

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA ON THE 7<sup>TH</sup> DAY OF FEBRUARY, 2022**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**  
  
**SUIT NO.FCT/HC/CV/1453/2020**

**COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

**GRID REFERNCES LIMITED.....CLAIMANT**

**AND**

**DOUBLE HELIX LIMITED.....DEFENDANT**

**RULING**

The Defendant/Applicant's Notice of Preliminary Objection dated 19<sup>th</sup> August 2020 is for an order dismissing or striking out the suit for not disclosing any cause of action against the Defendant/Applicant.

(2) And for lack of jurisdiction or alternatively

(3) Staying proceedings pending arbitration.

Learned Counsel to the Defendant/Applicant relied on the 26 paragraph Affidavit filed in support of the application. The deponent Oyinlola O. Osimade of Flat 5, Block 5, Mani Close, Off Kano Street, Area 1, Garki Abuja state amongst others. That the originating Processes have not disclosed any reasonable cause of action .....

that it has not alleged sufficient facts to support the claims or link the Defendant/Applicant to his claim. The Defendant took a soft loan of N15 Million from Claimant through Mr Madaki and repaid same sometimes in 2019. That Defendant/Applicant is not indebted to the Claimant in the sum being claimed. That Claimant concealed the actual amount he granted the Defendant. That the N15 Million granted has been fully paid. That the Memorandum of Understanding relied by the Claimant has a provision for arbitration in the event of a dispute between the parties to the said agreement. That parties submitted to arbitration. That Claimant failed to invoke the clause relating to arbitration. That the suit is brought malafide.

The Claimant/Respondent on the other hand, in its counter Affidavit deposes through Ashi Michael Ashi that the document which gave rise to this loan between the parties is the loan agreement which was executed on 8/06/17 which had no arbitration clause. That the Memorandum of Understanding was abandoned by the Defendant when he failed to comply with Paragraph C of the Memorandum by submitting a collateral. The Defendant has filed a Statement of Defence. That this Court has already decided on the issue of arbitration as contained in the earlier Notice of Preliminary Objection.

I have read the Affidavit Evidence summarised above, I have also considered the Written Addresses of Counsel. The two issues germane for the determination of this application as postulated by parties are:

- (1) Whether or not the suit discloses a cause of action.
- (2) Whether or not the Court lacks jurisdiction to entertain this action the parties not having reverted to an arbitration as contained in their agreement.

On the 1<sup>st</sup> issue, I refer to the case of A. G. Federation vs. A. G. Abia State & 35 ors(2001) 11 NWLR (PT. 725) 689 at 733.

The Supreme Court per Uwais JSC held:

***“A cause of action has been defined to mean the fact or facts which establishes or give rise to a right of action and that it is the factual situation which gives a person the right to judicial relief”.***

The Supreme Court held further at P. 733 thus:

***“It is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case discloses some cause of action or some questions fit to be decided by a judge notwithstanding that the case is weak or unlikely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out”.***

See also **MILITARY GOV. ONDO STATE & 5 OTHERS VS. KOLAWOLE & 4 ORS (2008) 4-5 SC (PT. 11) 158 at 184-185.**

**ABUBAKAR VS. BEBEJI VIL& ALLIED PRODUCTS LTD & 2 ORS (2007) 2SC 48 at 79.**

**ELUBANJO &ANOR VS. DAWODU (2006) 6-7 SC 24 at 43.**

The Claimant's Statement of Claim is dated 16/07/20. The claim seeks against the Defendant:

- (1) The sum of N36 Million being the loan granted by the Claimant to the Defendant on its application.
- (2) 20% interest on the judgment sum.
- (3) N2 Million as general damages.
- (4) N500,000 as cost of the action.

The Claimant's Statement of Claim is short and succinct.

That on 8/06/17, the Defendant approached it for a loan of N15 Million which it granted at 20% interest flat which brings it to N18 Million which Defendant agreed to pay within 30 days. That part of the agreement is for the Defendant to submit a collateral in the value of land documents of 4 uncompleted terrace duplexes situate at

Mborawhich the Defendant never did. That for over three years the Defendant has only paid N12.7 Million.

The total balance (principal & interest) as at the time of filing N36.5 Million. That Defendant has refused to pay the said amount despite demands.

It is clear and apparent from the Statement of Claim that there are sufficient facts which establish or give rise to a right of action. The statement of claim in my humble view discloses some questions fit to be decided. Consequently it is my view and I so hold that this suit discloses a cause of action.

On the 2<sup>nd</sup> issue whether there is a condition precedent or that the matter ought to be referred to arbitration in accordance with the arbitration clause which ousts the jurisdiction of the Court. On the 8<sup>th</sup> day of June 2017 parties entered into a loan agreement. It is attached to the Statement of Claim.

From the records, parties entered into a Memorandum of Understanding on how to liquidate the said sum. The said Memorandum of Understanding contains an arbitral clause. The Defendant contends that this Court lacks jurisdiction to entertain this matter as the Claimant has not invoked the arbitration clause which is a condition precedent. It is well settled that the incorporation or

inclusion of an arbitration clause in an agreement does not oust the jurisdiction of the Court.

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

The loan agreement between the parties which gave rise to this action does not have an arbitration clause. However, the Memorandum of Understanding contains an arbitration clause which reads:

***“... in the event of dispute or controversy arising out of or in connection with the contract, parties willing resolve should (SIC) such dispute or resort to arbitration”.***

The law is that where a Claimant jumps arbitration and commences an action in Court of law, a Defendant shall take steps to stay proceeding of the Court. The Court will normally stay proceedings if it is satisfied that there is no sufficient reasons why the matter should not be referred in accordance with the arbitration clause.

However, a Defendant applying for a stay of proceedings/a striking out of the suit as in this case shall not deliver any pleadings or take any steps in the proceedings beyond entering a formal appearance.

Once a Defendant takes any step beyond entering a formal appearance before the Court, he will be deemed to have waived his right to go to arbitration.

See **OSUN STATE GOVT. VS. DANLAMI NIG. LTD (2003) 7 NWLR (PT. 818) 72.**

**KUNABOVS. ZACK-MOTISON (NIG.) LTD (1992) 5 NWLR (PT. 239) 102.**

Learned Counsel to the Defendant/Applicant surprisingly also cited to this Court the case of **ONWARD ENTERPRISE LTD VS. MV. MATRIX (2008) LPELR – 4789 CA** which is intandem with the Osun State vs. Dalami earlier cited in this ruling.

Learned Counsel to the Defendant/Applicant who wants a stay or strike out this motion also refer to Section 5(1) of the Arbitration and Reconciliation Act.

It states:

***“If any party to an arbitration agreement commences any action in any Court with respect to any matter which is the subject of arbitration agreement, any party to the arbitration agreement may, at any time after appearance and before delivering any pleading or taking any other steps in the proceedings apply to the Court to stay the proceedings”.***

I do not think the Defendant/Applicant Counsel understand the import and content of the authorities he cited to this Court which are obviously against his case.

In the instant case, the Defendant filed an appearance, a Notice of Intention to Defend and actually participated in the Undefended List proceedings which culminated to the transfer of the case to the general cause list. The Defendant has also filed a Statement of Defence to the Statement of Claim. Issues are joined.

In my view and I so hold that the Defendant has waived his right to go to arbitration. The Preliminary Objection M/9280/21 dated 19/08/20 lacks merit and it is dismissed.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**07/02/22**