IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 32**
CASE NUMBER:	**SUIT NO. FCT/HC/CV/84/2020**
	SUIT NO. FCT/HC/M/10663/2020
DATE:	**17TH JUNE, 2021**

BETWEEN:

EDON NIGERIA LTD……APPLICANT

AND

GOVERNMENT OF EBONYI STATE OF NIGERIA……DEFENDANT

APPEARANCE

A. T. Kehinde Esq for the Claimant/Respondent. With Ifeoma Nnamdi Okonkwo Esq and Christopher Awodimila Esq.

F. O. Amedu Esq for with Hajara Shehu and Abusafiyan ESq for the Respondent/Objector.

RULING

By a Notice of Preliminary Objection dated 12th day of February, 2021, filed same day the Respondent/Applicant (Respondent in the Arbitration) prayed the Court for the following:-

1. AN ORDER of this Honourable Court setting aside the entire proceedings in Suit No. FCT/HC/CV/84/2020 and/or; and Order of this Honourable Court dismissing Suit No. FCT/HC/CV/84/2020 in its entirety upon grounds stated on the face of the Motion paper.
2. And for such further order(s) that this Honourable Court May deem fit to make in the circumstances.

While the grounds upon which the Application is predicated are as follows:-

1. The Respondent/Applicant was never served with the Motion on Notice for the enforcement of the arbitral award filed by the Applicant/Respondent neither did the Respondent/Applicant have any knowledge of the pendency of this Application until the 8th February, 2021 when the Respondent was served with the Counter Affidavit to its Motion to set aside the award pending at the High Court of Ebonyi State in No. HAB/01/2021.
2. The proof of service before this Court has a stamp of the Ebonyi State Liaison Office but with no indication of the name of any officer to whom the process was served at the Respondent/Applicant Liaison Office in Abuja
3. The certified true copy of the endorsement and return copy of the process which we obtained from the Registry of this Court does not bear the name of any officer nor designation and cannot be traced to anybody currently working at the Ebonyi State Liaison office in Abuja.
4. The Contract between the parties from which the Arbitration ensued was entered into in Ebonyi State, the parties to the Contract have their principal

place of operation in Ebonyi State, the Contract whose alleged breach led to the initiation of the Arbitration proceedings was performed in Ebonyi State.

5. The only link any of the parties have with the Federal Capital Territory is the Respondent's deposition in paragraph 14 of the Affidavit supporting the Motion for enforcement of the Arbitral award reproduced hereunder. ***"14, EBSG operates a Liaison Office at 61, Mississipi Street, Off Alvan Ikoku Street, Maitama."***

6. By the combined provisions of Sections 2, 13 and 18 of the Ebonyi State Arbitration Law Cap 14 Laws of Ebonyi State, the only Court vested with the jurisdiction to enforce the award is the High Court of Ebonyi State.
7. The Application is premature as the three (3) months period within which the Respondent/Applicant is to apply to set aside the Award by virtue of Section 29 of the Arbitration and Conciliation Act has not lapsed.
8. To bring this Application in another jurisdiction, within the three months period and without serving the Applicant at its principal place of Business or on a responsible officer at its Liaison Office presupposes that the Applicant/Respondent has other motives that do not serve the interest of justice. Instituting this matter before this Honourable Court amounts to forum shopping by the Applicant/Respondent as this Courts is forum non-conveniens.
9. The setting aside or striking out of the matter will be in the interest of justice and will save the precious judicial time of this Honourable Court.

The Application/Notice of Preliminary Objection was brought pursuant to Sections 2, 13 and 18 of the Ebonyi State Arbitration Law Cap 14, Laws of Ebonyi State,

Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil procedure) Rules 2018 and under the inherent Jurisdiction of this Honourable Court as recognized and preserved by Section 6 (6) of the Constitution of the Federal Republic of Nigeria (1999) as amended.

Same is supported by an Affidavit of 9 paragraphs deposed to by Catherine Joseph a front desk officer in the Law firm of Ikpeazu Chambers, Counsel to the Applicant. An annexture marked Exhibit E B S G 1, as well as a written address filed in support dated 12th day of February, 2021.

Meanwhile, in opposition to the Application/Notice of Preliminary Objection, the Applicant/Respondent (Claimant in the Arbitration) filed a Counter Affidavit of 5 Paragraphs deposed to by Irene Idonwojo, the Administrative Secretary in Broderick Bozimo and Company (referred to as B B a C) Lawyers in Akinlou Kehinde Law office (who have joint conduct in this matter) as Applicant/Respondent's Legal Team, as well as a written address in support of the said Counter Affidavit dated 15th of February, 2021.

The Applicant/Respondent meanwhile filed a reply on points of Law to the Applicant's Counter Affidavit in opposition to the Preliminary Objection. The said reply is dated and filed 18/2/2021.

