

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 31st MARCH, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/467/2021

BETWEEN:

1. MR. YUSUF SULEIMAN ILU
2. RITA FOLAKEMI AKALUGWA
3. MRS. COMFORT DOUGLAS
4. OLAKUNLE FAYOMI
5. OMORE OMODHE OLOWODUN
6. ADEKUAJO CHARLES
7. AISHA LABARAN IBRAHIM
8. MR. FEMI ADEYEMI
9. MBARA STELLA
10. FUNKE NWAFOR
11. BAMIDELE SHAFI
12. SUNDAY EMEFIELE
13. FARIDA KITCHENER
14. JAMIL SHITTU
15. INEDU EMMANUEL
16. ADEYEMI ADEWOYE
17. AMAEZE H. ONOCHIE
18. SHEHU HUSSAINI
19. AUWAL ABBAS

CLAIMANTS

AND

WHITE AVENUE REAL ESTATE - - - DEFENDANT

RULING

This is a matter commenced by an originating summons dated the 16th day of February 2021 and filed on the 18th February 2021. The claimants are asking this honourable court for the determination of the following question/issues.

- 1. Whether by virtue of the sales agreements signed between the Claimants and the Defendant, the claimants individually duly acquired title and interest in the respective properties/houses paid for and bought from the Defendant's estate known and described as Glendale Place Estate, at plot 803 Cadastral Zone B03, Wuye District, Abuja.***

- 2. Whether in the absence of any specific or express agreement contained in the said sales agreement or any other agreement entered into between the Claimants and the Defendant for the payment of facility management fee annually by the claimants, the Defendant can demand that the Claimants pay facility management fee or any fee howsoever described not contained in the sale agreement executed between the parties.***

- 3. *Whether the Defendant has any power under the law or under any instruments to disturb the Claimants of the peaceful enjoyment of their properties/houses paid for and bought from the Defendant's estate known and described as Glendale Place Estate, at plot 803 Cadastral Zone B03, Wuye District, Abuja or exercise any power whatsoever to revoke the said properties of the Claimants.***

If the above questions were answered in the affirmation the claimants seeks for the following reliefs:

- 1. *A declaration that by virtue of the sale agreement freely entered into and executed by all set of Claimants and the Defendant in this case, the Claimants are the owners of the said properties as contained in their respective sale agreements and as such are all entitled to peaceful enjoyment of same without any interference from the Defendant.***
- 2. *A declaration that the Defendant is not entitled to the payment of facility management fee from the Claimants.***

- 3. A declaration that the Defendant has no right and power to revoke the title of the Claimants over the said properties contained in the said sale agreements or exercise any control over same by virtue of the said sale agreement.**
- 4. A declaration that the purported invasion and the attendant vandalization of the house of the 1st Claimant on the 5th day of February 2021, by the agent of the Defendant is illegal, unconstitutional, wrong in law and same constitutes trespass on the 1st Claimant's property.**
- 5. An Order of perpetual injunction restraining the Defendant, her agent, privies, successor in title and assigns or any other person(s) claiming through Defendant from disturbing the claimants from peaceful enjoyment of their properties/houses at Glendale Place Estate, at plot 803 Cadastral Zone B03, Wuye District, Abuja subject matter of this suit.**
- 6. An Order of this Honourable Court directing the Defendant to pay to the 1st Claimant N20,000,000**

(Twenty Million Naira)only as damages to the unlawful trespass to his house, unlawful invasion and vandalization of his property/houses with accrued interest at the prevailing bank rate from 5th day of February, 2021 till the time of final liquidation of the sum claimed.

7. An Order of this Honourable Court compelling the Defendant to issue to the Claimants their title documents over their respective properties/Houses purchased as contained in the sale agreement.

8. AND any other orders(s)as this Honourable court may deem fit to make in this circumstances.

Accompanying the originating summons is a 23 paragraphs affidavit deposed to by one Mr. Yusuf Suleiman Ilu the 1st Claimant in this suit, who stated that he has the consent and authority of all other claimants listed in this suit to depose to the affidavit. The Claimants avers that they are owners of property/houses at Glendale Place Estate located at Plot 803 Cadastral zone, B03 Wuye District Abuja.

