

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA**

THIS THURSDAY, THE 3RD DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

MOTION NO: M/505/2021

BETWEEN:

OAK DEVELOPMENT LIMITED -----CLAIMANT

AND

1. NIGERIAN POLICE FORCE -----}

2. INSPECTOR GENERAL OF POLICE -----}

REPOENDENTS

JUDGMENT

This is a Motion Brought Pursuant to **Section 31(1) &(2) of the Arbitration and Conciliation Act, Cap. A18, LFN,2004, Order 19, Rule 13 (1) &(2), Order 43,Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018**, and Under the Inherent Jurisdiction of the Honourable Court.

The Motion is praying this Court for :

An ORDER for the Recognition and Enforcement of the Arbitral Award Made on 30th April, 2020 coram Emmanuel Dike, Esq. FCIArb (U.K) in OAK DEVELOPMENT LIMITED v. NIGERIAN POLICE FORCE AND THE INSPECTOR GENERAL OF POLICE.

And for such Order or other Orders as this Honourable Court may deem fit to make in the circumstance.

The Grounds upon which this Motion is brought are:

1. The Arbitral Panel made an Award on the 20th April, 2020 in favour of the Oak Development Limited (the Applicant)
2. The Respondent have failed, neglected and/or refused to comply with the award.
3. An Order of the Honourable court is required to recognize and enforce the Award of the Arbitral panel.

The Motion is supported with a 12 paragraph Affidavit Deposed to by one Philips Wemambu, a litigation Secretary in the law firm of Charles Musa & Co. Counsel to the Applicant in this Suit. Attached to the Motion is Exhibit OAK 1(the Agreement) and Exhibit OAK 2, (the Arbitral Award) with A Written Address of the Applicant's Counsel.

The Respondents were served with this Originating Motion on 3/3/2021, but they failed to file any response and were not represented in court by any counsel of their choice.

On the 19th day of July, 2021 when this matter came up for hearing, after several adjournments to see if the Respondents can file something or at least be represented, but still the Respondents were neither in court nor represented. The Applicant Counsel then moved this Court, and adopted his written address as his oral argument in support of the Application, and urged the Court to grant the Application.

The case of the Applicant as gleaned from the affidavit evidence is that in furtherance of Article 28 of the Development of Palm Brook Manors Agreement between Applicant and Respondents, dated 1st day of July, 2014, both parties submitted to an Arbitration Panel, duly constituted and presided over by Emmanuel Dike, Esq. FCI Arb (U.K). The Arbitration panel entered judgment in favour of the Applicant on 30/04/2020. The final award granted in favour of the Arbitration inter alia includes:

1. The Nigeria Police Force shall pay the sum of #178, 828, 669. 55 (One Hundred and Seventy Eight Million, Eight Hundred and Twenty Eight Thousand, Six Hundred and Sixty Nine naira, Fifty five Kobo) to Oak Development Limited being damages for the cost of engaging professional services and construction contract document.
2. The Nigeria Police Force shall pay the sum of #22,800,000.00(Twenty Two Million, Eight Hundred Thousand Naira) to Oak Development Limited being damages for the cost of facilitating and processing the statutory Certificate of Occupancy No. GAL/07881 covering 50.425 Hectares of land (parcel C) situate at Four Corners Ozalla/Akegbu-Ukwu dated 17th September, 2014, issued by Enugu State Government to the 1st Respondent.
3. The Nigeria Police Force shall pay the sum of #15, 360,000.00(Fifteen Million three Hundred and sixty Thousand Naira) to Oak Development Limited being damages for the cost of logistics and mobilization of resources to site.
4. The Nigeria Police Force shall pay the sum of #300,000,000.00 (Three Hundred Million Naira) to Oak Development Limited being general damages for breach for the development of Palm Brooks Manor Estate.
5. The Nigeria Police Force shall pay the sum of #10,000,000.00 (Ten Million Naira) to Oak Development Limited being cost of arbitration.
6. The Nigeria Police Force shall pay the sum of #2,000,000.00 (Two Million Naira) to Oak Development Limited being legal fees for legal representation in the arbitral proceedings.
7. Post award interest of 10% per annum shall apply to the sums to Oak Development Limited from the date of this award, until the sums awarded are fully paid by the Nigeria Police Force.

Applicant stated that the said final award has not been paid by the judgment debtor and has also not filed an appeal against the decision of the panel published on 30th day of April, 2020.

Attached to the Applicant's affidavit are:-

Exhibit "OAK 1" – Palm Brooks Manor Agreement

Exhibit "OAK 2" Final Award.

In their written address counsel for Applicant formulated a sole issue for determination.

Whether the Court can grant an Application to recognize and enforce an arbitral award.

Relying on **Section 31(1) of the Arbitration and Conciliation Act, 2004 and Order 19 Rule 13(1) of the rules of this Court**, The Counsel submitted that the requirements listed therein for their application has been satisfied. That the Court is empowered to grant an application for recognition and enforcement of an arbitral award.

The Counsel further submitted that it is trite that an arbitral award in itself is not enforceable except the court gives effect to it. He cited the case of **Vessel Naval Gent & Ors v. Associated Commodity International Limited (2015) LPELR-25973 (CA)** where the Court held that:

The Law is settled on bindingness of an award. The Supreme Court in the case of Okechukwu v. Etukokwu (1998) 8 NWLR (Pt. 562) 513 at 529-530 which states thus: Section 31(1) of the Arbitration and Conciliation Act, Cap. 19, LFN 1990 –“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. ”

Submitting further, the Counsel contended that in law an Arbitral award *per se* lack enforceability and enforcement. That it does not carry any element of sanction on it and at the completion of the Arbitration, the award is a toothless dog which cannot bite until a court of law gives it teeth. That at the end of the day, it is the order recognizing the award that gives it the force of a judgment which can be enforced and thereby operating as *estoppel per rem Judicatam*. The Counsel then urged the Court to grant the Application.