In the Respondent/Applicant's written address in support of the Application/Notice of Preliminary Objection, three issues for determination were formulated by Dr. Onyechi Ikpeazu OON, SAN, Learned Senior Counsel to wit:-

> ***"(i) Whether failure to serve the Respondent/Applicant with the Motion for Enforcement of the Arbitral Award does not affect the adjudicatory powers of this Honourable Court?***

(ii) Whether the High Court of the Federal Capital Territory, Abuja has the Territorial Jurisdiction to hear and determine the Application for Enforcement of an arbitral Proceedings regarding a contractual dispute arising in Ebonyi state and between parties resident in Ebonyi State?

(iii) Whether the Applicant/Respondent's Motion for Enforcement of the Arbitral Award is ripe for hearing in view of the provisions of Section 29 of the Arbitration and Conciliation Act?"

In arguing issue one, it is submitted by the Learned silk that service of any Court process is Germaine to the exercise of the adjudicatory powers of the Court. That any dereliction of this is bound to vitiate the entire proceedings, no matter how well conducted, as it is a condition precedent to an effective adjudication.

Reliance was placed on the cases of ***MGBENWELU V OLUMBA (2017) 5 NWLR (PT. 1558) PAGE 201; EMEKA V OKOROAFOR (PT. 1577) 410.***

That the Applicant/Respondent herein chose to serve the originating processes in this suit on the Respondent/Applicant through the Liaison office which is within the Jurisdiction of this Honourable Court. It is submitted therefore, that the proof of service did not show that service was effected on any named person at all. Reliance was placed on the case of **RANCO TRADING COMPANY LTD V UNION BANK OF NIGERIA PLC (1998) 4 NWLR (PT. 547) 566**, per Ayoola, J. C. A (as he then was) at page 573. As well as order 7 Rule 13 (1) of the Rules of this Court 2018.

Moreso, the Learned Silk argued that the person on whom service was effected, the place where the service was effected, were never stated at all and submitted that the provision of Order 7 Rule 13 (1) of the this Court's Rules 2018 is clear and mandatory that any service effected in breach of same is a nullity. Reference was also made to the case of **SHRODER & CO V MAJOR & CO NIGERIA LTD (1989) 2 NWLR (part 107) page 1.**

It is submitted, that it is settled that where service is effected personally, the proof of service of the Court processes should contain the name, rank, address, date and signature of the receiver on the endorsement copy, so as to know the identity of the receiver. That in the instant case, the purported proof of service only had the stamp and signature of the alleged receiver which does not meet the requirement of service. That, surely Justice will require that Ebonyi State Government should be served through a named person whose identity can be traced, since service through an unnamed person who cannot be traced in the entire Ebonyi State Liaison office in Abuja cannot be said to be sufficient service.

It is the submission of the Learned Silk that the Respondent/Applicant only got to know about the pendency of the suit when served with the Applicant/Respondent's Counter Affidavit to the Respondent/Applicant's Application to set aside the arbitral award which was filed in the High Court of Ebonyi State and served on the Respondent/Applicant on Monday, the 8th of February, 2021.

It is submitted, therefore, that the Respondent/Applicant has not been served with the Originating process filed by the Applicant/Respondent which is so fundamental and therefore not an irregularity that could be waived. Reliance was

placed on the case of **SOCIETE GENERAL BANK (NIG) LTD V ADEWUNMI (2003) LPELR-3081 (SC)** per Katsina-Alu, J. S. C later CJN (of blessed memory) at pages 15-18 paras B-A; **MADUKOLU V NKEMDILLIM (1962) 1 ALL NLR (PT. 4)587 at 594; SKEN CONSULT V UKEY (2001) 49 WRN 63 at 86-87.**

The Court is urged to resolve issue one (1) in favour of the Respondent/Applicant and strike out the Motion on Notice for Enforcement of Arbitral Award filed by the Applicant/Respondent.

On issue two, the Learned Silk submitted that the overriding importance of jurisdiction of Court to hear and determine any matter brought before it cannot be overstated. That it is the life blood of any suit being so fundamental that when a Court has no Jurisdiction, any action taken by that Court is a nullity notwithstanding the fact that the proceeding was well conducted**. MODUKOLU V NKEMDILIM** (Supra) was cited in support.

It is submitted that the Law is settled that the Court with adjudicatory powers over dispute arising out of contract is the Court in whose jurisdiction the parties reside, the Contract is perfumed or breached.

Reliance was placed on the case of **RIVERS STATE GOVERNMENT OF NIGERIA & ANOR V SPECIALIST KONSULT (SWEDISH GROUP) (2005) LPELR-2950 (SC) per NIKI TOBI JSC at page 23, paras C-E.**

It is submitted that the above is the basis for the provisions of Order 3 Rule 3 of the Rules of this Honourable Court. Reference was also made to Section 2 of the Ebonyi State Arbitration Law which provides that the Court with the power to recognize and enforce an arbitral award in respect of a dispute arising from a

Contract performed in Ebonyi State is the High Court of Ebonyi State. Section 13 of the Arbitration was equally relied upon in support of this line of argument.