That the defendant in this case is a company registered under the law of the Federal Republic of Nigeria and is into the business of Estate development.

That sometimes in the year 2018, the defendant advertised sale of housing units in their property, consisting of 48 units of houses at Glendale Place Estate located at Plot 803 Cadastral zone B03, wuye District Abuja, which contains one (1) living room three (3) bedroom apartment with a BQ all en suite convenience kitchen and pantry as described in the sale agreement. That consequent upon the said advertisement, all the claimants herein signified their intention to purchase property/house with the said Estate. That the claimants respectively purchased the application forms and the defendant asked each of the subscribers to make a deposit of money for the purchase of the said property. That the only condition given by the defendant is that each of the claimants will make commitment amount, which is the (Initial Investment amount) and later make full payment of purchase sum being the total Investment amount with some administrative charges upon which a final allocation of property will be made to each of the claimants based on such payments. That each claimants made the payments as scheduled by the defendant. That the defendant prepared a sales agreement evidencing the payments by each claimants and put the claimants in physical

possession while handing over the houses to each of them. That the sale agreement which the defendant executed with the claimants in this case are all the same both in form and content. That sometimes in 2020, the defendant wrote the claimants asking them to sign an agreement unilaterally prepared by the defendant titled (Facility Maintenance Agreement) for the common areas which comprises of the security gate, the fence and flower planted by the fence. That the claimants approached the defendant intimating him that the terms in the said agreement were unacceptable to them, as a result, they did not sign the agreement. That the defendant threatened to revoke the claimants rights over the properties they had already bought and had full possession. That on the 21st January 2021 the defendant sent another notice to the claimants given them up to 20th day of February 2021 to sign the said facility maintenance agreement or risk their property/house been revoked. That the defendant through her agent (Moris Danjuma and Paul) unlawfully trespassed and invaded the apartment of the 1st claimant at Flat 1 Block B at Glendale Place Estate at 803 Cadastral zone B03, wuye, removing the electricity meter and switch controlling the apartment.

Attached to the affidavit are annexures marked as Exhibit A1, A2, A3, A4, A5 and Exhibit B respectively, which are sales agreement

between the defendant and claimants number 1 to 5 herein. Exhibit B is a document titled "**Final Request to conclude the sales transaction for A unit of three Bedroom apartment at Glendale Place Estate wuye District Abuja**" dated 21st January 2021; addressed to Mr. Yusuf Suleiman Ilu, Folakemi Akalugwa, Mrs. Comfort Dauglas, Mr. Olufemi Adeyemi.

Learned Counsel to the claimants in his written address dated the 16th day of February 2021 and filed on the 18th day of February 2021 formulated the following issues for determination to wit:

- 1. Whether by virtue of the sales agreements signed between the Claimants and the Defendant, the claimants individually duly acquired title and interest in the respective properties/houses paid for and bought from the Defendant's estate known and described as Glendale Place Estate, at plot 803 Cadastral Zone B03, Wuye District, Abuja.***
- 2. Whether in the absence of any specific or express agreement contained in the said sales agreement or any other agreement entered into between the Claimants and the Defendant for the payment of facility management fee annually by the claimants,***

the Defendant can demand that the Claimants pay facility management fee or any fee howsoever described not contained in the sale agreement executed between the parties.

3. ***Whether the Defendant has any power under the law or under any instruments to disturb the Claimants of the peaceful enjoyment of their properties/houses paid for and bought from the Defendant's estate known and described as Glendale Place Estate, at plot 803 Cadastral Zone B03, Wuye District, Abuja or exercise any power whatsoever to revoke the said properties of the Claimants.***

Learned counsel argued the above (3) issues jointly. It is the submission of learned counsel that parties in this suit met at different times where they both signified their intentions to enter into contractual relationship after which offer were made by one party and accepted by the other party.

