

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/646/2018

MOTION: M/3262/19

BETWEEN:

PREFERRED PROPERTIES LTD.....CLAIMANT/RESPONDENT

VS

1. ASSET BUYBACK GUARANTY PLC

2. QUANTUM QUANTITATIVE EASING UNLIMITED

.....DEFENDANTS/APPLICANTS

RULING

By a Motion on Notice dated 7/1/2019 but filed 15/2/2019, brought pursuant to Order 43 Rule (1) of FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, the Defendants/Applicants prays for the following:-

- (1) An Order of this Hon. Court striking out this suit by virtue of its incompetence.
- (2) An Order of further order as the court may deem fit to make in the circumstances.

The grounds upon which the application is predicated are:-

- (1) The Claimant's action is pre-mature and brought in breach of terms and conditions of the Agreement voluntarily entered into by the parties.
- (2) The Claimant has not complied with the mandatory dispute resolution which provides for the manner wherein all differences will be resolved between the Defendants and the Claimant arising from the interpretation or the performance of any act under the investment and guarantee Agreement between the Defendants and the Claimant.
- (3) Where an alternative dispute resolution exists in an Agreement activity and utilization, the Alternative Dispute Resolution Procedure to resolve dispute as to interpretation of Agreements executed by the parties is a condition precedent to the activation of the court's jurisdiction.

In support of the application, is an eight (8) Paragraph affidavit, sworn to by Taiwo Onifade, with three(3) Exhibits, marked "1-3". In compliance with the Rules, filed a Written Address.

The Claimant/Respondent in opposition, filed a 13 Paragraph counter-affidavit on 31/5/2019 sworn to by Ayomipo Sodipo (Female). Also filed a further affidavit on 15/3/2019, sworn to by Adedolapo Oluwasegun, also filed is a Written Address.

Both Counsel on 28/10/2021, adopted their Written Address, in urging the court to grant and/or refuse the application.

In the Written Address of the Defendants/Applicants, only one (1) issue was distilled for determination, which is;

“Whether this Honourable Court ought to strike out the Claimant’s suit by virtue of competency”

And submits that by the Provisions of the Exhibit “2” - Investment and Guarantee Agreement, voluntarily entered by the parties and bound by them, by extension the Para 18 of the said Exhibit “2” thereof, where there is a dispute arising from the interpretation or performance of any act under this Agreement shall be resolved in accordance with the terms stated in the Para 18 of the Exhibit “2”, that the Claimant having failed to explore this option first before resorting to filing of this Writ, is in breach of the Terms of the Agreement between the parties, therefore liable to be struck out for lack of competence. Contends that the allusion of the Claimant in their Para 8 of their Oath that the arrangement the Claimant has with the Defendants is one of money lenders Agreements as against Investment and Guarantee Agreement of the Exhibits, submits touches on the interpretation of the nature of the said Exhibit. In his written submission, Counsel referred the court to the following judicial authorities, Hallam Vs A.G Plateau State (1996) 9 NWLR (PT. 471) Pg. 249, Para A – B. Union Bank of Nigeria Ltd Vs Sax Nigeria Limited (1994) 8 NWLR (PT. 361) 124 @ 163 Para C. and Madukoli Vs Nkemdilim (1962) 1 All NLR 587 @ 575, in urging the court to grant the reliefs sought.

In the Written Address of the Claimant/Respondent settled by victor Okwudiri Esq. only one (1) issue was distilled for determination.

“Whether having regards to all the facts and circumstance of the case, the Defendants/Applicants are entitled to the relief sought”

And submits that contrary to the submission of the Applicants, the gravamen of the Claimant’s case in the main exist outside the interpretation of any of the clauses, rather it bothers on legality of the parties into entering of the said Agreements from the onset. And urge the court to look at the Claimant Writ of Summons and will find that their claim is not related to interpretation of the Investment Agreement as alluded to by the Applicant. Therefore, not a matter that an Arbitral Panel can adjudicate upon. Further contend that by Provisions of statute the court is empowered to sit and determine suits of civil nature – referred to Section 257 (1) of 1999 Constitution and Section 6 of 1999 Constitution of Federal Republic of Nigeria. Finally, submits that if the court is minded to allow the application, the appropriate order in line with the law, is one of stay of proceedings and not a striking out as claimed by the Applicant , in all, Counsel referred the court to the following judicial authorities; United World Ltd Inc. Vs M.T.S. Ltd (1998) 10 NWLR (PT. 568), Obembe Vs Wemabode Estate Ltd (1977) All N.L.B 130; Section 5(1) of the Arbitration and Conciliation Act; in assuaging this court to dismiss this application for lacking in merit.

Having carefully considered the submission of both Learned Counsel and the judicial authorities cited as well as the statutory authorities, the court finds that there is only one (1) issue for determination; which is;

“Whether this court has jurisdiction to hear and determine this suit as presently constituted?