The Learned Silk also relied on the case of **KABO AIR LIMITED V THE .O. CORPORATION LIMITED (2014) LPELR-23616 (CA).**

It is submitted that this Honourable Court does not have jurisdiction to hear this Application. Reliance was placed on the case of **MAILANTARKI V TONGO (2018) 6 NWLR (part 1614) 69 (SC) PP 89-90, PARAS H-B; OKOYOMON V A. G OF THE FEDERATION (2015) LPELR-25926 (CA).**

In that regard, the Learned Silk submitted that the decision of the Applicant/Respondent to file this Application for the Enforcement of the Arbitral Award in the High Court of the Federal Capital Territory, Abuja whereas the Cause of Action is a Contract which was entered into in Ebonyi State, where both parties reside cannot be anything but a sheer decision to abuse the judicial process and a decision to actuate forum shopping.

It is submitted that this Honourable Court is forum non convenient since the Arbitral award can only be enforced in the High Court of Ebonyi State and no other forum and urged the Court to so hold.

On issue three, the Learned Silk referred to Section 29 of the Arbitration and Conciliation Act and Order 43 Rule 5 (4) of the High of the Federal Capital Territory (Civil Procedure) Rules 2018.

It is submitted that from the Act (Supra) an Application for the Enforcement of an Arbitral award can only inure after the time from within which any aggrieved party may apply for the setting aside of such Arbitral Award. Reliance was placed

on the case of **ATOJU VS TRIUMPH BANK PLC (2018) 5 NWLR (PT. 1505) page 282, paras B-H.**

It is submitted moreso, that the Court of Appeal in the above case described the actions of the party in that suit whose conduct is the same as the Applicants herein as ***"hasty".***

It is further submitted by the Learned Silk that in the instant case, the award was made on the 7th August, 2020, and was interpreted and corrected by an addendum to the award dated 5th October, 2020. That following the principles expounded above, the earliest time the Applicant/Respondent could have properly applied for the enforcement of the Arbitral award without the fear that the statutory right of the Award Debtor is being supplanted would have been on the 5th of January, 2021. But, that the Application to enforce the Arbitral award by the Applicant/Respondent was filed on the 12th of October, 2020 way before the expiration of the three months stipulated by the Rules.

The Court is urged to oblige the Respondent/Applicant by granting the Application and to dismiss the Applicant/Respondent's request to enforce the Judgment.

On the part of the Respondent/Applicant, a sole issue for determination was formulated by Learned Senior Counsel Akinlolu Timothy Kehinde, SAN in the written address, to wit:-

> **"Has the Applicant/Respondent engaged the Honourable Court's Jurisdiction in the circumstances of this case?**

The Court is invited to answer the question in the affirmative on three reasons which were accordingly argued by the Learned Silk.

It is submitted at a Preliminary point that paragraphs 3, 6, 7 and 8 of Catherine Joseph's Affidavit in support of the Preliminary Objection be struck out for offending Section 115 of the Evidence Act 2011.

It is also argued in paragraph 3.5 of the address that the deponent is not an employee of the Ebonyi State government and does not have direct knowledge of EBSG'S inner working. That the deponent also did not state the source of her information within EBSG. The Court is therefore invited to hold that the deponent's conclusion regarding the alleged non service is a matter of her opinion.

On paragraphs 6, 7 and 8, of the Applicant/Respondent's Affidavit in support of the Preliminary Objection, the Learned Silk submitted that the deponent does not bear any of the depositions referred to on proven facts. Reference was made to the case of **N. I. P. S. S V OSIGWE (2008) 6 NWLR, (PT. 1083) 239 AT 252, PARA B.**

That is not for the deponent to usurp a lawyer's role by making submissions, or a Judge by arriving at Legal conclusions herself.

Reliance was also placed on the cases of **NIGEIRA LNG LTD. V A. D. I. C LTD. (1995) 8 NWLR (PT. 416) 77AT 701-702, paras B-A; GOVERNOR. OF LAGOS STATE V OJUKWU (1986) 1 NWLR (PT. 18) 621 at 641, B-G, per Oputa J.S.C.**

On the substantive arguments, the Learned Silk first of all drew the Court's attention to paragraphs 2 (c) of the Applicant/Respondent's Affidavit as well as paragraphs 5 of EBSG'S written address, and argued that a copy of Edon's Enforcement Application was served at its Liaison Office within the Honourable Court's Jurisdiction.

Reliance was placed on the case of **FORBY ENGINEERING COMPANY LIMITED V ASSET MANAGEMENT CORPORATION OF NIGERIA (2018) LPELR-43861 (CA) 25-26, per Garba JCA.**

Further it is submitted that Court processes can be served on a State Government trough its Liaison office. Reference was made to the case of RIVERS STATE **GOVERNMENT V SPECIALIST KONSULT (2005) 7 NWLR (PT.923) 145 AT 172-173 G-A, per Tobi JSC.**

To that extent, the Learned Silk submitted that service in this case was effected on EBSG'S Liaison office in the F. C. T serves conclusively as proof of personal service and that the Applicant cannot renege the admission at this stage.