Counsel submitted in the main that the essential elements of a contract have been fulfilled as far as the law of contract is concerned he cited the case of **PRESIDENTIAL IMPLEMENTATION COMMITTES ON**

FEDERALGOVERNMENT LANDED PROPERTIES VS MR. NOEL AYWILA & ANOR (2017) LPELR – 43204(CA)at page 25 A-D to the effect that *“in order to create a binding contract the parties must express their agreement in a form which is sufficiently certain for the courts to enforce.....”*

Learned counsel submitted that looking at the said sale agreement, which brought and bind the parties in this case together, the parties entered into the contract freely for the sale of the property/house so described in the agreement. Learned counsel contended that by virtue of the said agreement and the payments made to the defendant the title of the properties has passed to the claimants from the defendant.

He relied on the case of **MINI LODGE LIMITED & ANOR VS CHIEF OLAKA NGEI & ANOR (2009)LPELR-1877(SC)AT PAGE 41 PARA G-B** to the effect that:

“A contract of sale exists where there is a final and complete agreement of the parties on essential terms of the contract, mainly the parties to the contract, the property to be sold, the consideration for the sale and the nature of the interest to be granted. Once there is agreement on these essential terms, a

contract of sale of land on property is made and complete”.

Learned counsel cited the case of **ALHAJI AMINU SURAJO FUNTUA V. DR SALIHU AHMAD INGAWA (2016)LPELR-41166** to the effect that “*the law is settled that contract of sale of property exist where there is a final and complete agreement of the parties on essentials terms of the contract.....”*

It is the contention of counsel that parties are bound by their agreement and there is nothing under the law which confers the right on defendant to revoke the property/house which the claimants had acquired.

He relied on **NIGERIA SUPPLIES MANUFACTURING CO LTD VS NIGERIA BROADCASTING CORPORATION (1967) LPELR – 25518 (SC) AT PAGE 11-12 PARA F-A** to the effect that “*once a contract is completed one of the parties cannot resite from his contract because he claims he has not enough money to carry it out as he should have thought of that before entering into the contract in the first place”.*

On the whole, the claimants counsel submitted that they have placed sufficient evidence before this honourable court to be entitled to the grant of the relief sought in this case.

Upon service of the originating summons and other accompanying processes on the defendant. The defendant through her counsel filed a notice of preliminary objection dated and filed on the 17th June 2021.

The Notice of Preliminary Objection was brought pursuant to order 43 Rule 1 of the High Court of the Federal Capital Territory civil procedure Rules 2018. Wherein the defendant is praying this honourable court for the following reliefs:

1. *An Order of this Honourable Court striking out the instant suit for want of jurisdiction on the ground that the Defendant as constituted on the face of the Originating processes is unknown to law, not being a juristic person.*
2. *An Order of this Honourable Court striking out the instant suit for lack of jurisdiction on the ground that the sales agreement which the Claimants by their Originating Summons seek this Honourable Court to interpret contains an Arbitration Clause for the resolution of any dispute arising out of the said Agreement.*
3. *An Order of this Honourable Court striking out the instant suit for being an abuse of the process of this Honourable Court, having been commenced by an improper originating process and procedure.*

4. And for such further or other Order(s) as the Honourable Court may deem fit to make in the circumstances of the case.

Grounds upon which the Preliminary Objection is brought are as follows:

1. That the name of the defendant herein is unknown to law not being juristic person.
2. That parties are not properly constituted in this case before this honourable court.
3. That the defendant as presently constituted is not a competent party before this honourable court and this lacks the competence to sustain an action before this honourable court.
4. That the incompetence of the defendant to maintain an action before this honourable court robs the court of jurisdiction to entertain this suit.
5. That the sales agreement which the claimants by their originating summons seek this honourable court to interpret contains an Arbitration clause for the resolution of any dispute arising out of the said agreement.

6. That claimant has not explored the arbitration process prescribed in the agreement relied upon before commencing the instant action.
7. That the instant action having not gone to arbitration is premature and incompetent.
8. That the instant action is highly contentious and ought not to have been commenced by originating summons.
9. That Questions 2 and 3 of the Questions/issues for determination as well as reliefs nos. 2, 4, 5, 6, 7 and 8 as contained in the originating summons are issues and reliefs that cannot be determined in an originating summons as they contain substantial dispute of facts.
10. That this suit be struck out for want of competence.

