

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
THIS 16th DAY OF DECEMBER, 2021
BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA
SUIT NO.M/12396/2020

BETWEEN:

SOLUTIONS PHARMACEUTICALS NIG LTD-----APPLICANT

AND

- | | | |
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| <ul style="list-style-type: none">1. BENUE STATE GOVERNMENT2. BENUE STATE MILLENIUM DEVELOPMENT GOALS MDGs3. SENIOR SPECIAL ASSISTANT TO THE EXECUTIVE GOVERNOR, BENUE STATE ON MDGs. | } | RESPONDENT |
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RULING

The applicant filed originating motion dated and filed on 19th November 2020 brought pursuant to order 19 Rule 16(1)& (2) of the High Court Federal Capital Territory (civil procedure) Rules 2009 section 31 of the Arbitration and conciliation Act 1988.

The application is seeking the following reliefs

- 1. AN ORDER** of this Honorable court granting leave to recognize and enforce the FINAL AWARD published by the Arbitral Tribunal consisting of **Chikwendu Madumere, LLB, C.Arb (UK), (presiding),**

Eleoju Enenche Esq and Prof. Akaa Imbwaseh PhD, FCARB on 14th July 2020 in an arbitration between the above-named parties in the same manner as a judgment of this Honorable court.

- 2. AND** for such further or other orders the court may deem fit to make in the circumstance

THE GROUNDS UPON WHICH THE APPLICATION IS BROUGHT ARE:-

- a. Clauses 21, 21 .1, 21.2, 21 .3 and 21.4 of the contract Agreement dated 18th march 2011 between the Applicant and the Respondent, provide that the event of a dispute, the parties would submit to the jurisdiction of three (3) Arbitration and Conciliation Act.
- b. A dispute having arisen between parties, the parties consensually submitted the dispute to arbitration before an Arbitral Tribunal constituted by Chikwendu Madumere LLB C.Arb (UK),(presiding), Eleojo Enenche Esq and prof. Akaa Imbwaseh PhD, FCARB appointed in accordance with the Rules of Arbitration.
- c. The Arbitral entered its final Award on 14th July 2020
- d. The Arbitral Tribunal found and awarded the sums of N43,063,380.00 (forty three million and sixty three thousand, three Hundred and Eighty Naira), as unpaid balance of the contract; N30,000,000.00 (thirty million Naira) as damage for breach of contract; and N14,183,802.00(fourteen million one hundred Eighty three, Eight Hundred and Two Naira), as cost of this Arbitration, making an aggregate sum total of

N87,247,182.00 (Eighty seven million, Two Hundred and forty seven thousand, one Hundred and Eighty Two Naira, to wit:

“7.1 WE ACCORDINGLY AWARD AND DIRECT IN FULL AND FINAL SETTLEMENT OF THE MATTERS IN ISSUE IN THIS ARBITRATION THAT:

- a. The first Respondent shall pay to the claimant forthwith or within but not exceeding twenty-one (21) days from the date of this Award the sum of N43,063,380.00(forty three million and sixty three thousand, three hundred and Eighty Naira)being the unpaid balance of the contract sum of 108, 306,00.**
- b. The first Respondent shall pay the claimant forthwith or within but not exceeding twenty-one (21) days from the date of this Award, the sum of N30,000,000.00 (thirty million Naira) as damages for breach of the payment terms of the Agreement.**
- c. The first Respondent shall pay to the claimant forthwith but not exceeding twenty-one (21) days from this Award, the sum of N14, 183, 802.00(fourteen million, one Eight Hundred and two Naira) being the total cost of this arbitration including cost of claimant’s legal representation borne fully by the Claimant.”**
- e. The Respondent has not taken any step, to voluntarily obey/perform the directions under the Award.**
- f. The Applicant, therefore, seeks to register the Final Award as a judgment of this Honorable court.**

FACTS OF THE CASE

The applicant and the Respondent formally executed a contract agreement on 18th march 2011 for the procurement and supply of 22,000 doses of Anti combination therapy (ACT)and Drugs for the opportunistic infection HIV/AIDS for the contract sum of N 108,306,000.00(one Hundred and Eight million, three Hundred and six thousand Naira) only. During the course of the performance of construction works a dispute arose between the parties. The applicant commenced an arbitral proceeding against the respondent base on the Arbitration clause contained in clause 21 of the contract Agreement dated on 18th march 2011.