That a party must be consistent in stating its case and consistent in proving it. That given EBSG'S admission stated earlier, it cannot, in the same breath, contest proper service of the Enforcement Application. On this premise, reliance was placed on the case of **ODEH V AHUBI (2015) LPELR-41783 (CA) 47, C-G.**

However, the Learned Silk submitted that even if EBSG is correct in its submissions that the proof of service did not show that (it) was effected on any named person at all (which they do not concede), it is submitted that EBSG has taken steps to defend these proceedings, and has therefore dispensed with the requirement of personal service.

Reliance was placed on the case of **VICTOR V F. U. T. A (2015) 4 NWLR (PT. 1448) 1 at 35 D-G, per Jombo-ofo J. C. A.**

That in the instant case EBSG has not demonstrated a justifiable Cause for this Honourable Court to strike out Edon's Enforcement Application on the ground of non service.

It is submitted further that EBSG is mistaken in its forum non conveniens contention by predicating its argument that the High Court of Ebonyi State represents the proper forum for these proceedings on two prepositions namely:-

a) The parties performed their underlying contract in Ebonyi.

b) The Ebonyi State Arbitration Law controls the Enforcement Application.

That both prepositions are incorrect, in that Edon's Cause of action does not sterm from the parties underlying contract. Reliance was placed on the case of **KANO STATE URBAN DEVELOPMENT BOARD V FANZ CONSTRUCTION COMPANY LTD (1990) 4 NWLR (PT. 142) 1 at 37 A-B.** Reference was also made to the parties Arbitration clause.

The Learned Silk further argued that EBSG'S argument regarding Order 3 Rule 3 of this Honourable Court's Rules is misplaced. And that parties agreement refers disputes to Arbitration under ACA not the Ebonyi State Arbitration Law.

Sections 31 (1) of the ACA; Order 57(1) of the ACA were cited in support. As well as two seminal texts namely- Handbook of Arbitration and ADR practice in Nigeria (Lexis Nexis 2018) page 217 by Tinuade Oyekunle and Chief Bayo Ojo SAN.

The Second is COMMERCIAL ARBITRATION LAW AND INTERNATIONAL PRACTICE IN NIGERIA (Lexis Nexis 2012) 151-152.

The Court is therefore invited to find that it has jurisdiction to enforce an arbitral award under the ACA, and that EBSG has therefore failed to establish its objection on the ground of forum non conveniens.

On the third issue, the Learned Silk submitted, that EBSG contends that Edon's Enforcement Application is premature. That the case of **ATOJU V TRIUMPIT BANK PLC** (Supra) cited by EBSG, neither represents the Correct nor current state of the law. On this premise the Learned Silk again relied on the case of KANO STATE **URBAN DEVELOPMENT BOARD V FANZ CONSTRUCTION COMPANY LITD (Supra) at 37 A-B.**

It is further argued that Section 29 of the ACA does not curtail Edon's right to pursue its cause of action following the award's Publication. The Court is therefore invited to find that the two subsequent decisions of the Court of Appeal have qualified Atoju's Judgment.

Reference was made to the cases of **ALLIED ENEREGY LTD & ANOR VS NIGERIAN AGIP EXPLORATION LIMITED (2018) LPELR-45302 (CA) at 53-54, per Abubakar J. C. A; ENL CONSORTIUM LTD V SHAMBILAT SHELTER (NIG) LTD (2020) LPELR-50465 (CA).**

The Court is therefore invited to find that these proceedings are not premature as EBSG alleges, or at all.

In conclusion, the Court is invited to find that it has jurisdiction and to dismiss EBSG'S preliminary Objection as lacking merit.

Meanwhile, in the Applicant/Respondents reply on points of Law, it is submitted by the Learned Silk that paragraphs 3, 6, 7 and 8 of the Affidavit in support are not in breach of the provisions of Section 115 of the Evidence Act 2011.

Reliance was placed on the Locus classicus of **JOSIEN HOLDINGS LIMITED & ANOR (1995) 1 NWLR (PT. 371) 2 54; LPELR- 1634 (SC**) per Kutigi J. S. C as he then was at pages 8 to 14, paras D to A.

It is submitted by the Learned Silk on the strength of the authority cited that the Respondent's Affidavit did not offend any of the provisions of the Evidence Act and urged the Court to discountenance the submission of the Applicant.

That the Applicant/Respondent has misconceived the objection of the Respondent/Objector on the point of service.

In citing **SHRODER & CO. V MAJOR & CO. NIG LTD** (**Supra) and RANGO TRADING COMPANY LTD. V UNION BANK OF NIG. PLC. (SUPRA),** it is submitted that in this case there's no name, address or other details with which to determine whether service was effected. That the proof in this case is even worse, than that of SHRODER & CO'S case (Supra) in that in this case, the proof of service does not even have information as to whom the processes was served on and that since there's no response to this point, the point is conceded. Reliance was also placed on the case of **MOHAMMED SERKIN FULANI M. V THE STATE (2018) LPELR-45195 (SC).**

It is submitted moreso, that since the Applicant/Respondent is not complaining about service at the liaison office of the Respondent, the principle of the propriety of service at Liaison office of a state Government as decoded in **RIVERS**

STATE GOVERNEMNT & ANOR V SPECIALIST KONSULT (FINDISH GROUP) (2005) LPELR-2950 (SC) and other arguments in that light will be of no moment. Moreso since there is no denial of the fact that it was only after the Applicants/ Respondents were served with the Court Affidavit to set aside the Application pending in Ebonyi State High Court that Applicant/Respondent got Notice of the Proceedings initiated in this case.