Attached to the preliminary objection is an 8 paragraphs affidavit deposed to by one Martina Erilebutem Bertem a secretary of White Avenue Real Estate Limited wherein the defendants avers that White Avenue Real Estate Limited is a private Limited Liability company incorporated in Nigeria under the laws of the Federal Republic of Nigeria. That the name white Avenue Real Estate who is listed as the defendant is not a juristic personality known to law. That the sales agreement which the claimants by their originating summons herein seek this honourable court to interpret contains an Arbitration Clause at para. 12:0 for the

resolution of any dispute arising act of the agreement. Annexed to affidavit is Exhibit A which is the Certificate of Incorporation of White Avenue Real Estate Limited.

Learned counsel to the defendant in his written address dated 17th June 2021 and filed on the same date formulated the following issues of determination to wit:

1. *Whether this Honourable court has the jurisdiction to entertain the instant suit as it is presently constituted.*
2. *Whether the claimant's claim were properly commenced by originating summons.*

On the first issue above, learned counsel to the defendant submitted that for a court to have jurisdiction to entertain a matter the following conditions must be present.

- a. The proper parties are before the court.
- b. The subject matter falls within the jurisdiction of the court.
- c. The composition of the court as to members and qualification.
- d. The suit is commenced by due process of law and upon fulfillment of any condition precedent to assumption of

jurisdiction. He relied on the case of **MADUKOLU V. NKEMDILIM (1962)2 SCNLR 341** amongst others.

Learned counsel argued that for a party to be proper before the court, that party must also be competent to defend such a suit, he relied on **ATAGUBA & CO VS GURA NIG. LTD (2005) ALL FWLR (PT. 256)P 1219 AT P 1228 Para B.** It is the submission of counsel that the name White Avenue Real Estate is different and distinct from the name White Avenue Real Estate Limited and that both names are not the same. He cited the case of **ATAGURA & CO VS GURA NIG. LTD (SUPRA)AT P 1228** to the effect that only "*natural persons, that is human beings and juristic on artificial persons such as body corporate are competent to sue or be sued. Consequently, where either of the parties is not a legal person, the action is liable to be struck out as being incompetent*".

Learned counsel argued that the instant suit contravenes the provisions of paragraphs 12.0 of the same sales agreement which the claimants seeks the interpretation of this honourable court upon. He relied on the case of **BCC TROPICAL NIGERIA LTD VS THE GOVERNMENT OF YOBE STATE OF NIGERIA & ANOR (2011) LPELR – 9230(CA)(P.13)PARA D-F.** Counsel contended that parties are bound by their agreements and the

court blocked as much as possible uphold and enforce the agreements parties validly and voluntarily made.

Learned counsel submitted that where parties have agreed to refer their dispute to arbitration agreement the court has a duty to enforce the agreements of the contrary to the arbitration agreement, he relied on the **SEAS CHARTERING AND SITIPPING LTD (2003)15 NWLR (PT. 884)N 469.**

On issue two above, counsel submitted that the instant suit was not properly commence by originating summons, counsel argued that questions nos. 2 and 3 of the questions for determination as well as reliefs nos. 2, 4, 5, 6, 7 and 8 as contained in the originating summons are not questions or reliefs arising out of the construction of the sale agreement between the parties as relied upon by the claimants in this suit. Learned counsel submitted that the claimants have sought reliefs touching on acts of trespass in reliefs 4, 5 and 6 of their originating summons, he relied on the case of **OLOYO VS ALEGBE (1983)2 SCNLR 35 at 67** to the effect that issues like the determination of short questions of construction and not matters of controversy are dealt with by originating summons.

In response to the defendant/applicant notice of preliminary objection, learned counsel to the claimants/respondents filed a 19

paragraphs counter affidavit dated and filed on the 12th November, 2021. Equally filed along the counter- affidavit is a written address.