The gravamen of the Defendants/Applicants mainly is that the Claimant/Respondent suit, as presently Constituted, a declaration that the purported Agreements entered between them and amongst other reliefs, are in breach of the Terms and Conditions of the Agreement voluntarily entered into, in particular Para 18 of the Investment and Guarantee Agreement, which provides for resolution mechanism, in the event of dispute. Therefore, this court lacks the competence and jurisdiction to entertain this suit.

In response, the Claimant/Respondent, however, contend that the claim of the Claimant in the main, is one of a case that exist outside the interpretation of any of the Clauses on the Agreement, rather bothers on the legality of the parties to have entered into the Agreement from the onset. In any event if the court is inclined to hold for the Applicant the appropriate order should be a stay of proceedings and not striking out.

In considering these contending issues of the parties, the court will have to look at the records of the court, see *Agbareh Vs Mimrah* (2008) All FWLR (PT. 409) Pg. 559 @ 589 Para D – F on this position of the law.

The basis of this application is contained in Para 18 of the Investment Guarantee Agreement Exhibit “2” attached to the Applicant’s Motion; which reads:-

18. Dispute Resolution, Law and Jurisdiction.

18.1 The Laws of the Federal Republic of Nigeria shall govern this Agreement.

18.2 The parties understand and covenant that all differences between the parties arising from the interpretation or the performance of any act under this Agreement shall be amicably resolved by consultation and negotiation for 2 working days of first notice of dispute being issued by any party herein to the other party or parties, failing which there shall be a mediation under the auspices of the Branch Manager, for the time being, of First City Monument Bank, Aminu Kano Wuse 2 Branch Abuja, for 3 working days immediately following the consultation and negotiation, failing which there shall be an Arbitration to be referred at the instance of all or either or any party to a sole Arbitrator hereby mutually agreed to without objection by all the parties herein from amongst these three (3) indisputably acceptable Arbitrators in order of preference (1) Israel Adejoh Usman, Esq. of Classified Solicitors, No. 1, 53 Road (Fela Anikulapo – Kuti Road) 5th Avenue, Gwarimpa, Abuja, FCT, and upon his inability or refusal, then Ikechukwu Maledo, Esq. of Maledo & Co. 252^A Herbert Macaulay, Way, CBD Abuja, and upon his inability or refusal, then Olakunle Ajagbe, Esq. of c/o of Maledo & Co. 252A Herbert Macaulay, way, CBD Abuja. The decision of the sole Arbitrator shall be final.

18.3 The parties understand and covenant that the sole Arbitrator's fee shall not exceed a maximum of two (2) percent of the amount in dispute and such fee and other costs of the Arbitration shall be fully and solely borne by the party adjudged in the sole Arbitrator's award to be at fault or more at fault than the other party or parties. The Arbitral reference shall not exceed 30 days from issuance of the Notice of Arbitration by a party to publication of award by the Arbitrator and the hearing in Robert Kennedy Block at Plot 1099 Salihu Iiyasu Street, Life Camp Gwarimpa II (next to FCT Magistrates Court complex) Abuja, FCT shall not exceed two (2) working days. Any party to the Arbitral reference is entitled to a maximum of only one adjournment not exceeding 5 working days but hearing day(s) having been fixed shall not be adjourned at the instance of any party on any ground whatsoever. Failure to attend or file documents as at when due shall be deemed to be a full, knowing and voluntary waiver of the right to attend or file such a document and the proceedings shall proceed without objection.

18.4 The President of the Chartered Institute of Arbitrators shall appoint any other successive Arbitrator if none of the (three) above listed mutually preferred Arbitrators is willing or able to conduct the Arbitral proceedings.

18.5 The parties hereby agree that Federal Capital Territory, Abuja is the forum of this contract. Every legal redress, adjudication or proceedings shall be deemed to be proper if done or commenced.

On the other hand the claim of the Claimant as contained in Writ of Summons are stated below as follows:-

THE WRIT OF SUMMONS

1. **A DECLARATION** that the purported:
 - a. Investment Guarantee Agreement made between the Claimant, 1st Defendant, and 2nd Defendant dated the 20th of September 2018;
 - b. Tenancy and option to purchase Agreement made between the Claimant and 1st Defendant dated the 20th of September 2018;
 - c. Sales Agreement made between the Claimant and 1st Defendant dated the 21st of March 2019;
 - d. Deed of assignment made between the Claimant and 1st Defendant dated the 21st of March 2019.
 - e. Power of Attorney made between the Claimant and 1st Defendant dated the 21st of March 2019.

Are unlawful, null and void.
2. **AN ORDER** of this Honourable Court setting aside the purported.