On the issue as at to whether this Court has jurisdiction to entertain this application, it is submitted by the Learned Silk that the Crux of the argument of the Respondent on this point is basically that because the word ***"Court"*** as defined in Section 57 of the Arbitration and conciliation Act, listed the Federal High Court, the High of the Federal Capital Territory and the High Court of the State, an Application for the enforcement of an award can be made through the tributaries of the River Niger and enforce his award anywhere his boat berths.

That on the two texts cited by the Learned Silk, it is submitted that arguments on this point is clearly misconceived of the book's principles and practice on commercial arbitration Prof. Joseph N. McCarthy Mbadugha SAN, faulted the views expressed by authors of the two texts.

He referred the Court to pages 235 to 236 of the said text, on the issue of subject matter in determining a Court's jurisdiction.

It is further argued in that respect that same accords with the interpretation which was given to similar provisions of other states where jurisdiction is donated to both the Federal High Court, the State High Court and the High Court of the Federal Capital Territory.

Reliance was placed on the cases of **PEOPLE'S DEMOCRATIC PARTY & ANOR V TIMIPRE SYLVA & ORS (2012) LPELR-7814 (SC) ; EKPE V ITANJAH & ORS (2019)LPELR-48462 (CA) PER AGIM JCA AT PP 43-54 PARA B; MAILANTARKI V TONGO (2017) LPELR-42467 (SC); F.C.M.B PLC V ABDULGAFARU & CO. LTD & ORS (2017) LPELR-42452 (CA); GRACE JACK V UNIVERSITY OF AGRICULTURE MAKURDI (2004)LPELR-1587 (SC).**

It is submitted that the opinion sought to be canvassed by the Applicant/Respondent that Section 57 of the ACA gives it latitude to choose any High Court of its choice is according to the Supreme Court doing undue violence to plain words in the statute.

Reliance was placed on the case of **BRONIK MOTORS V WEMA BANK (1983) NSCC, 226.**

It is submitted therefore, that the filing of the Application for enforcement of the award before this Honourable Court is a clear case of forum non conveniens. That the arbitral award can only be enforced first as the Judgment of the High of Ebonyi State and no other, and that this Honourable Court does not have Jurisdiction whatsoever to entertain this matter in its entirety.

Whether the Application for Enforcement of the Arbitral Award is Ripe for hearing notwithstanding the provisions of Section 29 of the Arbitration and conciliation Act, it is submitted that in citing **ALLIED ENERGY LTD & ANOR V NIGERIA AGIP EXPLORATION LIMITED (2018) LPELR-45302 (CA),** the Respondent misconceived the point. Reference was made to order 19 Rule 11 Sub Rule (h) of the Rules of this Honourable Court.

It is submitted on this premise, that the word "if" in a statute shows the requirement to fulfill a condition precedent.

Oxford Advanced Learner's Dictionary 9th Edition was also cited on the Defination of the word "if".

It is argued moreso that the case of **ALLIED ENERGY LTD & ANOR V NIGERIAN AGIP EXPLORATION LIMITED** (Supra) is in applicable in the instant case.

That following the principles expounded on the cited authorities, the earliest time the Respondent could have properly applied for the Enforcement of the Arbitral award without the fear that the statutory right of the award Debtor is being supplanted would have been on the 5th of January, 2021. That the Application to enforce the arbitral award by the Respondent was filed on the 12th of October, 2020 way before the expiration of the three months stipulated by the Rules.

Finally, the Court is urged to dismiss the Applicant's Application for being premature, and to uphold the Preliminary Objection.

First of all let me begin by considering the Preliminary point raised by the Applicant/Respondent in the address.

It is the submission of the Learned Silk that paragraphs 3, 6, 7 and 8 of Respondent/Applicant's Affidavit in support of the Preliminary Objection offend the provisions of Section 115 of the Evidence Act 2011.

The paragraphs referred to provide as follows:-

> ***"3. The Applicant in this Application being the Respondent in the arbitration was never served with the Motion on Notice for the***

Enforcement of the arbitral award filed by the Respondent neither did the Applicant have any knowledge whatsoever of the pendency of the Application.

6. ***The only link any of the parties have with the Federal Capital Territory is the Respondent's deposition in paragraph 14 of the Affidavit supporting the Motion for Enforcement of the Arbitral award reproduced hereunder.***

   "14, EBSG operates a Liaison Office at 61 Mississippi Street, Off Alvan Ikoku Street, Maitama Abuja."

