

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/2550/2013**

**DATE: : WEDNESDAY 8<sup>TH</sup> JUNE, 2022**

**BETWEEN:**

**FEDERAL HOUSING AUTHORITY } APPLICANT/  
RESPONDENT**

**AND**

**CITEC INTERNATIONAL } RESPONDENT  
ESTATE LTD. /APPLICANT**

# **RULING**

This is a Consolidated Ruling predicated upon Motion number, M/9616/2020 dated 10<sup>th</sup> September, 2020 and filed same date and M/737/2021 dated on the 19<sup>th</sup> January, 2021 and filed on the 28<sup>th</sup> January, 2021 respectively.

On Motion M/9616/2020, Counsel on behalf of the Applicant pray for the following:-

- a. An Order of this Honourable Court recognizing the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief Bayo Ojo CON, SAN, FCIArb, Chief Jim Okey Nwagbara MCIArb; and Chief Eflix Okereke – Onyeri FCIArb dated the 31<sup>st</sup> day of January, 2013.

- b. An Order of this Honourable Court granting leave to the Applicant to enforce the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief Bayo Ojo CON, SAN, FCIArb, Chief Jim Okey Nwagbara MCIArb; and Chief Felix Okereker – Onyeri FCIArb dated the 31<sup>st</sup> day of January, 2013.
- c. An Order of this Honourable Court mandating the Respondent to pay the sum of N401,407,000.00 (Four Hundred and One Million, Four Hundred and Seven Thousand Naira only) to the Applicant, being and representing the sum awarded in the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief Bayo Ojo CON, SAN, FCIArb Chief Jim Okey Nwagbara

MCIArb; and Chief Felix Okereke – Onyeri  
FCIArb dated the 31<sup>st</sup> day of January, 2013

- d. An Order of this Honourable Court mandating the Respondent to pay the sum of N168,590,940.00 (One Hundred and Sixty – Eight Million, Five Hundred and Ninety Thousand, Nine Hundred and Forty Naira) to the Applicant, being the accrued interest for seven (7) years at N24,084,420.00 (Twenty Four Million, Eighty Four Thousand, Four Hundred and Twenty Naira) per annum at the agreed interest rate of 6% from 31<sup>st</sup> April, 2013 (when the Respondent ought to have satisfied the Arbitral Award) till 10<sup>th</sup> September, 2020 (when this suit is filed), pursuant to the Final Arbitral Award delivered

by the Arbitral Panel/Tribunal, Coram Chief BayoOjo CON, SAN, FCIArb Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb dated the 31<sup>st</sup> day of January, 2013.

- e. An Order of this Honourable Court mandating the Respondent to pay to the Applicant 6% of the Arbitral Award from the 10<sup>th</sup> day of September, 2020, till the date that judgment is satisfied being the agreed interest rate pursuant to the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief BayoOjo CON, SAN, FCIArb, Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb dated the 31<sup>st</sup> day of January, 2013;

f. And for such further or other Order(s) as this Honourable Court may deem fit to make in the Circumstances.

Applicant filed a 30 paragraph affidavit deposed to by Olamilekan Adebayo a litigation clerk in the law firm of M.A Banire& Associates.

It is the deposition of the Applicant that the Arbitral Award of 31<sup>st</sup> January, 2013 is to be enforced against the Respondent whose last known address is Airport Road by pass, Mbora District, Abuja.

That pursuant to an Agreement dated 6<sup>th</sup> August, 2001, the Respondent committed to the construction of 5000 Housing Units at Mbora District in Abuja within 18 months in

consideration for the contract sum of N300,000,000.00 (Three Hundred Million Naira) only.

Respondent has failed, neglected and/or refused to construct the 5000 houses agreed even though the Applicant has paid the Respondent.

Applicant promptly paid the Respondent the sum of N300,000,000.00 (Three Hundred Million Naira) as agreed.

That this failure of the Respondent to fulfill its obligations under the Agreement resulted in an action for recovery in Suit No. FCT/HC/CV/873/2010 between the instant Applicant and the Respondent before this Honourable Court.

That based on an arbitration Clause contained in the agreement, this Honourable Court, Coram Hon. Justice A.S Umar, declined jurisdiction and referred the matter to arbitration. A duly authenticated copy of the Agreement dated 6<sup>th</sup> August 2001 is herewith attached and marked as Exhibit “FHA 1”.

