA)***.

I shall beam my judicial searchlight on the writ of summons to ascertain whether the court has jurisdiction or not.

For the sake of clarity I hereby reproduce the reliefs claims by the Plaintiff.

- a. The Sum of N500,000,000.00 (Five Hundred Million Naira) being damages for trespass committed and still being committed by the Defendants on the Plaintiff's properties situate, lying and being at Plot 12A and 12B (formerly known as plot 11A and 11B) Udi Street, Aso Drive, Maitama - Abuja, Federal Capital Territory.
- b. Declaration that the Defendants by themselves their servants, agents and or privies including the Ad Hoc Presidential Committee on sale of

Federal Government Houses, or otherwise howsoever, have no right in Law to invade, trespass upon, forcefully evict, sell, transfer title or interfere with the Plaintiff's peaceful possession and quiet enjoyment of her properties situate, lying and being at Plot 12A and 12B (formerly known as Plot 11A and 11B) Udi Street, Aso Drive Maitama, Abuja, Federal Capital Territory.

- c. Declaration that the demolition of the Plaintiff's properties at Plot 12A and 12B (formerly known as Plot 11A and 11B) Udi Street, Aso Drive Maitama, Abuja, Federal Capital Territory by the Defendants is malicious, illegal and constitutes an unlawful trespass on the Plaintiff's properties.

- d. Declaration that the Plaintiff is the person entitled to the statutory right of occupancy over the properties lying and situate at Plot 12A and 12B (formerly known as Plot 11A and 11B) Udi Street, Aso Drive Maitama, Abuja, Federal Capital Territory.
- e. An Order for the payment of the sum of N79,064, 680.00 (Seven Nine Million, Sixty Four Thousand and Six Hundred and Eighty Naira) being special damages suffered by the Plaintiff, when the Defendants through their servants and /or agents demolished the Plaintiff's buildings on Plot 12A and 12B (formerly known as Plot 11A and 11B) Udi Street, Aso Drive Maitama, Abuja, Federal Capital Territory.

f. A perpetual injunction restraining the Defendants, their servants, agents and or privies, officers or otherwise howsoever called from trespassing or further trespassing on the Plaintiff's properties lying and situate at Plot 12A and 12B (formerly known as Plot 11A and 11B) Udi Street, Aso Drive Maitama, Abuja, Federal Capital Territory and/or in any way in interfering with Plaintiff's right of ownership of the said plot and peaceful enjoyment thereof.

It is the contention of the Defendants/Applicants that the share sale and purchase Agreement between the parties had a provision for an arbitration clause and therefore the court should strikeout this suit.

The law is trite regarding the bindingness of terms of agreement on the parties. Where parties enter into an

agreement in written, they are bound by the terms thereof. This court and indeed any other court will not allow anything to be read into such agreement, terms on which the parties were not in agreement or were not ad-idem.

***LARMIE VS DATA PROCESSING
MAINTENANCE & SERVICE LTD. (2005)12 SC
(Pt. 93 at 103).***

It is instructive to state here that if any party to an arbitration agreement commence any action in any court with respect to any matter which is the subject of an arbitration agreement, any party to the arbitration agreement may at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceeding. See section 5 of the

Arbitration and Conciliation ACT Cap 29 of the Laws of the Federation 1990.

However, I must state here that, from the reliefs sought as aptly captured in the preceeding part of this ruling, there is no nexus between the claims of the Plaintiff and the share sale agreement.

Indeed, it is the claim of the Plaintiff and not the defence that is to be considered in determining whether the court has jurisdiction or not. *PDP VS ADEYEMI (2002)10 NWLR (Pt.776)*.

From the statement of claim before this court, it is obvious that the claims did not arise from the share sale purchase agreement in view of the fact that the share sale agreement is in respect of the acquisition of Federal Government of Nigeria shareholdings in the Plaintiff by Assurance Acquisition Limited. It is

then clear that it has nothing to do with the claims before this court.

Lacken in merit, the present application shall be dismissed for being unmeritoriously moved. Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
8th December, 2020

APPEARANCE

BECKY IZIOMA DIKE -for the Plaintiff.

JOSHUA BOYEDE - for the 2nd
Defendant/Applicant holding the brief F. P
CHORIO.