7. ***Striking out the matter will be in the interest of justice and will save the precious judicial time of this Honourable Court.***

8. ***That the Applicant/Respondent will not be prejudiced if this Honourable Court grants this Application."***

Likewise, for ease of reference, I shall reproduce Section 115 of the Evidence Act 2011 hereunder. It provides thus:-

"Section 115

1) ***Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.***

2) ***An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.***

3) ***When a person to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.***

4) ***When such belief is derived from information received from another person, the home of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information."***

The Affidavit in question was deposed to by one Catherine Joseph a front desk officer in the law firm of Ikpeazu Chambers Counsel to the Applicant.

As shown in paragraph 2 thereof, the deponent deposed to how she received the information in this case, which is through Abdul Mohammed, SAN, FC1 Arb (UK) one of the Counsel in the Law firm of Ikpeazu Chambers on the 10th of February, 2021 at about 2: pm and she venly believes to be true.

Now, Section 115 (1) (3) and (4) of the Evidence Act is clear that the facts deposed to must be either from the deponent's own personal knowledge or from information he believes to be true.

In the instant case, having carefully analysed paragraph 2 of the Respondent/Applicant's Affidavit, vis-à-vis Section 115 (1) (3) (4) of the Act (Supra) it is my considered opinion there's substantial compliance with the said provisions in that the Deponent has stated how she derived her belief on the source of her information, the facts and circumstances forming the ground of her belief, the place where it was given, the particulars of the informant and the time,

place and circumstances of the information. Therefore paragraphs 3, 7 and 8 are no doubt derived from the source of the deponent's information and in my view do not in any way offend Section 115 of the Evidence Act. I so hold.

However, I have also carefully analysed paragraph 6 of Catherine Joseph's Affidavit which states:-

> ***"The only link any of the parties have with the Federal Capital Territory is the Respondent's deposition in paragraph 14 of the Affidavit supporting the Motion for Enforcement of the Arbitral Award reproduced hereunder…"***

Section 155 (2) of the Evidence Act (Supra) reproduced earlier, states that an Affidavit shall not contain extraneous matter, by way of Objection, or prayer, or legal argument or conclusion.

Therefore, the deposition in paragraph 6 on the only link parties have with the Federal Capital Territory is clearly in my view, a legal argument which offends the provision of Section 115 (2) of the Evidence Act (Supra).

Consequently therefore, the said paragraph is hereby struck out.

On the Application, I've carefully considered this Notice of Preliminary Objection, the grounds predicating same, the supporting, Affidavit and submissions on the Preliminary Objection.

In the same vein, I've considered, the Respondent's Counter Affidavit in opposition to the Respondent's Preliminary Objection, and the submissions of the Learned SAN in support of same.

Likewise, I've equally given due consideration to the reply on points of law filed by the Respondents.

In a bid to determine this preliminary Objection, I shall raise a lone issue to wit:

> ***"Whether the Respondent/Applicant (EBSG) has made out a case for this Preliminary Objection to be sustained".***

Therefore, on the issue as to whether or not service of the motion for Enforcement of the Arbitral Award was served on EBSG or not, let me begin by stating that indeed it is trite that the whole essence of service of Court processes is to give notice to the other party that there is a pending suit against him and to enable him prepare to do the needful.

It must also be borne in mind that service of an originating process is a condition precedent to the hearing of a suit.

In the case of **OKOYE V OWORONKWO (2009) 6 NWLR (PT. 1136)** page 130, the Court held that failure to serve a process on a party entitled to service is a fundamental vice which may vitiate subsequent proceedings no matter how well conducted.

Clearly in the instant case, the Respondent's are not complaining of improper service but rather non-service.

It is the contention of the Respondents on this issue that service on the Respondent/Applicant through its Liaison office within the Jurisdiction of this Court, as seen on the proof of service, did not show that service was effected on any named person at all.

The Respondent/Applicant contends as well that they only got to know about the pendency of this Suit when served with the Applicant/Respondent's Counter Affidavit to their Application to set aside the Arbitral award which was filed in the High Court of Ebonyi State and served on the Respondent/Applicant on the 8th of February, 2021.

However, it is deposed in paragraph 3 (a) of the Applicant/Respondent's Counter Affidavit that on 5/11/2020, a Bailiff of this Honourable Court served the Respondent/Applicant with a copy of Edon's Application to enforce an Arbitration Award (The Enforcement Application) and therefore refutes the Claims of the Applicant that they were not served.

Now, the Rules of this Honourable Court clearly provide for how to prove service.

On proof of service generally, order 7 Rule 13 (1) provides thus:-

> ***"The process server shall after serving any process promptly depose to and file an Affidavit setting out the fact, date, time and mode of service describing the process served and shall Exhibit the acknowledgment of service".***

In this case, the senior Bailiff of this Honourable Court states in the certificate of service dated 5/11/2020 as follows:-

> ***"I served the Defendant Government of Ebonyi State of Nigeria motion on Notice. It was received and stamped at Ebonyi State Liaison office, Abuja".***

However, I have looked at the acknowledged copy of the process and although it has a stamp of Ebonyi State Liaison Office Abuja, dated 5 November, 2020 and

signed, the name, and rank/designation of the receiver is not contained in the said acknowledged copy.