That a Final Arbitral Award was made against the Respondent in favour of the Applicant in the Court – referred Arbitration between ***FEDERAL HOUSING AUTHORITY VS. CITEC INTERNATIONAL ESTATES LTD.*** by the Arbitral Panel of Chief BayoOjo CON, SAN, FCIArb, Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb on the 31<sup>st</sup> day of January, 2013. A duly authenticated copy



of the Final Award is attached and marked as Exhibit “FHA 2”.

That the total sum awarded to the Applicant by the Arbitral Panel is the sum of N401,407,000.00 (Four Hundred and One Million, Four Hundred and Seven Thousand Naira) only, which the Respondent ought to have paid within 90 (Ninety days) from the date of the Arbitral Award.

That the Applicant is now desirous of properly enforcing the Arbitral Award made against the Respondent in favour of the Applicant in the Court referred Arbitration between ***FEDERAL HOUSING AUTHORITY VS. CITEC INTERNATIONAL ESTATES LTD.*** by the Arbitral Panel of Chief BayoOjo CON, SAN, FCIArb Chief Jim OkeyNwagbaraMCIArb; and

Chief Felix Okereke – OnyeriFCI Arb on the 31<sup>st</sup> day of January, 2013.

That he knows as a fact that the Respondent is liable to pay an annual interest at the rate of 6% on the Award if the Award was not satisfied within ninety (90) days starting from 31<sup>st</sup> January, 2013.

That he knows as a fact that the Respondent has refused, neglected and or failed to pay up its indebtedness for over seven (7) years.

That the time for the Respondent to object or appeal the Arbitral Award has passed.

In compliance with the Rules of Court, the Applicant filed a written address and raised a sole issue for determination to wit:-

**“Whether this Honourable Court has the power to enforce the Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief BayoOjo CON, SAN, FCIArb Chief Jim OkeyNwagbaraMCIArb; and Chief Felix OkerekeOnyeriFCIArb published on 31<sup>st</sup> January, 2013.”**

Upon argument canvassed on the above issue, learned counsel urged the court for the following;

- i. The Arbitral Award published on the 31<sup>st</sup> day of January, 2013 between the Applicant and Respondent is final and binding.
- ii. The Applicant is entitled to the monies contained in the final Arbitral Award.

- iii. The Respondent ought to pay the Applicant the sum of N401,407,000.00 (Four Hundred and One Million, Four Hundred and Seven Thousand Naira only) to the Applicant, being and representing the sum awarded in the final Arbitral Award.
- iv. The Respondent ought to pay the Applicant the sum of N168,590,940.00 (One Hundred and Sixty – Eight Million, Five Hundred and Ninety Thousand, Nine Hundred and Forty Naira), being the accrued interest for seven (7) years.

On its part, Respondent filed a counter affidavit in opposition to the application filed by the Applicant deposed to by one Ruth Ogbole a legal

practitioner in the law firm of SaniOlogunorisa (SAN) & Co.

It is the deposition of the Respondent that; By a Construction Agreement dated 6<sup>th</sup> August, 2001, contracted with the Minister of the Federal Capital Territory and the Applicant (both agents of the Federal Government of Nigeria) for the construction of 5000 housing units at Mbora District, Abuja by the Respondent.

That pursuant to the said Agreement, the Client Party, i.e the Minister of the Federal Capital Territory and the Applicant provided to the Respondent the sum of N3000,000,000.00 (Three Hundred Million Naira) for the construction of the aforesaid number of housing units.

That subsequently, by another Agreement dated 20<sup>th</sup> March, 2013, the Applicant entered into a joint venture partnership agreement with the Respondent for the construction and completion of 308 housing units in Gwarimpa Area of Abuja.

That a disagreement however arose with respect to the Mbora District project with both the Respondent and the Applicant accusing each other of breaches of the Construction Agreement on the project. The dispute resulted in the Applicant writing to the Respondent to refund the aforesaid sum of N300,000,000.00 (Three Hundred Million Naira), together with interest.

That as at the time the dispute arose, the Applicant was indebted to the Respondent to the tune of N595,350,000.00 (Five Hundred and Ninety Five

Million, Three Hundred and Fifty Thousand Naira) on the aforesaid Gwarimpa project. In reaction to the demand of the Applicant for a refund on the Mbora project, the Respondent also demanded the immediate payment of the said sum of N595, 350,000.00 (Five Hundred and Ninety Five Million, Three Hundred and Fifty Thousand Naira) on the Gwarimpa project.

That in view of this impasse or standoff, on 23<sup>rd</sup> March, 2010 the Applicant commenced an action i.e Suit No. **FCT/HC/CV/873/2010** under the undefended list procedure of this Honourable Court claiming against the Respondent the sum of N401,467,000.00 (Hundred Million Naira), 60% interest on that amount with effect from 1<sup>st</sup> January, 2009 and 10% post – judgment interest.

