

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON TUESDAY, 9<sup>TH</sup> DAY OF FEBRUARY, 2021**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/539/2019**

**MOTION NO. M/10459/2020**

**BETWEEN**

**INCORPORATED TRUSTEES OF  
SUNSHINE HOMES RESIDENTS ASSOCIATION,  
WUMBA DISTRICT**



**CLAIMANT**

**AND**

- 1. ONDO STATE DEVELOPMENT AND  
PROPERTY CORPORATION**
- 2. MUSTADRAK CONTRACTS LTD.**
- 3. ALIADE ENGINEERING & CONSTRUCTION  
COMPANY LTD.**



**DEFENDANTS**

**RULING**

The claimant commenced this action on 6/12/2019 vide writ of summons claiming several reliefs in respect of Plot 50 Wumba District, Abuja [known as Sunshine Homes] as set out in paragraph 44 of the statement of claim filed along with the writ of summons.

This Ruling is on 2<sup>nd</sup> defendant's *Motion No. M/10459/2020* filed on 6/10/2020 seeking:

1. An order of the Court staying proceedings in this suit pending the reference to and determination of the dispute between the parties before an arbitral panel.
2. And such orders as this Honourable Court may deem fit to make in the circumstance of this case.

The grounds of the application are:

- i. The facts and/or series of facts that culminated to the suit of the claimant arose from the terms and conditions as contained in the Memorandum of Understanding made on 8<sup>th</sup> day of March, 2016 between the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- ii. The Memorandum of Understanding made on 8<sup>th</sup> day of March, 2016 between the 1<sup>st</sup> and 2<sup>nd</sup> defendants is the bedrock that gave rise to the suit of the claimant.
- iii. The suit of the claimant is premature as the parties including the claimant connected to the MOU made on 8<sup>th</sup> day of March, 2016 are yet to explore the mechanism of ADR as provided in the MOU made on 8<sup>th</sup> day of March, 2016 which constitutes condition precedent before the claimant will invoke the jurisdiction of this Honourable Court.

Nadia Oka Esq., a counsel in the Law Firm of Deeplaw Associates, filed an affidavit of 13 paragraphs in support of the motion; attached therewith are Exhibits MCL-1 & MCL-2. Dr.SoniAjala [now Senior Advocate of Nigeria] filed a written address.

In opposition, CordeliaOgbonna, a litigation secretary in the Law Firm of Paul Erokoro& Co., filed a 7-paragraph counter affidavit on behalf of the 1<sup>st</sup>& 3<sup>rd</sup> defendants on 18/11/2020. OduduabasiItuenEsq. filed a written address with the counter affidavit. On 19/10/2020, Tochukwu Peter TochukwuEsq. filed a written address on behalf of the claimant, which he referred to as a *“Reply on Points of Law”*. At the hearing of the application on 23/11/2020, the counsel for the parties adopted their respective processes.

In the affidavit in support of the application, Nadia Oka Esq. stated that:

- i. At the root of the claimant’s cause of action is the Memorandum of Understanding [MoU] made on 8/3/2016 between 1<sup>st</sup>& 2<sup>nd</sup> defendants [Exhibit MCL-2].The MoU is mentioned in paragraphs 19, 22 & 37 of the statement of claim [Exhibit MCL-1].
- ii. The said MoU provided for arbitration in the event of dispute over the subject matter of this suit. The law imposes a duty on the parties including the claimant to explore and exhaust the mechanism of ADR as adequately provided in Exhibit MCL-2 before recourse to the adjudicatory jurisdiction of the Court.

iii. The issue submitted to this Court for determination are within the contemplation of the binding arbitration agreements between the 1<sup>st</sup>& 2<sup>nd</sup> defendants and the claimant that derived its cause of action from Exhibit MCL-2.

In the counter affidavit of the 1<sup>st</sup>& 3<sup>rd</sup> defendants, Cordelia Ogbonna stated that: [i] the MoU, which has the arbitration clause relates to disputes between the 1<sup>st</sup>& 2<sup>nd</sup> defendants; [ii] the crux of this case is the dispute between the claimant and the defendants and not any dispute arising from the MoU; and [iii] the claimant and the 3<sup>rd</sup> defendant are not privy to the MoU and are not bound by the terms and clauses contained therein.