The dispute was heard and determined by three Arbitrators, (presiding) Chikwendu Madumere Eleajo Enenche and prof Akaa imwaseh on the 14th July,2020 when the tribunal delivered its final award, hence this application.

Attached to the Application is a 20 paragraphs affidavit deposed to by one Damilare George Adeyemi with Exhibits attached **A1** to **A2**. Equally filed along with the application is written address dated 19th November 2020 wherein the learned counsel to the applicant formulated alone issue for determination to wit:-

Whether in view of the circumstances of this case, the applicant is entitled to the reliefs sought?

On the sole issue above, The leaned counsel to the applicant submitted that the applicant is entitled to the reliefs sought, argued that this Honorable court has the inherent power to grant this application, Learned counsel cited section 31 of the Arbitration and conciliation Act

(ACA). Cap A8 Laws of the Federation of Nigeria 2004 which provides thus:

1. **“31(1) An Arbitral award shall be recognized as binding, and subject to this section and section 32 of this Act, shall upon application in writing to the court be enforced by the court”**
2. **The party relying on an award or applying for its enforcement shall supply-**
 - a. **The duly authenticated original award or duly certified true copy thereof.**
 - b. **The original arbitration agreement or duly a certified true copy thereof.**
3. **An award may, be leave of the court or a judge be enforced in the same manner as a judgment or order to the same effect.”**

He further relied on order 19 Rule 13 (1) and (2) of the Federal High court (civil procedure) Rules 2009 which is in pari material with section 31 of the Arbitration and conciliation Act (A.C.A.). The learned applicant’s counsel further argued in line with the laws cited above, that this honorable court has inherent power and jurisdiction to grant the reliefs sought in the originating motion. He further submitted that it is trite law where parties to an agreement vide arbitration (s) or the arbitration clause in a contract voluntarily submitted to an arbitrator the decision of the arbitrator (s) or the arbitration Tribunal is binding on the parties.

The applicant’s counsel relied on the case of **Okechukwu V.Etukokwe(1998)8 NWLR PT 567 P.513 at 529 per Niki Tobi JCA(as he then was) Court held thus:**

“In law, an arbitral award per se lacks enforcement or enforceability. It does not carry any element of sanction until a court of law, by its judicial powers, breathes enforcement or sanction on it. At the completion of the arbitration, the award is a toothless dog which cannot bite a court of law gives teeth to it.”

The learned counsel submitted that where two disputants Parties submitted to settle the matter through arbitrators or to a body of persons who may be vested with judicial authority to determine such disputes and matters for investigation in line with the customary law and usage and a decision is duly given, the decision is unimpeachable as the decision of any constituted court of the land and it becomes binding on the parties, the court can also enforce it. He relied on the case of **OJIBAH V. OJIBAH (1991) 5 NWLR PT 191, P.296.**

He also referred this court to the case of **IMANI & SONS LTD V. BIL CONSTRUCTION LTD.(1999) 12 NWLR PT 630 P.254**

Court held thus:

“By virtue of section 31 of Arbitration and conciliation Act, An arbitral award shall be recognized as binding and subject to section 32 thereof, the award shall upon application in writing to the court be enforce by the court. The party relying on an award or applying for its enforcement shall supply the duly authenticated original award may be leave of the court or a judge be enforced in the same manner as judgment or order to the same effect and the case of **COMMERCE ASSURANCE LTD Vs ALL (1992)3 NWLR PT.232 P.710 AT 725.**

The learned counsel submitted that in the above premises that Othis honorable court has a duty under the provision of section 31 and 51 of the Arbitration and conciliation Act to grant the reliefs sought by the applicant and order the award of the 14th July 2020 be recognized and enforced. He finally lied on the legal of maxim that “parties took their arbitrators for better or for worse both as to the decision of fact and law” He relied on **Montgomery Jones & CO. V libenthal (1898)78 LT 406@** and urged the court to grant the reliefs sought.

The exhibits annex in support of the originating motion is A1 to A2

- 1. Exhibit A1** is an Agreement for the procurement of Drugs And Long lasting insecticides Treated Nets for 2009 conditional Grants scheme between the Applicant and the Respondent dated 18th march 2011
- 2. Exhibit A2** is a certified true copy of publication of award between the applicant and the Respondent dated 14th July, 2020.

