IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 18TH DAYOF JANIUARY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/3570/2020
MOTION NO: M/5986/2022

BETWEEN

1. MR. ABDUL BELLO ---------- CLAIMANTS/RESPONDENTS
2. MRS AISHA BELLO

AND

TRANSURB TECHNIRAIL ---------- DEFENDANT/APPLICANT
CONSULT LIMITED

RULING

The Claimants herein commenced this suit against the Defendant vide a writ of summons seeking declaratory and various orders. The Defendant on the 29th of April, 2022 filed a Preliminary Objection to the competence of this action on the grounds that the suit is premature, incompetent and ought to be struck out or referred to Arbitration, having regard to clause 5(2), (3) and (5) of the parties Tenancy Agreement dated 1/03/2013 and that this court lacks requisite jurisdiction to hear and determine the Claimants' action as same is not properly brought before this court. In support of the preliminary objection, the Defendant filed an affidavitof 3 paragraphs deposed to by Mr. Lawrence Ojo-Gabrielagent of the defendant wherein he averred that by the provisions of Clause 5(2), (3) and (5) of the Tenancy Agreement dated 1/03/2013 upon which the Claimant's action is predicated this matter was wrongly brought to this court as a peaceful settlement of dispute/disagreement must first be had by parties failing which the dispute/disagreement ought to be referred to arbitration and the Arbitrator's decision becomes final. That the implication of the breach of the above clause of the tenancy agreement is that this Honourable Court lacks jurisdiction to entertain this action, hence the action ought to be struck out. Attached also is the counsel's written address dated 28thApril,2022.Learned Counsel to the Defendant formulated a sole issue for determination to wit: -

"Whether this Honourable court has the jurisdiction to entertain and determine this action regard being had to the breach of the terms of the tenancy agreement duly executed by the parties".

Summarily learned counsel submitted that the preliminary objection of the defendant has merit to warrant the sustenance of same by this Honourable court. That by the use of the word "shall" in the Agreement, the provision makes it mandatory and not optional. Furthermore, that the supreme court have held in a plethora of cases that where parties agree that all their disputes in respect of a contract shall be resolved by arbitration, the court must uphold the agreement of parties by referring the matter for arbitration. Counsel then urged the court to hold that the objection has merit and ought to be upheld. He relied on the following authorities; **Isiaka v. Amosun (2016) All FWLR (Pt. 839) pg. 1040 at 1061062 paras H-A ;Royal Exchange Assurance v, Bentworth Finance (Nig) Ltd (1976) 11 SC and S. O. &S.S. Ltd v. Adun(2016) ALL FWLR (pt. 860) pg 1102 at 1121, paras D-E** amongst others.

In opposition, the Claimant filed a 13-paragraphs Counter Affidavit deposed to by Kennedy Khanoba, the Claimantsattorney. Deponent averred thathe had several meetings with the Defendant/Applicant's representatives in a bid tosettle this matter before the commencement of this suit.That the Defendant/Applicant's had on every occasion failed to keep the terms of Settlement and kept dribbling him and the claimants/Respondents.That the Defendant/Applicant and her representatives are no longer accessible to him and the Claimants/Respondents.That it was the inaccessibility of the Defendant/Applicant that led to the present suit. That it was because of the amicable settlement which both parties have agreed to explore that delayed the filing of this suit, when the Defendant/Applicant defaulted in paying their arrears of rent.That the Defendant/Applicant has been served all the statutory notices and yet did not deem it fit to call for arbitration.That the Defendant/Applicant has been in arrears for 6 months.

In the Written Address of Claimant/Respondent in support of their counter affidavit, counsel raised a soleissue for determination to wit;

"Whether the preliminary objection as raised by the Defendant/Applicant has merit to warrant sustenance of same by this Honourable Court".

In summary, learned counsel submitted that paragraphs 2b-e of the affidavit in support of the motion offends section 115 of the Evidence Act, 2011 and should be struck out. That if struck out the preliminary objection will collapse as it will be bereft of the requisite facts that the preliminary objection is

predicated upon. Counsel also submitted that it is trite law that an Arbitration agreement does not oust the jurisdiction of the Court.That all it does is to allow the parties the avenue and possibilities of settling disputes amicably out of court. Counsel further submitted that the proper and competent application the Defendant/Applicant is supposed to make is to ask for stay of proceedings and request that the matter be referred to arbitration and urged the court to overruled the Defendant/Applicant's Objection as it is frivolous and not sustainableas the prayer being sought by the Defendant/Applicant in herapplication is not in line with **Section 5 of Arbitration and conciliation Act, Cap A18 LFN 2004**.Counsel cited the following authorities amongst others; **Agip (Nig) Plc v. Ossai&Ors (2016) LPELR-40976 (CA); Transocean Shipping Ventures Private Ltd v. MT SEA Sterling (2018) LPELR-45108 and Messrs NV SCHEEP v. MV S. ARAZ (2000) 12 SC (Pt. 1) 164 at 213**

I will like to bring to the attention of both parties that the Tenancy Agreement referred to was not attached to the preliminary objection nor to the counter affidavit. This is very unprofessional for counsel to send the court on a voyage of discovery. Be that as it may, I have squeezed time out of my tight schedule to fish out the said Tenancy agreement from the bulky court file.