From the grounds of the application and the submissions put forward on behalf of the parties, I am of the view that the issue for resolution is:

Whether the arbitration clause contained in the MoU dated 8/3/2016 [Exhibit MCL-2] made between the 1<sup>st</sup>& 2<sup>nd</sup> defendants is binding on all the parties to this suit so as to warrant the grant of an order staying proceedings in this action pending arbitration.

It is necessary to first reproduce Clause 12 of the MoU between Ondo State Development and Property Corporation [the 1<sup>st</sup> defendant] and Mustadrak Contract Ltd. [the 2<sup>nd</sup> defendant]. The said Clause 12 of the MoU, which contains the Arbitration Clause relied upon for this application reads:

*Any disputes between the parties hereto with respect to the construction, management and operations of the Project or the effect of this MoU or rights, or liabilities of the parties hereunder or any other matter arising therefrom or connected therewith shall be amicably settled by the parties. If the parties hereto cannot amicably settle the dispute, it shall be referred to arbitration under the provisions of the Arbitration and Conciliation Act Cap. A 18, Laws of the Federal Republic of Nigeria 2004 or any statutory modification or re-enactment thereto in force for the time being.*

Let me also set out section 5[1] of the Arbitration and Conciliation Act, Cap. A18 Laws of the Federation of Nigeria, 2004, which provides:

*If any party to an arbitration agreement commences 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 proceedings.*

The learned senior counsel for the 2<sup>nd</sup> defendant referred to section 5 of the Arbitration and Conciliation Act and posited that parties to an agreement and/or persons who derive benefits or obligations from an agreement which contains arbitration clause are estopped from approaching a court of law until the mechanism of arbitration is explored. He argued that from the averments in paragraphs 19, 22 & 37 of the statement of claim, the irresistible conclusion is that all parties in this suit are bound to explore mediation and

arbitration before resorting to this Court as both the claimant and the 3<sup>rd</sup> defendant come within the purview of “*any other matter arising therefrom or connected therewith*” as stated in Clause 12 of the said MoU. Dr. Soni Ajala, SAN cited **Shayler v. Woolf [1946] Ch. 320** to support his submission that an arbitration agreement will bind not only the actual parties to it, but also an assignee of a contract containing it.

The standpoint of learned counsel for 1<sup>st</sup> & 3<sup>rd</sup> defendants is that the wordings of Clause 12 of the MoU must be given the literal interpretation to the effect that the claimant and 3<sup>rd</sup> defendant are not parties to the MoU. He pointed out that the general law of contract is that a contract affects only the parties to it and cannot be enforced by or against a person who is not a party to it. Oduduabasi Ituen Esq. submitted that an analysis of the MoU will show that the agreement does not cover disputes between the signatories and third parties. He cited the case of **Cannitec International Company Ltd. v. Solel Boneh [Nig.] Ltd. [2017] 10 NWLR [Pt. 1572] 66** to support the principle that when construing a document, the proper course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document.

For his part, learned counsel for the claimant referred to **A.I.D.C. v. Nigeria L.N.G [2000] 4 NWLR [Pt. 653] 494** to support the principle that the applicant for a stay of proceedings must be “*a party to the arbitration agreement*” and that the subject matter of the action must be “*with respect to any matter which is the*

*subject of an arbitration*". Tochukwu Peter Tochukwu Esq. submitted that it is evident from the MoU that the claimant is not a party thereto. The law is that a contract is only binding on parties and their privies. The case of **Makwe v. Nwukor & Anor. [2011] LPELR-1830 [SC]** was relied on. He concluded that the MoU is only binding on the 1<sup>st</sup> & 2<sup>nd</sup> defendants; it is not binding on the claimant even though it may be beneficial to the claimant.