The learned counsel to the Applicant relied on the following causes in support of his argument

- 1. Okechekwu Vs Etukokwu (1998) 8 NWLR PT 567P. 513 at 529**
- 2. Ojibah V. Ojibah (1991)5 NWLR PT 191,P.296**
- 3. Imani & sons LTD Vs Bil Construction LTD (1999)12 NWLR PT 630 P.254**
- 4. Commerce Assurance LTD Vs Alli(1992)3 NWLR PT. 232 P. 710 AT 725**
- 5. Montgomery jones& Co. V. Libenthal (1898)78 LT 406 @ 408.**

On the hand the learned counsel to the Respondents in opposing the originating motion filed a counter affidavit of a 6 paragraphs dated

21st June, 2021 deposed to by one Tyogyer Emmanuel with Exhibits **A** to **F** attached respectively. Equally filed along with the counter affidavit is a written address dated 21st June, 2021. The learned counsel to the Respondents formulated a sole issue for determination in his written address as follows:-

Whether or not the application has merit?

The learned counsel to the Respondent answered to the above issue in a negative and referred this court to section 32 of the Arbitration and Conciliation Act provides:

“Any of the parties to the arbitration agreement may, request the court to refused recognition or enforcement of the award “

Learned counsel urged this court not to grant the applicant’s applicant, he submitted that this court has the power to refused to enforce or recognized an arbitral award sought to be enforced, he relying on the case of **Abuja International Hostels LTD Vs Meridien SAS (2018) LPELR 45840 (CA)PP.16-18**, Section 32 and 52, of the Arbitration and conciliation Act to be considered as to the grounds on which the court may refused to enforce or recognized an arbitral award, the respondents’ counsel submitted that the misconduct of an arbitrator is another ground on which a court may refuse to enforce an arbitral award he relied on the case of **Mekwunye Vs Imoukhuede (2019)13 nwlr (pt.1690)439 @ pp483 paras G-F** and **Mutual life General Insurance LTD Vs. Ihome (2013)All Fwlr pt 69 336 @361-364 paras D-c**

The Respondents’ counsel further argued that the Respondents were not given notice of the delivery of award and neither was the award communicated deliver/served as a copy of arbitral award to the parties.

He relied on section 26(4) of the Arbitration and conciliation Act that mandate the tribunal to communicate, serve or deliver the award to the parties, learned counsel submitted that failure to comply with the said section is an irregularity in proceedings that amount to misconduct by the tribunal and unfair treatment especially where the claimant was served with the final award, that her on advantageous position while denying the Respondents/applicants to challenge the award timeously. He submitted that the Arbitral Tribunal in this case was improperly constituted and its in violation of the agreement completely, the Respondent counsel refereed to the agreement in clause 21.4 which provide thus:

“the arbitrator shall be three (3) in numbers, mutually appointed by both parties failing which any of the parties shall apply to chief judge of Benue State of Nigeria to appoint arbitrators”

The Respondents, counsel submit that the Applicant went ahead unilaterally and appointed one Arbitrator as its own arbitrator without prior Consent or notice to the Respondent, there was no provision on the agreement by the arbitrators appointed by claimant, the Respondents’ counsel further submitted that under section 6 and 7 of the Arbitration conciliation (A.C.A) the duty to make the appointment of the arbitration would fall on the court rather than anybody or Chief Judge, he stated that the procedure adopted by the claimant in this matter was a hybrid of the arbitration agreement and in contrary to section 6 and 7 of the Arbitration Act he referred to the case of **Okudu (1979) ALL NLR 105;(2001) FWLR (PT.72) 1987;(1979)LPELR-2295(SC)PP.23-24: at page 24** The Court Held Thus:

“An express provision in an instrument excludes any stipulation which would otherwise be implied with regards to the same subject matter-express um facit cessare tacitum.”

The respondents’ counsel submitted that **Exhibit B** have expressly set out the number of arbitrators and the mode of appointing and procedure adopt was neither in accordance with the agreement nor with the statutory provisions sought to be invoked by the claimant, he further submitted that in purporting to appoint its own arbitrator without prior notice to and consent of the applicants, claimant hard violated of the applicants right to a fair hearing unbiased and independent arbitral panel.