It is the argument of the Respondent/Applicant therefore that there's a purported service since it was not made through a named person whose identity can be traced. As such it is insufficient service.

Now, although Applicant/Respondent did not concede to this fact, the Learned Silk did argue that EBSG has taken steps to defend these proceedings and has therefore dispensed with the requirements of personal service.

On this premise, I have taken my time to look at the case cited by Learned Applicant/Respondent's Senior Counsel i.e the case of **YAKUSAK V XELA (NIG) LTD & ORS (2019) LPELR-48728 (CA),** and the Court per Jombo, Ofo JCA held at pp 36-37, para C-A, as follows:-

> ***"……..The right of the Defendant to be duly served with Court processes is a right which is mainly for his benefit and which can on the other hand be waived by him. Thus, where the Defendant on his own initiative upon becoming aware of the existence of the Process, then takes steps to obtain them himself and thereafter file a response to the Claims therein, he will be treated as having waived his right of service.***
>
> ***It is therefore not every situation where failure to serve originating processes or other processes at that on the Defendant that vitiates the proceeding……."***

In the instant case I've carefully considered the facts and have also taken judicial Notice that when the Application for Enforcement came up for hearing for the first time on 30/11/2020, the Respondent EBSG was absent and unrepresented.

The Respondents have submitted in this preliminary Objection that they only became aware of this suit through a process served on them in another suit pending in High Court of Ebonyi State.

Moreso, the Rules of this Honourable Court state that proof service shall be by an Affidavit deposed to by the process server. I refer to order 7 Rule. 13 (1) of the Rules of this Honourable Court.

The law is trite that an Affidavit of service is prima facie Evidence of service. On this premise I refer to the cases of **OKI & ANOR V FIRST BANK (2019) LPELR-47542 (CA); WEST AFRICAN OILFIELD SERVICES LTD V GEFORY (2019) LPELR-47292 (CA).**

However, in the instant case, although there's certificate of service attached to the Court's file, there's no Affidavit of service.

On whether certificate of service by a bailiff is the proper or appropriate proof of service of a Court process, in relation to FCT High Court and effect of lack of a valid proof of service of Court process, the Court of Appeal held in the case of **YAKUSAK V XELA (NIG) LTD &ORS** (Supra) per AGIM, JCA at pp9-22, para E-D held as follows:-

> ***"……The Bailiff's certificate of service is not provided for in both the 2004 Rules and the 2018 Rules amending it. There is nothing in the 2004 Rules***

or even the 2018 Rules recognizing it as a means of proof of service of Court processes.

Now where a process has been served, it is necessary for the Court to have before it evidence of that fact. Service of the process is an essential condition for the Court to have competence or the jurisdiction to entertain the matter. Further, failure to comply with this condition would render the whole proceeding, including the judgment entered, and all subsequent proceeding based therein, wholly irregular, null and void. That is why the proof of the service of the processes on a Defendant is very Fundamental to the issue of the jurisdiction and competence of the Court to adjudicate…….The Affidavit of service must be a proper affidavit of service proving due service of the writ……."

Likewise, in the case of **AMANKE V EFFIONG & ORS (2018) LPELR-46002 (CA),** per Shuaibu, J.C.A, at pp 22-24, para F-D, held as follows:-

"……In the absence of Affidavit of Service filed before the Court by the Appellant, the trial Judge was on the right track in declining jurisdiction."

Consequently therefore, since there's no Affidavit of service filed in this case pursuant to the Rules, it is my considered opinion that the said service is irregular, null and void since it is a condition precedent which touches on the competence of this Honourable Court to adjudicate on the matter. I so hold.

I humbly refer to the case of **MADUKOLU VS UKEMDILIM (1962) ALL NLR.**

To this extent therefore, the submissions of the Learned Respondent/Applicant on this issue is hereby sustained. The service of the motion for Enforcement of Arbitral award on the Respondent/Applicant is hereby set aside.

I shall now proceed to consider whether or not this Honourable Court is the proper forum for the institution of the Applicant/Respondent's Motion on Notice for Enforcement of the Arbitral award?

Now, the Applicant/Respondent in fast track matter with suit NO.FCT/HC/CV/84/2020, filed a motion on Notice dated 12th day of October, 2020 filed same day seeking order of this Honourable Court to enforce an arbitral award dated 7th August, 2020. Filed in support of the Application for Enforcement is Exhibit Edon 1 containing the Contract agreement between Ebonyi State Government and Edon (NIG) Limited for the Construction of lot 3 (Three) of the proposed international Market, Abakaliki, Ebonyi State, the certified copy of the Arbitration agreement and certified copy of the Arbitral award.