That upon being served with the originating processes in the aforesaid suit, the Respondent filed its Notice of Intention to defend with affidavit in support wherein it vehemently denied indebtedness and disclosed a clear existence of a counter claim/set off in the aforesaid sum of N595,350,000.00 (Five Hundred and Ninety Five Million, Three Hundred and Fifty Thousand Naira), which the Applicant was owing it on the Gwarimpa project and which it indicated intention to pursue via counter – claim in the event the matter is transferred to the general cause list.

That in addition to the foregoing, the Respondent also raised a preliminary objection invoking the arbitration clause in the Construction Agreement and requesting the Court to refer the matters raised



by the parties in their respective processes to arbitration and to stay proceedings pending the determination of the arbitration.

That in its Ruling on the Respondent's Preliminary Objection, His Lordship, A.S. Umar, J. (as he then was) found that the Notice of Intention and the affidavit in support thereof disclosed a triable issue and also found merit in the Respondent's Objection. The court therefore ordered referral of the case to arbitration and a stay of proceedings in the suit.

That following the referral to arbitration, the Respondent and the Applicant appointed Chief Jim OkeyNwagbara and Chief Felix Okereke – Onyeri as arbitrators and they in turn appointed

Chief BayoOjo, SAN as the 3<sup>rd</sup> and presiding Arbitrator.

That at the arbitral proceedings that ensued, the Applicant filed its points of claim and bundle of Documents dated 7<sup>th</sup> September, 2011. While the Respondent filed its points of defence. Bundle of documents and Cross/Counter claim dated the 1<sup>st</sup> of March, 2012.

That the Respondent requested the arbitral panel/tribunal to also consider the Appellant's counter – claim with respect to the Gwarimpa project, alongside the Respondent's claims, since it was the entire case i.e both the case of the Applicant and the defence of the Respondent that the Court referred to them for purpose of arbitration.

That sadly, the Panel, at the instance of the Applicant refused to grant the Respondent's request.

That instead, the Panel proceeded to entertain only the Applicant's case and shut the doors against the Respondent's counter – claim/set off on ground that same was not referred to it for arbitration. The award is Exhibit “FHA2” in support of the Applicant's affidavit.

That consequently, the Panel in its award dated 31<sup>st</sup> January, 2013 found for the Applicant and entered Judgment in its favour against the Respondent.

That being convinced that the Applicant's Motion Exparte was calculated to overreach the

Respondent's Motion on Notice for an order setting aside the Arbitral Award and that the Court lacked jurisdiction to hear the Motion Ex-parte as it infringes upon its right of fair hearing in the matter, the Respondent on 11<sup>th</sup> October, 2013 filed Motion No. M/639/2013 seeking for an Order dismissing and /or setting aside in limine the Ex – parte motion of the Respondent for constituting an abuse of court process.

That rather than first hear and determine the Respondent's Motion on Notice filed on 11<sup>th</sup> October, 2013 as it touches on jurisdiction of the trial Court to hear and determine the recognition and enforcement of the arbitral award vide the Ex-parte motion, the Court consolidated the Respondent's Motion on Notice with the

Applicant's Ex-parte Motion, heard them together and delivered a consolidated ruling dismissing the Respondent's Motion on Notice while granting all the reliefs contained in the Applicant's Ex-parte Motion.

That being dissatisfied by the Ruling and particularly the order of the trial court dismissing the Respondent's Motion on Notice filed on the 11<sup>th</sup> October, 2013 and ordering the recognition and enforcement of the arbitral award upon the Applicant's Ex-parte Motion, the Respondent appeal against the consolidated Ruling of 12<sup>th</sup> December, 2013 to the Court of Appeal in Appeal No. **CA/A/623/2014**.

That upon hearing the Respondent's Appeal, the Court of Appeal in its Judgment set aside the

order of recognition and enforcement of the award as ordered by the High Court. The Applicant has annexed the said Judgment as Exhibit “FHA 3” in support of this application.

That the Respondent shall contend at the earliest opportunity that this application is **statute – barred** given the Applicant’s failure to file it within the period of six (6) years from the date the cause of action arose.