It is in the record of the court that the Respondents were served the process of court on 3/3/2021, but failed or neglected to file their response, Respondents also failed to avail themselves the opportunity to be represented by a Counsel of their choice in this matter. The implication of this, is that the evidence of the Applicant is unchallenged and it is the law that where evidence is unchallenged and uncontroverted such evidence is accepted as true and correct. See the case of **CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406 Ratio 12.**

To succeed in an application such as this, Applicant must satisfy the provisions of Section 31 (2) (a) and (b) which are:-

- (a) The duly authenticated original award or a duly certified copy thereof and
- (b) The original arbitration agreement or a duly certified copy thereof.

In the instant application, Applicant in compliance with the provision of the law attached the above mentioned document to the affidavit as Exhibit “OAK 1”and “2”. And from the unchallenged evidence of the Applicant, the Respondents participated in the proceedings at the Arbitration panel leading to the final award

and Section 31 (1) of the Arbitration and Conciliation Act empowers the court to enforce an Arbitral Award.

The question now is, would it be just to refuse this application, where the Applicant has shown by their unchallenged evidence in compliance to the provision of the law, so as to be entitled to the enforcement of the arbitral award?

The Court held in **Ecobank v. Admiral Environmental Care Ltd. & Ors (2021) LPELR 56130(CA)**

There is no gainsaying that the lower Court is amply clothed with the jurisdiction to recognise and enforce an arbitral award. By Ss. 31 and 57(1) of the Arbitration and Conciliation Act, Cap. A18 LFN 2004 ("ACA") as well as Order 15 Rule 4(1), (2) and (3) of the High Court of Kaduna State (Civil Procedure) Rules 2007, the 1st Respondent is entitled to apply for recognition and enforcement of an arbitral award, just as the lower Court is equally eminently empowered to entertain the application. See EMERALD ENERGY RESOURCES LTD v SIGNET ADVISORS LTD (2020) LPELR-51389(CA) 1 at 51. However, whether or not the lower court was right in affirming/recognizing the arbitral award subject matter of this appeal is a different kettle of fish and remains the relevant enquiry." Per AFFEN ,J.C.A (Pp. 11-12 paras. D)

It is the law that a successful party is entitled to the fruit of his judgment. See the case of **Julius Berger (Nig) PLC v. T.R. Comm. Bank (2007) 1 NWLR (PT.1016 Pg 540 @ 343 Ratio 2.**

The Court agrees with the submission of Applicant's Counsel, that where parties by their own making submits to a panel for resolution of disputes, they are bound

by the outcome of such decision as stated in the case of **Bellevue Airlines Ltd Vs Aluminum City Ltd (2007) LPELR-8465 (CA)**.

In all of these, the Court finds that the Applicant having satisfied the requirement of Section 31 (2) (a) and (b) and their unchallenged evidence adduced in support of prayers; the application succeeds.

An Order is hereby granted to the Applicant to Recognize and Enforce the Arbitral Award Made and Published on 30th April, 2020 coram Emmanuel Dike, Esq. FCI Arb (U.K) in the Arbitral proceedings between the Applicant and the Respondents herein, (OAK DEVELOPMENT LIMITED v. NIGERIAN POLICE FORCE AND THE INSPECTOR GENERAL OF POLICE), as judgment of this Honourable Court decided in favour of the Applicant as follows:

1. The Nigeria Police Force shall pay the sum of #178, 828, 669. 55 (One Hundred and Seventy Eight Million, Eight Hundred and Twenty Eight Thousand, Six Hundred and Sixty Nine naira, Fifty Five Kobo) to Oak Development Limited being damages for the cost of engaging professional services and construction contract document.
2. The Nigeria Police Force shall pay the sum of #22,800,000.00(Twenty Two Million, Eight Hundred Thousand Naira) to Oak Development Limited being damages for the cost of facilitating and processing the statutory Certificate of Occupancy No. GAL/07881 covering 50.425 Hectares of land (parcel C) situate at Four Corners Ozalla/Akegbu-Ukwu dated 17th September, 2014, issued by Enugu State Government to the 1st Respondent.

3. The Nigeria Police Force shall pay the sum of #15,360,000.00(Fifteen Million three Hundred and sixty Thousand Naira) to Oak Development Limited being damages for the cost of logistics and mobilization of resources to site.
4. The Nigeria Police Force shall pay the sum of #300,000,000.00 (Three Hundred Million Naira) to Oak Development Limited being general damages for breach for the development of Palm Brooks Manor Estate.
5. The Nigeria Police Force shall pay the sum of #10,000,000.00 (Ten Million Naira) to Oak Development Limited being cost of arbitration.
6. The Nigeria Police Force shall pay the sum of #2,000,000.00 (Two Million Naira) to Oak Development Limited being legal fees for legal representation in the arbitral proceedings.
7. Post award interest of 10% per annum shall apply to the sums to Oak Development Limited from the date of this award, until the sums awarded are fully paid by the Nigeria Police Force.

Hon. Justice Jude. O. Onwuegbuzie

APPEARANCES:

1. Moses Ideh Esq., For the Applicant.
2. No Appearance For the Respondents.