

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT COURT 7 NYANYA-ABUJA ON THE 17TH DAY OF JUNE
2021

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO:FCT/HC/CV/1243/20

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

- 1. NIGERIA CAPITAL DEVELOPMENT FUND LTD**
- 2. MR. HARETER BABATUNDE ORALUSI**
- 3 MR. LOUIS OKEREKE**

AND

- 1. FCT DIRECTORATE OF ROAD TRAFFIC SERVICES
STAFF CO-OPERATIVE SOCIETY LTD.**
- 2. PRESIDENT: FCT DIRECTORATE OF ROAD TRAFFIC
SERVICES STAFF CO-OPERATIVE SOCIETY LTD**

**CLAIMANTS/
RESPONDENTS**

**DEFENDANTS/
APPLICANTS**

RULING

The Defendant/Applicants' Notice of Preliminary Objection dated 23/03/20 is for an order striking out the Claimants' suit for lack of jurisdiction.

The grounds for the objection relied upon by the Applicants' Counsel are:

1. That the Writ is predicated on a Memorandum of Understanding dated 12/09/12.

2. That Clause 9 at page 8 of the Memorandum of Understanding provides that any dispute not settled amicably between the parties shall be referred to and determined by arbitration in accordance with the Arbitration & Conciliation Act, Laws of the Federal Republic of Nigeria 1990 before resorting to litigation.
3. Arbitration is a condition precedent.
4. The jurisdiction of this Court to entertain the suit has not yet risen.

Learned Counsel relied on the above grounds.

The facts in the Affidavit are in tandem with the facts stated as grounds for the application.

He deposes further that the Claimants have not exhausted the dispute resolution mechanism agreed by the parties before commencing this action.

That the matter is before the Abuja Multi-door Court now Uwais Dispute Resolution Centre. The Claimant was served. The Claimants' Counsel also appeared twice at the Centre which has same parties and subject matter.

The Claimant filed a Counter Affidavit. He failed to appear to adopt same.

I shall however consider it in accordance with the rules of Court.

The Claimants' Counsel chose to argue law in the Affidavit by attacking the competence of the Notice of Objection.

Paragraph 4 (a)-(g) are issues of law and prayer which an affidavit is forbidden to contain.

I shall therefore ignore same.

The Claimants' Affidavit also stated he never failed to adhere to the contents of the agreement.

That he wrote several letters dated 5th, 7th of August 2019 to settle the matter. He further wrote a reminder on 29/08/19.

I have read and considered the Written Addresses of Counsel. There is no contention that the Memorandum of Understanding between the 1st Claimant and the 1st Defendant is the fulcrum of this suit.

Paragraph 9 of the Memorandum of Understanding contains an Arbitration Clause.

It states:

“In event of a dispute or difference between the parties in respect of this agreement such disputes or difference shall be resolved amicably otherwise it shall be referred to and determined by Arbitration in accordance with the Arbitration and conciliation Act.”

The Applicant’s evidence which is not controverted is that this matter is pending before the arbitration tribunal at Uwais Dispute Resolution Centre.

The law is that the incorporation or inclusion of an arbitration clause in an agreement does not oust the jurisdiction of the Court.

See *MAGGBEOLA VS. SANNI (2002) 4 NWLR (PT.756) 193.*

Where parties choose to have their dispute settled by arbitration, then subject to certain limited exceptions, the attitude of the Court has been that the parties should take the arbitration for better for worse.

See Arbico (Nig) Ltd VS. N.M.T. LTD (2002) 15 NWLR (PT.789) 1

C.G.de GEOPHYSIQUE VS. ETUK (2004) 1 NWLR (PT.853) 20

Where parties to an agreement make provisions for arbitration before an action can be instituted in a Court of law, any aggrieved party must first seek the remedy available in the arbitration. If a party thus goes straight to Court to file an action without reference to the arbitration clause as contained in the agreement, the Court of law in which the action is filed is bound to decline jurisdiction in the matter.

See KURUBO VS. ZACK MOTISON (NIG) LTD (1992) 5 NWLR (PT.239) 102.

I have read the Arbitration Clause. It is mandatory, precise and unequivocal.

See KURUBO VS. ZACK MOTISON Nig. Ltd (Supra).

The agreement of Claimants' Counsel that the Preliminary Objection is not brought under any extant law does not hold any water.

The Courts have since moved away from technicalities to doing substantial justice.

A community reading of the Notice of Objection can reveal to any Thomas that it is complaining about a breach of the provision of the Arbitration & Conciliation Act.

Rather than confront the issue, the Claimant/Respondent choose to dance ‘Kokoma’ around the issue.

In the circumstance of this case, the matter is pending before the Arbitral Tribunal.

A cause of action has not arisen.

Until the matter is disposed of, the Claimants’ right to institute an action in Court cannot enure.

This action is incompetent.

It is accordingly struck out.

.....

HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

17/06/21.

Parties absent.

Ola Ibuoye for the Defendant/Applicant.

Claimant/Respondent's Counsel absent.

P.U.Innocent now appears for the Claimant/Respondent.

Signed.

Hon. Judge.

17/06/21.