However, it is the contention of the Respondent/Applicant basically, that since the agreement was entered into by the parties in Ebonyi State and both parties reside in Ebonyi State, it is the Ebonyi State High Court that has the Jurisdiction to entertain Application for Enforcement of the said award and not the High Court of the Federal Capital Territory. Authorities were cited in that regard along with Sections 2 and 13 of the Ebonyi State Arbitral Law, order 3 of Rule 3 of the FCT High Court (Civil Procedure) Rules 2018.

On the other hand, it is submitted for the Applicant/Respondent that EBSG is mistaken in its forum non conveniens contention on the grounds earlier referred to. In arguing this issue, the Learned Silk contends that the preposition of the

Applicant/Respondent is incorrect and that the arguments based on order 3 Rule 3 of this Court's Rules, and Ebonyi State Arbitration Laws are misplaced since the parties agreement is to refer disputes to Arbitration under the Arbitration and conciliation Act.

Authorities were cited in that regard as well as Sections 31 (1) of the AC Act and 57 (1) of the ACA.

First of all let me begin by stating that this Honourable Court is no doubt empowered to Enforce Arbitral awards pursuant to order 19 of the FCT High Court (Civil Procedures) 2018 as well as Section 57 (1) of the ACA which defines ***"Court"*** as the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court.

On this premise, I quite agree with the submissions of the Learned Silk for the Respondent/Applicant that Enforcement of Awards by Courts is one of the areas in which Federal and State Courts enjoy concurrent jurisdiction.

However, it is my humble opinion that in all cases, the issue of subject matter and territorial jurisdiction must come into play.

This becomes necessary when one considers the facts of this case.

In the first place as gleaned from the Application for Enforcement and Exhibit Edon 1, it is clear that the parties herein entered into the contract in Ebonyi State. The subject matter of the Contract is situate in Abakaliki Ebonyi state, both parties reside in Ebonyi State and the Arbitral Award dated 7th day of August, 2020 was made in Enugu, Enugu State.

Therefore, in my humble view, one Cannot run away from the issue of Territorial Jurisdiction even in Applications of this nature i.e for Enforcement of Arbitral Award.

This is on the back drop of many judicial authorities in this respect.

For the instance, the Supreme Court has held in the case of **BASHIRU DALHATU V TURAKI AND ORS (2003)** 7 SC, 1 at 16-17, 19, per Ejinwinmi JSC as follows:-

> ***"Rules of Court do not vest jurisdiction in Court. Rather, it is the statute that created the Court that also makes the necessary provisions for the jurisdiction of the Court. With regard to the High Court of the Federal Capital Territory, it is Section 255(1) of the Constitution. Its Jurisdiction is set out in Section 257.It is undeniable that the events that led to the action had to do with the governorship of Jigawa State. It s of course not debatable that Jigawa State is totally distinct and different from the Federal Capital Territory, Abuja. It seems to me that if any action was to be properly commenced, that action should have been initiated in the Court in Jigawa State. In this respect, I think it must be remembered that by our Constitution, each State of the Federation is independent of the other and the jurisdiction of each State is limited to matters arising in its Territory. Hence, the Court below per Oguntade JCA was right when it held "The Evidence called by the 1st Respondent upon which the Judgment of the lower Court was hinged clearly shows that nothing in connection with the primaries, the subject matter of the dispute, took place in Abuja. It is irrelevant that the Defendants resided or had offices in Abuja……There was no jurisdiction in the Abuja High Court to entertain***

this suit. The lower Court should have struck it out"…..In the face of Section 257 of the Constitution, one cannot talk about a Rule of Court, that is, order 10 rule 4 of the FCT rules to accommodate this action."

Likewise, in a more recent decision in the case of MAILANTARKI V TONGO & ORS (2017) LPELR- 42467, the Supreme Court per Onnoghen J.S. C (as he then was) held at pp76-77, para D-F, as follows:-

"……I have taken pains to discuss this Judgment on Territorial Jurisdiction of a Court in view of recent developments whereby litigants rather than suing in the proper Courts come to the High Court of the Federal Capital Territory, Abuja. I think their Lordships of the High Court of the Federal Capital Territory ought to be circumspect before deciding whether or not it is wise and correct to exercise Jurisdiction in matters outside the Territory of the Federal Capital Territory. Their Court, unlike the Federal High Court, has jurisdiction only in matters arising out of the Federal Capital Territory."

(underlining for emphasis)

I believe his Lordship has said it all. In view of this, therefore, it is my considered opinion that this Honourable Court lacks jurisdiction to entertain the Application for Enforcement of the Arbitral award in this case. The proper forum for filing the Application should be the High Court of Ebonyi State. I so hold.

On this premise therefore, there will be no need for me to consider the remaining issue which is whether the Application for Enforcement is Ripe for hearing in view

of the provision of Section 29 of the Arbitration and Conciliation Act, such would only amount to an exercise in futility.

On the whole, the Preliminary Objection is found to be meritorious and it is accordingly sustained. The issue for determination is resolved in favour of the Respondent/Applicant.

Consequently, and without further Ado the Suit with NO. FCT/HC/CV/84/2020 along with Motion with No. M/10663/2020 are hereby struck out for want of Jurisdiction.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

17/06/2021.