In the counter -affidavit, the claimants/respondents avers that the defendant/applicant entered into an agreement with the claimants with the name White Avenue Real Estate, as contained in the sales agreement attached as Exhibit A to the affidavit in support of the originating summons. That parties are properly constituted before this court. That the defendant had reached out to the claimant at different occasions seeking for settlement out of court which had collapsed. That there is no issue regarding the agreement of sale of property between the parties to warrant issue of arbitration clause contained at paragraph 12.0. That the issue for determination is based solely on whether the defendant can impose any service charge on the claimants without proper agreement duly signed by parties based on the interpretation of document supplied to this honourable court and affidavit evidence.

In the written address attached to the counter affidavit learned counsel to the claimants/respondents adopts the issues for determination as formulated by the defendants as follows.

1. *Whether this honourable court has the jurisdiction to entertain the instant suit as presently constituted?.*
2. *Whether the claimants claims were properly commenced by originating summons.*

On the first issue above learned counsel submitted that the preliminary objection is totally mis-conceived and this honourable court is urged to discountenance same.

Learned counsel argued that the position of the law is that in any action, necessary parties must be sued, he relied on **OBEGWURA ORDU AZUBUIKE V PEOPLES DEMOCRATIC PARTY & ORS.(2014)LPELR – 22258.**

Learned counsel submitted that, parties are free to enter into a contractual relationship, and when such happens any dispute relating to the contract can only be determined between the parties to such contract and not total stranger. He relied on **ALFOTRIN LIMITED V. THE ATTORNEY GENERAL OF THE FEDERATION & ANOR (1996) LPELR – 414 (SC)AT page 28-29 paras F-A** to the effect that ... *"as a general rule, a contract affects only the parties to it and cannot be forced by or against a person who is not a party thereto, even if the contract was made for his benefit and purports of give him their right to sue a make him gable upon it".*

Learned counsel submitted that the name of the defendant as clearly stated on the sale agreement is “White Avenue Real Estate” and not “White Avenue Real Estate Limited”. He cited **ATTORNEY GENERAL OF THE FEDERATION V AIC LIMITED (2000) LPELR – 628(SC) at page 30, para A**, to the effect that a party who is not a party to a contract cannot be held bound by it.

Learned counsel submitted that the defendant are not misled in any form, having initiated a move for settlement out of court hence the non-inclusion of “limited” does not make the instant suit incompetent at best it is a mis nomer which occurs where there is a mistake in the name of a litigant in an action. He relied on **EMESPO J. CONT. LTD VS CORONA & CO. (2006)11 NWLR) PT. 991(365** where it was held that :

“It is settled law that a misnomer occurs when the correct person is brought to court under a wrong name”.

On issue two, learned counsel to the claimant/respondent submitted that the instant suit is properly commenced by originating summons as provided for under order 2 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure Rule)2018. Counsel submitted that looking at the instant suit, it is clear that the suit was founded on the interpretation of the sale

agreement of the properties which the defendant witness case sold to each of the claimants.

Counsel contended that contrary to the submission of the defendant, the case of the claimant regarded relief 6 is solely on trespass and unlawful invasion of the 1st claimant's property, that the said provision of Order 2 Rule 2 and 3 did not mention damages to trespass and the law is that specific and express mention of a thing exclude those other not mentioned in the statutes. He cited the case of **THE FEDERAL REPUBLIC OF NIGERIA V. GEORGE OSATIORL & ORS (2006) LPELR – 3174(SC) AT PAGE 80 PARAS B-D** amongst others.

On his part, the defendant/applicant counsel filed a 17 paragraphs of further and better affidavit in support of the Notice of Preliminary Objection deposed to by one Martina Erilebutem a secretary of White Avenue Real Estate Limited. Wherein the defendant/Respondent avers that while Avenue Real Estate is not registered with Corporate Affairs Commission and does not have a corporate personality whereas White Avenue Real Estate Limited is incorporated with the Corporate Affairs Commission. That White Avenue Real Estate Limited is only intended in seeing that the proper parties in their proper names are before this honourable court and not in any way out to outsmart the

claimants in any way fraudulent as alleged. That this honourable court lacks the jurisdiction to determine the rights of the parties in the said agreement based on the arbitration clause contained therein.