The learned counsel to the Respondents further argued that its condition precedent for the respondent to pay the arbitrators and the administrative costs, which is the condition precedent for the arbitrators to proceed on payment by the respondents but the tribunal did not in its final award order the respondents to pay its outstanding arbitrators fee to the arbitrators or to the registrar of the tribunal, but order the Respondents to pay all these costs to the claimant without the respondents’ knowing or consenting. He cited 20 (3) of the Arbitration and conciliation Act and Article is of 1st schedule to Arbitration and conciliation Act and section 36(1) and (3) of the 1999 constitution as (amended). The respondents’ counsel submitted that it is the constitutional right of the respondents to be heard by an impartial court or tribunal and the hearing should be in public not in camera he relied on the case of **Alimi Vs. Kosebinu(2016) 17 NWLR(P.T.1542)337;(2016)LPEL-42557(SC)PP 35-36**, per Nweze Jsc held thus:

“By way of preliminary observations, it is, indeed, correct to assert that hearing notice is the only means of getting a party to appear in court”

The learned respondents’ counsel submitted that it’s the duty of the tribunal to serve the applicants with notice, venue and date of the publication of the final award but they failed to do that. He relied on section 26(3)(c) of the Arbitration and conciliation Act which states that an award shall contain the place of arbitration, and the place of publication of an award but all the activities of the tribunal are in contrary to the said section cited above. He further submitted that section 22(4)of the arbitration and conciliation Act provides that

“the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction”.

The respondents’ counsel finally submitted and urged the court to set aside, vary or refuse to enforce the final arbitral award made on 14th July, 2020 and the appointments of the arbitration is in violation to the arbitration agreement and the Arbitration and conciliation Act (A.C.A) and fair hearing of the respondents has been denied by the arbitration and further submitted that the arbitral award was never communicated to the applicants after it was made.

The learned counsel to the respondents’ relied on the Exhibits A to F

1. Exhibit “A” is a Notice of Arbitration issued by solutions pharmaceuticals Nigeria LTD (Claimant)to the Benue State Government & 2 ors dated 8th December 2014

2. Exhibit "B" is a application to the chief Judge Benue State to appoint an Arbitration or between the applicant and the respondents dated 16th January, 2015
3. Exhibit "C" is a letter of appointment of Arbitration by the chief Judge of Benue State dated 7 may 205.
4. Exhibit "D" is a constitution of Arbitral Tribunal and proposal for preliminary meeting between in the applicant and the respondents dated 6th July 2015
5. Exhibit "E" is a procedural order No;1 between the Applicant and the respondents dated 27th July, 2015
6. Exhibit "F" is a hearing notice of an Arbitral tribunal between the Applicant and the Respondent dated 21st February 2019.

The learned counsel to the Respondents relied on the following cases in support of his counter affidavit

1. **Abuja International Hotels LTD V. Meridien SAS (2018)LPELR-45840(CA)PP.16-18**
2. **Mekwunye V. Imoukhuede (2019)13 NWLR(P.1690)439@PP482-para G-F**
3. **Ogbunyiya V. Okudo(1979)ALL NLR105;(2001)FWLR(PT.72)1987: LPELR-2295(SC) PP.23-24:**
4. **Darma V. Eco Bank (2017)9 NWLR(PT1571)481(2017)LPELR-41663(SC)PP.35-36,**
5. **Ogundele V. Agiri(2009)18 NWLR(PT 1173)219; (2009) LPELR-2328(SC)PP.24-25**
6. **Heubner V. Aeronautical Industrial Engineering & project management Co. LTD (2017) 14 WLRL(PT 1586)397;(2017)LPELR-42078(SC)PP.26.28**
7. **Atrivie V. Kabelimetal (NIG) LTD (2008)10 NWLR (PT.1095);(2008)LPELR-591(SC)PP.28-29.**

In response to the Respondents' counter affidavit the learned counsel to the applicant filed a 29 paragraph further and better affidavit deposed to by one Godwin Elaigwu dated 31st August, 2021 and a Reply on points of law dated on same date. On his reply on point of law the applicants' counsel contended that the Respondents' in this suit have dubiously denied service of the final award dated 14th July, 2020 on them in this arbitration, been the final award dated 14th July, 2020 was served on the Respondent by courier DHL. He referred to Exhibit "C" attached on his further affidavit that it stand as proof of delivery of final award on the Respondents' he also relied on the case of **NIWEDIUM V. UDUMA (NIG) LTD (1995)6 NWLR(PT.666 587)AT 602.**