Now, by section 5[1] of the Arbitration and Conciliation Act, the ground upon which "*any party to the arbitration agreement may... apply to the court to stay the proceedings*" is where "*any party to an arbitration agreement commences any action in any court with respect to any matter which is the subject of an arbitration agreement*". See **A.I.D.C. v. Nigeria L.N.G [supra]**. Also, Clause 12 of the MoU under focus begins with: "*Any disputes between the parties hereto*". Clause 1 of the MoU provided that '*Parties*' means the Corporation and the Company, that is the 1<sup>st</sup> & 2<sup>nd</sup> defendants.

The words used in section 5[1] of the Arbitration and Conciliation Act and in Clauses 1 and 12 of the MoU are plain. As rightly submitted by Mr. Ituen, the words must be given their ordinary or literal meaning. Since the claimant and the 3<sup>rd</sup> defendant are not parties to the MoU, the claimant is not bound by the arbitration clause. With profound respect, I do not agree with the view of the learned Senior Advocate of Nigeria representing the 2<sup>nd</sup> defendant/applicant that the claimant and the 3<sup>rd</sup> defendant come within the purview of "*any other matter arising therefrom or connected therewith*" in Clause

12 of the MoU. The decision of the Court is that the proceedings in the claimant's suit cannot be stayed by an order of the Court on account of the arbitration clause in the agreement of the 1<sup>st</sup> & 2<sup>nd</sup> defendants.

In arriving at this decision, I have given due consideration to the submission of the learned SAN that the claimant copiously referred to the MoU in paragraphs 19, 22 & 37 of the statement of claim. In paragraphs 17, 18 & 19 thereof, the claimant stated that the 1<sup>st</sup> defendant's solicitors [Paul Erokoro & Co.] wrote to claimant threatening to evict its members from their properties. Due to the acts of harassment, disturbance and interference with the quiet enjoyment of their properties, the claimant filed an action in the High Court of FCT. In the course of the proceedings, the parties agreed to settle the issues in contention and the MoU dated 8/3/2016 was signed, which paved way for the discontinuance of the suit.

In paragraph 37 of the statement of claim, the claimant averred that instead of the 1<sup>st</sup> & 2<sup>nd</sup> defendants to observe the terms of the MoU, *"they are busy fighting each other amongst other reasons on the deposits ... in the joint account of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with Unity Bank while the Claimant's members that paid these monies for infrastructural development suffer the consequences."*

At this juncture, let me refer to paragraphs [viii] & [ix] of the recitals in the MoU, which read:



*[viii] Disagreements and disputes arose between the Corporation and the Company and its Managing Director on the one hand and between the Corporation and the subscribers on the other hand.*

*[ix] The Corporation and the Company have resolved to settle their disputes amicably and also to resolve all third party interest and disputes arising from the disagreements with the Company and to jointly re-launch actions towards the recovery of the portions of land encroached upon by Frank Woopet Engineering Ltd.*

I have deliberately referred to the above averments in the statement of claim and recitals in the MoU to show that the MoU was between the 1<sup>st</sup> & 2<sup>nd</sup> defendants even though the terms of the MoU included the implementation of "Projects" which is defined in the MoU as "constructing the necessary infrastructure and providing the necessary services to enhance the value of the several plots comprised in the entire parcel of land ..." The point remains that the averments in the statement of claim do not change the fact that the claimant and the 3<sup>rd</sup> defendant are not parties to the MoU; and therefore they are not bound by the arbitration clause.

### **Conclusion**

From all that I have said, I resolve the issue for determination against the 2<sup>nd</sup> defendant. The application lacks merit and is dismissed.

I award cost of N25,000.00 to the claimant; and N25,000.00 to the 1<sup>st</sup>& 3<sup>rd</sup> defendants payable by the 2<sup>nd</sup> defendant.

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**HON. JUSTICE S. C. ORIJI**  
**[JUDGE]**

**Appearance of Counsel:**

1. U. C. EzeukwuEsq. for the claimant/respondent.
2. Molang Peter Esq. for the 1<sup>st</sup>& 3<sup>rd</sup> defendants/respondents.
3. Douglas OndorEsq. for the 2<sup>nd</sup> defendant/applicant.