A written address was filed wherein a sole issue was raised for determination to wit:-

**“Whether in the circumstances of this case, the Honourable Court ought to exercise its powers to grant recognition to and or enforce the arbitral award delivered by the Arbitral**

*Panel/Tribunal, Coram Chief BayoOjo, CON, SAN, FCIArb, Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb dated the 31<sup>st</sup> day of January, 2013.”*

On the whole counsel to the Respondent urged the court to refuse and dismiss the application for lacken in merit. Alternatively, Counsel urged the court to remit the matter to the arbitral panel of tribunal for the hearing and proper determination of the Respondent’s counter claim.

Counsel to the Applicant/Respondent filed reply on point of law to Respondent’s counter – affidavit wherein he urged the court to grant the application of the Applicant, recognize and enforce the final Arbitral Award delivered by the

Arbitral Panel/Tribunal, Coram Chief Bayo Ojo, CON, SAN, FCI Arb, Chief Jim Okey Nwagbara MCI Arb; and chief Felix Okereke – Onyeri FCI Arb dated the 31<sup>st</sup> day of January, 2013.

Learned counsel to the Respondent on the other hand filed their Notice of Preliminary Objection on the 28<sup>th</sup> day of January, 2021 and dated the 19<sup>th</sup> day of January, 2021 wherein five grounds were raised as thus;

1. The cause of action which gave rise to No. **FCT/HC/CV/873/2010** and the subsequent arbitral proceedings culminating in the arbitral award accrued on 1<sup>st</sup> January, 2009 when the Applicant/Respondent alleged the Respondent /Applicant breached the construction contract.



2. By law the Applicant/Respondent had a period of six (6) years from the date of accrual of the cause of action to file its application for recognition and enforcement of the arbitral award.
3. The Applicant/Respondent did not file its application for recognition and enforcement of the arbitral award until 10<sup>th</sup> September, 2020.
4. By the time the Applicant/Respondent filed its application on 10<sup>th</sup> September, 2020, the statutorily prescribed period for doing so had lapsed.
5. The Applicant/Respondent's application dated and filed on 10<sup>th</sup> September, 2020 is statute – barred and ought to be dismissed.

The Notice of Preliminary Objection was supported by a 11 paragraphs affidavit deposed to by one Ruth Ogbole and it was her deposition that sequel to a dispute between the Applicant/Respondent and the Respondent/Applicant over a construction contract for the construction of 5000 housing units at Mbora District, Abuja by the Respondent/Applicant and the alleged breach of the same by the Respondent/Applicant whom the Applicant/Respondent claimed failed to refund the contract sum as demanded by it by 1<sup>st</sup> January, 2009, the Applicant/Respondent on 23<sup>rd</sup> March, 2010 commenced an action i.e Suit No. **FCT/HC/CV/873/2010** under the undefended list procedure of this Honourable Court claiming

against the Respondent/Applicant the sum of N401,467,000.00 (Hundred Million Naira), 60% interest on that amount with effect from the said 1<sup>st</sup> January, 2009 and 10% post – judgment interest.

That following the disclosure of triable issue and show of intention to file a counter claim by the Respondent/Applicant and upon application, the Court referred the matter to arbitration based on the arbitration agreement in clause 20:1 of the construction agreement.

That the arbitration agreement in clause 20:1 of Exhibit “FHA1” in support of the application was not made under seal. Neither was it brought under the Arbitration and Conciliation Act Cap A14 LFN 2004.

At the arbitration the Applicant/Respondent filed its Points of Claim and bundle of documents dated 7<sup>th</sup> September, 2011 while the Respondent/Applicant filed its Points of Defence, bundle of documents and Cross/Counter Claim dated the 1<sup>st</sup> of March, 2012.

From the facts deposed by the Applicant in suit No. **FCT/HC/CV/873/2010** and pleaded in its Points of Claim at the subsequent arbitral proceedings, the Applicant owned up to the fact that its cause of action accrued from the said 1<sup>st</sup> of January, 2009 by claiming interest on its principal monetary claim from that date.

That at the end of the arbitral proceedings, the arbitral Panel/Tribunal (Coram: Chief BayoOjo, CON, SAN, FCIArb, Chief Jim

OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb) delivered its award dated 31<sup>st</sup> January, 2013 wherein the Tribunal found for the Applicant/Respondent and enter judgment in its favour against the Respondent/Applicant.

That the award sought to be recognized and enforced vide the Applicant/Respondent's application is founded on supposed breach of contract and a cause of action (if any) which accrued on 1<sup>st</sup> January, 2009.

That in the Applicant/Respondent's application filed on 10<sup>th</sup> September, 2020, the Applicant/Respondent attempts to claim that the Respondent/Applicant ought to have satisfied the arbitral award by 31<sup>st</sup> April, 2013.