The applicants counsel further contended that on service of the award on the respondents section 29 of the Arbitration and conciliation Act gives three (3) months to any person who is aggrieved by an award to write an application to set-aside from the date of the award, But the respondents failed to complied, he further relied on section 33 of the Arbitration and conciliation Act which stated that failure of the Respondents to comply with section 29 of the same Act if seems that Respondents has wave his right, he urged this court to so hold. The Applicants' counsel further argued that the Arbitral Tribunal was properly constituted in furtherance to the Arbitration agreement and the Arbitration and conciliation Act. He referred this court to the Respondent Exhibit A (Arbitral Agreement) and Exhibit B (Applicants' application to Benue chief judge and Exhibit D (procedural order N:1). The applicant learned counsel further contended that after been served to Respondents with the notice of Arbitration and the Respondent failed to complied with upon the expiration of his time the applicant apply to the chief Judge of Benue State to appoint an arbitration on

behalf of the Respondents he relied on Exhibit “B” and “C” the learned Applicant counsel further argued that it is trite that the Respondents did not comply with the provision of Article 11(1) of the Arbitration and conciliation Act or the Arbitration agreement it is therefore too late for the respondents now to raise the improper constitution of the of the Arbitral tribunal, learned counsel referred to the case of **K.S.U.DB Vs FANZ CONSTRUCTION LTD (1990) 4 (NWLJR) PT.142.)1 AT 29,**

He further contended that by virtue of clause 21.4, the parties agreed that Arbitrators shall be three (3) in number mutually agreed and appointed by the parties failing which any of the parties shall apply to chief judge of Benue state, in this case the respondents failed to approach the chief judge of Benue state for the appointment of three (3) Arbitrators, He relied on section 7 of the Arbitration agreement did not specially specify the requirement for the appointment of any professional Arbitrators as the Respondents argued he urged this court to discountenance with the respondents submission.

The learned counsel to the applicant further contended that the respondents misconceived the tribunal that they did not notify them of the time and place of the final award, he submitted that the respondents are not aware of the provision of section 26 of Arbitration and conciliation Act that deals with the form and content of the award, He submitted that section 26 of Arbitration and conciliation Act is beyond equivocation that the Arbitrators must circulate any notice of publication of award containing a time or place of such publication, He further submitted that the Arbitrators were in compliance with section 26 of the (A.C.A) as the final Award contained signatures of the arbitrators, date and place of publication of the final award was delivered to the parties.

The Applicants' counsel further submitted that the Tribunal are empower to hold hearings of the place that considers it convenience for them, He relied on section 16(2) of the Arbitration and conciliation Act, learned counsel submitted that the Tribunal was categorically fixed its hearing venue at precious conference center opposite Benue Hotels Makurdi Benue State.

The learned Applicants' counsel refereed this court to section 31 of the Arbitration and conciliation Act that provides for an award to be recognized, binding and enforce able and section 32 of the same Act provides that for parties seeking to enforce award shall supply (a) a duly authenticated or a true copy of award (b) a duly certified copy of the final arbitration agreement the learned counsel Applicants, counsel finally submitted and urged this court to discountenance with the submission of the Respondents' counsel and place more reliance on section 256(1)(a) of Evidence Act 2011 that is not applicable in Arbitral proceeding.

The leaned Applicants' counsel relied on Exhibit "C" on his further affidavit

1. Exhibit "C" is a Terms and conditions of carriage to the executive Governor of the Benue State Government House, date (NG-PHCENU) dated 7th April 2020.

Learned Applicants' counsel cited the following cases in canvassing his argument on further affidavit

1. **NLEWEDIM Vs UDUMA (NIG) LTD (1995) 6 NWLR (P.666 587) AT 602.**

**2. K.S.U. DB Vs FANZ CONSTRUCTION LTD (1990) 4(NWLR)(PT.142)1
AT29,**

In opposition to the further affidavit the learned Respondents' counsel filed a further counter affidavit with 5 paragraphs deposed to by one Tyogyer Emmanuel dated 5th October, 2021 Along with a further counter affidavit is written address dated 30th September, 2021.