Learned counsel to the defendant/applicant in his reply on points of law dated and filed on the 15th November 2021, submitted that the claimants having argued that the name "White Avenue Real Estate" in which the defendant is sued is nothing but a misnomer. It behoves on them to make the appropriate applications to have the said irregularity regularized. He relied on the case of **ALHAJI HARUNA SULE KALSHING V. ALHAJI SULEIMAN MASORO & ORS.(2015)LPER – 41654(CA)** among others.

Learned counsel argued that the issue of whether a party is a juristic and/or competent party before the court is a matter of law which can only be decided after establishing such a personality.

Learned counsel submitted that the argument of learned counsel to the claimant in the instant suit on the issue of whether originating the suit, is misconceived and a deliberate attempt to mislead this honourable court. He relied on the case of **MR OKE DINACHI NELSO – MOORE & ANOR (2014) LPELR – 24089.**

It is the submission of counsel to the defendant/respondent that parties are in consensus ad idem that the claimants seek for reliefs bordering on damages and trespass. He relied on **OLOMODA V MUSTAPHA & ORS (2019) LPELR 46438(SC)PP 10** para a amongst other, where it was held:

“This action was commenced and maintained through originating summons. Originating summons should only be applicable in circumstances where there is no dispute on questions of fact and should never be a substitute for initiating contentious issues of fact.....”

On the whole counsel urged this honourable court to discountenance the claimant’s counter affidavit and to uphold the preliminary objection.

I have perused very carefully the notice of preliminary objection and the affidavit in support of same; I have equally perused the counter affidavit of learned counsel to the claimants/respondents and also the further and better affidavit together with the reply on points of law of the defendant/applicant. It is my considered legal opinion that this suit raises two issues for determination to wit:-

1. Whether this honourable court has the requisites jurisdiction to hear and determine the instant suit? ”

2. What is the effect of an arbitration clause in an agreement?

On the first issue above, the defendant counsel in his preliminary objection canvassed that this honourable court lacks the requisite jurisdiction to hear and determine this suit.

It is trite law that the issue of jurisdiction can be raised at any stage of an action even at the Supreme Court, it is fundamental as it is also pivotal. See the case of **SLB Consortium LTD VS NIGERIA NATIONAL PETROLIUM COOPERATION (2011) 9 NWLR (PT 1252) 317 AT PAGE 335.**

In determining whether a Court has Jurisdiction in an action or not, the claimant's originating process i.e. writ of summons or statement of claim has to be considered. In the instant suit, the originating summons. See **OKOROCHA VS UNITED BANK FOR AFRICA PLC (2011) 1 NWLR PT 1228.** Having said the above, I find that this honourable Court has the jurisdiction to entertain the instant suit. I so Hold

Before proceeding to answer the second issue, I find it expedient at this juncture to comment on the issue which both parties seem to have raised vehemently.

It is trite law that an action cannot be defeated on the ground of non-joinder, mis joinder or mis-description of the parties, because the court suo motu or on the application of any of the parties can join a party to an action, if found necessary. Even if a party who ought to have been joined to an action is not so joined, that failure to join him does not necessarily defeat the action since the court may in every cause or matter deal with the matter in

controversy so far as regards to rights and interest of the parties actually before it. See the cases of **F.U.T. YOLA V A.S.U.U (2013)1 NWLR P. 249 (CA) KALU V. ODILI (1992)5 NWLR (PT.440 PEENOK INVESTMENT LTD V. ABDUL-RAHEEM (2009)18 NWLR (PT.1173)384.**

The learned counsel to the defendants/respondent made a heavy whether as to the fact that the defendant was address as White Avenue Real Estate as opposed to White Avenue Real Estate Limited That both names are not the same. Consequently parties are not properly before this court. It is my considered legal opinion that wrongly spelling or mis-spelling of a party's name is a misnomer. A misnomer occurs when the correct person is brought to court under a wrong name. See the case of **EMESPO J CONTINENTIAL LTD Vs CORONA M.V CONCORDIA (2006) NWLR (PT.991)** It is trite law that an amendment of a misnomer will be allowed where the other party is not misled or prejudiced and the guilty party shows reasonable grounds for the misnomer. See the case of **IBRAHIM V CHAIRMAN KACHIA LG (1998) 4 NWLR** In the instant case, the defendant/applicant has not complained that he was in any way prejudiced or misled. I so Hold.