Having summarized the content of the affidavits of both parties and their submissions, the court finds that only one (1) issue calls for determination and that is;

> **"Whether or not the Applicant has made out a case to warrant the grant of the relief sought".**

It is germane to note at the onset that jurisdiction is the life wire of any adjudication. Where a court adjudicates upon a matter without jurisdiction, the entire proceeding will be rendered a nullity however beautifully conducted. In other words, jurisdiction is fundamental to every proceeding. In**MC INC LTD V. DUNCAN (2016) 4 NWLR PART 1501 @ P. 205, PARASF-G, Per NDUKWE – ANYANWU, JCA,** rightly held thus;

> *"...the jurisdiction of court is fundamental to any proceedings, therefore, the court must first of all assume jurisdiction to determine whether it indeed has jurisdiction to adjudicate on a matter brought before it..."*

The crux of this Preliminary Objection is that the tenancy agreement executed by the parties contains a condition precedent; that is an arbitration clause. Therefore, it is the contention of theDefendant/Applicant that this suit is incompetent. For the avoidance of doubt and easy understanding, I will reproduce the Clause 5(2), (3) and (5) of the tenancy agreement between the parties which is the arbitration clause, it reads thus;

"(2) In the event of any dispute or allegation of breach or question of interpretation relating to this Agreement, the parties shall meet to negotiate in good faith to settle the matter amicably.

(3) Where any such dispute or difference or question under this Agreement cannot be resolved as in Clause (ii) above within 2 1 days, it shall be referred to an Arbitrator appointed by the Multi Door Court House attached to the Abuja High Court. The arbitral proceedings shall be conducted in English language in Abuja, in Nigeria. The Arbitrators shall resolve the questions submitted, award the relief to which each party is entitled and allocate the cost of arbitration.

(5) The decision of the Arbitrator appointed under this Clause shall be final. "

Clause 5 (2) of the Tennant agreement is to the effect that parties are to resort to arbitration in the event of a dispute or allegation of breach (of the Tenancy agreement) or question of interpretation relating to this agreement.

I have read Claimants claim before this Court and Statement of Claim and paragraph 14, 16 and 17 is to the effect that Defendant allegedly breached certain terms in the tenancy agreement in that by Defendants failure to pay the sum of N250,000 daily forfailure to vacate premises was a direct breach of the Tenancy Agreement; also, Defendant by the tenancy agreement is to redecorate and restore the plaintiff to a tenantable condition.
From the above it is apparent that there are allegations of breach of the Tenancy Agreement amongst others and therefore this Court is of the view that the provision of the Tenancy Agreement which includes arbitration clause is binding on both parties.

Defendant/Applicant is of the mistaken belief that the arbitration clause ousts the jurisdiction of the court but that is not position as espoused Per Ogundare(JSC)in **CITY ENGINEERING NIG. LTD V. FEDERAL HOUSING AUTHORITY (1997) LPELR - 868 (SC)** held a contrary view thus ;

> *"...As well pointed out earlier, any agreement to submit a dispute to arbitration, such as the one referred to above, does not oust the jurisdiction of the court. Therefore, either party to such an agreement may before submission to arbitration or an award is made, commence legal proceedings in respect of any claim or cause of action included in the submission...."*

It has been held in the case of **NEURAL PROPRIETARY LTD V. UNIC INS. PLC (2016) 5 NWLR PT 1505 PG G-H.383 G-H 386 PARAS C-D**thus;

> *"...where parties have chosen or determined for themselves that they would refer any of their disputes to arbitration instead of resorting to regular courts. Aprima facie duty is cast upon the courts to act upon their agreement. The court must respect the arbitration clause the parties entered into voluntarily as included in their contract..."*

The Arbitration Clause used the word "**shall"** in stating that any dispute between the parties which cannot be resolved by mutual consent shall be settled by arbitration under the Laws of Nigeria. By the use of the word "shall", the parties agreed that any dispute which they cannot resolve by mutual consent must mandatorily be settled by arbitration and no other way. The parties have subscribed to a mandatory resolution of any dispute by arbitration and parties are bound by their agreement.The Courts have been enjoined to give effect to the plain words of a written contract, and must not read into them any meaning not stated in the agreement. Nevertheless, this does not oust the jurisdiction of this Court, the Clause gives the parties means of first resolving the dispute and not just rush to litigation. TheSupreme Court in the case of **ONYEKWULUJE & ANOR V. BENUE SATE GOVT & ORS (2015) LPELR-24780 (SC) Per KEKERE-EKUN J.S.C. (P.65, paras. A-G)** held;

> *"..... In Magbagbeola v. Sanni (2002) 4 NWLR (Pt. 756) 193 it was held that an arbitration clause is only procedural in that a provision whereby parties agree that any dispute should be submitted to arbitration does not exclude or limit rights or remedies but simply stipulates a procedure under which the parties may settle their differences. In other words, the existence of an arbitration clause in a contract merely postpones the right of the contracting parties to resort to litigation."*

Consequently, this Court would honour the terms of the parties as stated in the tenancy agreement executed by them and refer this matter to the Multi-Door Court House of the High Court of FCT, Abuja, who shall appoint an arbitrator. Parties are hereby given 3 months from the date of this ruling to report progress on Arbitration.

Parties: Absent

Appearances: Ruth LoviraOjumu appearing for the Defendant. Plaintiffs are not represented.

HON. JUSTICE MODUPE OSHO-ADEBIYI
JUDGE
18TH JANUARY, 2023