Wherein the learned Respondents' counsel formulated a sole issue for determination to wit:-

Whether or not there was service of the final award on the Respondents as contended by the applicant?

In respect of the sole issue above, the Respondents, learned counsel submitted that the respondents not aware that the tribunal had delivered its final award and on that if cannot be said that their right to contest on final award has been waived he relied on section 33 of the Arbitration and conciliation Act (A.C.A.) that stated “

(a).” that any provision of this Act from which the parties may not derogate; or

(b). that any requirement under the arbitration agreement, has not been complied with and yet proceeds with arbitration without stating his objection to such non compliance within the time limit provided therefore shall, be deemed to have waived his right to objection to the non-compliance”

He submitted that the above provision apply to irregularities that occur in the initiation of the arbitral process and not such fundamental irregularities as to the service of the Arbitral award. He further referred

to the case of **CIL RISK & ASSET MANAGEMENT LTD Vs EKITI STATE GOVERNMENT & ORS (2020) LPELR-49565(SC) PP53-4 PARAS E-B.**

The learned Respondents' counsel further contended that no service on the respondents and they did not aware that the tribunal had made a final award so as to contest within 3 three months of the knowledge of the award, He submitted that the respondent aware with the final award only when they receive service of the originating process in this suit and have since filed a motion to set same aside the Respondents' learned counsel further argued that is the trite law that its content cannot be altered, added to and oral or extrinsic evidence is inadmissible to a very its contents he cited section 123 E.A 2011 and relied on the case of **Bichi Investment Nig. LTD Vs Sybron Medical Center LTD & ors (2020) LPELR-51194 (CA)PP.52 Paras A.B**

The learned Respondents, counsel submitted that the purported notice of service of the final award on the Respondents is of no moment as the **Exhibit"C"** purports to have served on the executive Governor of Benue State are not a final award of the Tribunal and on that it cannot be said to be conclusive proof of service on the Respondents. He submitted even what was served on the Executive Governor of Benue State was final award of tribunal than Benue State Government was not apart to the Arbitral proceedings and service on the ward him cannot be said a proper or an act of submitted service required by law to be made on the respondents before final award can be valid.

The learned respondents' counsel further submitted that been served must of the process in the arbitration by the applicant to the counsel representing the respondent from the office of the Attorney General it was mere mischief to turn round offer the final award had been made

to serve it on the Governor, learned counsel relied on the case of **Ihedioha & Anor V. Okorochoa & ors (2015) LPELR-40837(SC)PP70 paras A.C** Court held thus;

“Ordinarily, the form of service required is a personal service unless otherwise directed by the court. In other words where personal service is required and service is effect without leave of court for substitute service, any such service will be void and will not be countenanced by the court.

The Respondents’ learned counsel argued that service of process can be proved by evidence the onus is on the sender to prove same relied on section 131, Evidence Act 2011; He submitted that the respondents were never in receipt of the Tribunal’s purported communication dated 4th May 2019 demanding of Arbitral fees to be paid by the parties in full, he referred to section 50(4) of the Arbitration and Conciliation Act (A.C.A).

Learned counsel to the respondents’ submitted that the Applicant failed to annex **Exhibit “D”** on her further affidavit, failure to annex it is amount to withholding of evidence, which if produced would be unfavorable to the Applicant and or the said **Exhibit “D”** is non-existent learned counsel urged this court to so Hold.

He further referred this court to **Exhibit “E”** which was binding on all the parties involved and such sitting in Makurdi was not and cannot be said to be a matter of convenience. He cited section 16 of the Arbitration and Conciliation Act (A.C.A) and submitted that the place of arbitral reference is that were the parties have agreed upon. Learned Respondents’ counsel submitted finally and urged this honorable court

to varying or refused to enforce the final award made on 14th July 2020 as there was no proper service on the Respondents.

The Exhibit relied on the further counter affidavit is

- 1- Exhibit "C" is court process filed by the Applicant against the arbitral award before the High court of Benue State with motion No: 940/2021 dated 17th June, 2021.