- a. Investment Guarantee Agreement made between the Claimant 1st Defendant, and 2nd Defendant dated the 20th of September 2018.
- b. Tenancy and option to purchase Agreement made between the Claimant and 1st Defendant dated the 20th of September 2018,
- c. Sales Agreement made between the Claimant and 1st Defendant dated the 21st of March 2018.
- d. Deed of Assignment made between the Claimant and 1st Defendant dated the 21st of March 2018.
- e. Power of Attorney made between the Claimant and 1st Defendant dated the 21st of March 2018.

For being unlawful, null and void.

3. **AN ORDER** or this Honourable Court compelling the 1st Defendant to forthwith return the original copy of the Claimant's Certificate of Occupancy (in respect of Plot 78, Cadastral Zone A7, Off Aminu Kano Crescent Wuse 2, Abuja with Certificate of Occupancy No: 17a2w-1271a-6ef3r-deuf8u-10 file No. MISC 55476 registered as No. 12434 page 12434 in Volume 63 of the Certificate of Occupancy Register of the Federal Capital Territory Abuja lands Registry, in the office at Abuja) to the Claimant.

4. **AN ORDER** of Perpetual Injunction restraining the Defendants whether by themselves, agents, privies, officers, members or by whomsoever and howsoever form interfering with the quiet enjoyment, ownership and possessory rights of the Claimant in respect of Plot 78, Cadastral Zone A7, Off Aminu Kano Crescent Wuse 2, Abuja with Certificate of Occupancy No: 17a2w-1271a-6ef3r-deuf8u-10 file No. MISC 55476 registered as No. 12434 page 12434 in Volume 63 of the Certificate of Occupancy Register of the Federal Capital Territory Abuja lands Registry, in the office at Abuja.
5. The sum of ~~₦~~30,000,000.00 (Thirty Million Naira Only) as damages suffered by the Claimant for the unlawful financial obligations imposed by the Defendants on the Claimant.
6. The cost of this suit assessed at the sum of twenty million naira (~~₦~~20,000,000.00).
7. And such further Orders that this Honourable Court may deem fit to make in the circumstances.

It is trite that parties are bound by their Agreement and is not the duty of the court to re-write the Agreement freely entered into by the parties. See the case of Ogbaje Vs Abuja Investment and Property Development Company Ltd (2009) LPELR 1185 (CA).

In this instant application, it is clearly stated in the Para 18 of the investment and guarantee Agreement, what the parties should do in the

event of a dispute. The question that would of necessity follows is whether any dispute has arisen to warrant the matter first be resolved by the process stated in Para 18 of the Agreement.

Dispute has been defined in the case of *Dalfam Nigeria Ltd Vs Okaku Int'l Ltd & Or* (2014) LPELR – 22990 (CA) Per J. Tur (JCA); as

“A conflict or controversy that gives rise to a particular law suit is what constitutes a dispute”

Consequent upon, the above cited authorities and when juxtaposed with the contending positions of the Claimant and the Defendants, there is clearly a dispute between them hence this suit. The question for determination in this instant is whether the dispute that has arisen is one that calls for resolution by terms and conditions as agreed by the parties in Para 18 of the Agreement or one outside the purview that should be determined by the court which is challenging the legality or otherwise of the Agreement entered into by the parties.

This calls for an invitation of the court to peruse the Claimant claim in their Writ of Summons against this instant application of the Applicant. I have stated that the courts are enjoined to look at its records to resolve such issues. See the *Agbareh Vs Mimrah* (Supra).

On a careful perusal of the records of court in particular, the claim of the Claimant, as contained in the Writ of Summons and the contention of the Applicant that the filing of this suit as presently constituted by the Claimant is in breach the said Para 18 of the Agreement, the court finds that without

attempting to delve into determining the substantive suit at this stage, consider on the face of the claim which borders on an alleged illegality of the contract Agreement in the first place be a subject for referral to an arbitral panel or in line with the terms contained.

Illegality has being defined in the case of Ag. Ekiti State & Ors Vs Daramola & Ors (2003) LPELR – 606 (SC) as;

“The term illegality in my humble view, connotes an infraction of law. In Black Law Dictionary, 6th Edition the Word is defined, which definition; I am in Agreement with, thus “that which is contrary to the principles of law as contradistinguished from mere Rules of procedure”.

Clearly, it is the courts firm view that granted that where there is a breach of terms, and conditions of an Agreement, where a dispute has arisen as in this instant suit, reference should be made to the appropriate panel as agreed, but in this case as found by this court, this suit is one bordering on an alleged illegality which can only be first determined by an appropriate court of law not an Arbitral panel or any panel agreed by the parties.

It is in the light of all of these, I hold that this court has the jurisdiction to hear and determine this suit as presently constituted. The application of the Applicant fails and is hereby dismissed.

HON. JUSTICE O. C. AGBAZA
Presiding Judge
20/1/2022

APPEARANCE:

ADEDALOPO ALEGE FOR THE CLAIMANT/RESPONDENT

ADELEWA WILLIAM FOR DEFENDANTS/APPLICANTS