It was also argued on behalf of the defendant/respondent herein that the Claimants commenced this action by improper originating process and procedure. The position of the law is that procedural irregularly should not vitiate the proceedings. The procedure is to guide orderly and systemic presentation of a cause. It is to help the substantive law and not to enslave it. It is true the constitution allows for the rules of procedure to be made but it does not make procedure to be master of law. See the case of

FANFA OIL LTD V AG FEDERATION (2003) 18 NWLR (PT.852)

On the effect of Arbitration clause in an Agreement

An arbitration clause is a written consensus which embodies the agreement of parties to resort to arbitration should any dispute arise with regards to the obligation which both parties have undertake to observe that such dispute be settled by a third party or tribunal of their own choice, see **BCC TROPICAL NIGERIA LTD VS THE GOVERNMENT OF YOBE STATE OF NIGERIA & ANOR (2011) LPELR – 9230 (CA)P 13 para D-F.**

At this point, I find it pertinent to reproduce clause 12.0 as contained in the agreement between the parties which reads:

"This Agreement shall be governed and construed in all respects in accordance with the laws of the Federal Republic of Nigeria. Any dispute concerning this Agreement that cannot be amicably resolved by the parties hereto shall be referred to a single arbitrator with the provisions of the Arbitration and conciliation Act Cap 19 Laws of the Federal Republic of Nigeria 1990. Wherein the parties are liable to agree on a single arbitrator within a period of 14 days the arbitrator shall be appointed after either party issues proceedings by the chairman of the Nigerian Branch of the Chartered Institutes of Arbitrations. The Arbitration proceedings shall take place in Abuja, FCT and shall be concluded in English Language."

There is no disputing the fact that the issue as to whether or not in the absence of any specific or express agreement contained in the sale agreement entered in to between the parties i.e the

claimants and the respondent herein for the payment of facility management fees annually by the claimants to the defendant respondent cannot be effectively settled or determined without construing the sale agreement entered in to by the parties. By virtue of clause 12.0 of the sale agreement between the parties, the parties herein had agreed to settle any disagreement between them by Arbitration of their choice.

It is trite law that parties are bound by their agreement which is given legal imperative in the latin maxim "*pacta sunt servanda*". Courts are enjoined to construe the agreement parties voluntarily entered into, see the case of **KAAN INT'L DEVELOPMENT LTD VS LITTLE ACORNS TURNEE PROJECTS LTD & ANOR (2018) LPELR – 45291**.

Having said that, it should be noted however that it has been clarified in plethora of judicial authorities that an arbitration clause in a contract does not necessarily oust the jurisdiction of the court but only prescribe arbitration as the procedure which the parties intend to adopt in settling their grievances see **ONYEKWULUJU & ANOR VS BENUE STATE GOVERNMENT & ORS (2013) LPELR – 24780(SC) para A-C**

In the instance case, parties by the sales agreement binding, them marked as Exhibit A1, to A5 before this honourable court have expressly stated the mode to be adopted in case of dispute arising from the agreement. A literal interpretation of clause 12.0 clearly shows that parties voluntarily subject dispute resolution to an arbitral panel.

From the foregoing, it is evidently clear that parties voluntarily submitted by the terms of their agreement to arbitration, hence I

find that the preliminary objection of the defendant/applicant succeeds I so Hold.

Consequently, it is hereby ordered as follows:

1. It is hereby ordered that proceeding in this suit be stayed pending the determination of the Arbitration Clause in accordance with paragraph 12.0 of the sales Agreement between the parties. I so Hold. The case is Adjourned sine dine.

Appearances:

K.A Imafidon holding the brief of Lukman O. Fagbemi for the claimant.

Ejeh Hycenth with A Joseph for the defendant.

Ruling read in open court.

Signed
Presiding Hon Judge.
31/03/2022