Learned counsel relied on the following cases in canvassing his argument on further counter affidavit

- 1- Cil Risk & Asset Management LTD V. Ekiti State Government .& ors (2020) LPELR-49565(SC)PP 53-54 Paras E-B**
- 2- Bichi Investment Nig. LTD V. Synbron Medical center LTD & ors (2020) LPELR51194 (CA)PP.52 paras A.B**
- 3- Ihedioha & Anor V. Okorochoa & ors (2015) LPRLR-40837(SC)PP 70 paras A-C.**

I have read very carefully the application and the affidavit filed in support of the originating motion, I equally considered very carefully the counter affidavit filed by the respondent including the Exhibits annex to the counter, I also perused the further affidavit in support of originating motion filed by the applicant including the exhibits annex, I have also very carefully read the further counter affidavit filed by the respondents including the exhibits annex on the it. Having done all of these, I shall adopt the a sole issue formulated by the counsel to the Respondents herein, I shall make reference to the legal arguments proposed by the learned counsel to the Respondents as I deem fit during the course of this ruling the issue is:-

Whether or not the application has merit?

I have carefully considered the processes and submissions of the learned counsel to both the applicant and the respondents with the written addresses attached. In that vein, the sole issue which calls for determination is:

whether having regard to the overall facts of this case, the applicant is not entitled to the relief sought in this application.

The gravamen of the learned counsel to the respondents objection herein in his written address and counter affidavit are:

1. That parties had not mutually agreed on the appointment of the three arbitrators as agreed upon in the arbitration agreement, the claimant appointed arbitrators in December, 2014 which the applicants demand the dispute between it and the respondent on the 25th may, 2012 be referred and is hereby referred to an arbitration to determine the issue(s) in controversy which is the payment of the balance of the contract sum in compliance with clause 21, 21.1, 21.2, 21.3, 21.4 of the contract agreement between both parties dated 18th march 2011 of which the name and addresses of the parties are the respondents herein in my humble view constitute notice of arbitration proceeding. There is nothing placed before this honourable court by virtue of exhibit A that the respondents responded to the notice of her own arbitrator without the consent of the respondent. The claimant without recourse to the respondents, applied to the chief judge of Benue state for appointment of arbitrator.
2. The court has power to extend time for the respondents to challenge the arbitral award vide the application pending in the

High Court of Benue State. There is nothing before this honourable court to show that there is a pending application before Benue State High Court. Motion attached was not filed, no motion number.

3. There was no service of the award on applicants within 7 days of its delivery or at all till date.
4. The parties had agreed on Makurdi as the place of arbitration, as can be seen in the procedural orders served on the applicants by the arbitral tribunal, attached below.

By exhibit A attached to the respondents counter affidavit which is the notice of the applicants commencement of arbitration proceeding from the 8th of arbitration nor appointed its appointed arbitration in accordance with the arbitration agreement. By exhibit C of the respondent's affidavit, the Benue State Government of Nigeria confirmed.

- In a letter dated 7th-May-2015. The appointment of Kingsley A. Egbon Esq. by the Hon. Chief Judge of Benue State. The respondents cannot be heard to say they are not aware of the appointment.

Exhibit C attached to the applicant's further affidavit in support of originating motion to recognize and enforce arbitral award dated 14th July 2020, contrary to the learned counsel to the respondent's assertion that certified true copy of the arbitral award is dated four months after the purported courier service of same. Arbitral awards are – read – delivered not in open court like judgments, rather arbitral awards are made in triplicates, each sent out to each opposing parties. While the

arbitrator is in custody of the arbitral award. The parties are to read, understand and digest the arbitral award received by them.

In essence, certify true copy is only made available for purpose of execution (if needed). Consequently, exhibit C attached to the applicant's further affidavit which is the evidence of delivery of the arbitration award by DHL courier service to the respondents in my view is a valid notice of arbitration award.

In all, in view of the reasons and legal authorities cited above, I find that the originating motion filed on 19th Nov 2020 has merit. I so Hold having held that the originating motion has merit, it is hereby ordered as follows:-

Leave is hereby granted to recognize and enforce the final AWARD published by the arbitral tribunal consisting of CHIKWENDU Madumere, LLB (uk), (PRESIDING) ELEJO ENENCHE Esq. and Prof. AKAA/mbwash PHD, FcArb on 14th July, 2020 in an arbitration between the above named parties in the same manner as a judgment of this honourable court.

Appearances:

Parties Absent

Godwin Elaiewu for the applicant

A.J Adar for the respondent

Signed
Presiding Hon Judge
16th/10/2021