I know as a fact that irrespective of whether the cause of action is taken to have accrued on 1<sup>st</sup> January, 2009 or 31<sup>st</sup> April, 2013, the time statutorily prescribed for seeking recognition and or enforcement of the award had lapsed as at 10<sup>th</sup> September, 2020 when the Applicant/Respondent filed its application, thereby rendering the said application statute – barred.

Attached to the Notice of Preliminary Objection is a written address wherein a sole issue was raised for determination to wit;

**“Whether having regard to the circumstance of this matter, the Applicant/Respondent’s application dated and filed on 10<sup>th</sup> September, 2020 is not statute – barred.”**

That the need for this Honourable Court to have recourse to the Applicant/Respondent's Writ of Summons and affidavit in support filed in Suit No. **FCT/HC/CV/873/2010** and the facts and claims pleaded in Applicant/Respondent's Point of Claim filed at the subsequent arbitral proceedings in determining when the cause of action in respect of the Applicant/Respondent's application accrued, is underscored by the settled principle that for purpose of determining when time begins to run in an application for recognition and enforcement of arbitral award is when the cause of action arose in the dispute which led to the commencement and or prosecution of the suit or arbitral proceedings. Not the time the award was made of when the award sum became due for payment. Section

7(1)(a)(b) and (d) of the Limitation Act of the Federal Capital Territory, Cap 522 Laws of FCT 2007.

***CITY ENGINEERING NIG. LTD.VS. FEDERAL HOUSING AUTHORITY (1997) 9 NWLR (Pt. 520) 224.*** Were cited.

That a cursory look at the content of clause 20:1 of Exhibit “FHA1”, which is the arbitration agreement between the parties, would inexorably show that the arbitration agreement therein was not made under seal and was not brought under the ACA Clause 20:1 of Exhibit “FHA1” in support of the Applicant/Respondent’s motion. Also, paragraph 4 (c) of the affidavit in support of this instant preliminary objection.



***BUHARI VS. OBASANJO (2005) 2 NWLR (Pt. 910) 241 at Page 412;***

***BALONWU VS. A.G., ANAMBRA STATE (2009) 18 NWLR (Pt. 1172) 13 at Page 43, Paragraphs B – C; 47 – 48, Paragraphs G – B were cited.***

Counsel submits that from the unambiguous provisions of that section of the Limitation Act, an action or application to enforce an arbitral award, where the arbitration agreement is not made under seal or where the arbitration is under an enactment other than the Arbitration and Conciliation Act (ACA) shall not be brought after the expiration of six (6) years from the date on which the cause of action accrued. Similarly, an action for the enforcement of a contract must be instituted

within six (6) years from the date of accrual of the cause of action.

Counsel submits that in view of the failure of the Applicant to file or institute this application in this Court within six (6) years from the date of accrual of its cause of action, i.e 1<sup>st</sup> January, 2008 but doing so on 10<sup>th</sup> September, 2020, more than Eleven (11) years after, the instant application is statute – barred. This is the more imperative in view of the settled principle of law that where a statute has prescribed the procedure for doing a thing, only that procedure and none other, is permissible.

***ODOGWU VS. ILOMBO (2007) 8 NWLR (Pt. 1037) 488 at Page 515 – 516;***

***JOY VS. DOM (1999) 9 NWLR (Pt. 620) 538 at Page 547 were cited.***

On the whole, Counsel urge the Honourable Court to resolve the sole issue donated for determination in this objection and dismiss the Applicant/Respondent's application dated and filed on 10<sup>th</sup> September, 2020 for being statute – barred.

Counsel submits that, this Honourable Court is humbly urged to sustain this Preliminary Objection as prayed.

On their part, Applicant/Respondent filed counter affidavit to Respondent/Applicant motion deposed to by Olamilekan Adebayo legal assistant in the law firm of M.A Banire& Associates.

It is the deposition of Applicant/Respondent that pursuant to an Agreement dated 6<sup>th</sup> August, 2001, the Respondent/Applicant committed to the construction of 5000 Housing Units at Mbora District in Abuja within 18 months in consideration for the contract sum of N300,000,000.00 (Three Hundred Million Naira) only.

That the Respondent/Applicant has failed, neglected and/or refused to construct the 5000 houses agreed to even though the Applicant/Respondent has paid the Respondent/Applicant.

That failure of the Respondent/Applicant to fulfill its obligations under the Agreement resulted in an action for recovery in Suit No:

**FCT/HC/CV/873/2010** between the instant Applicant/Respondent and the Respondent/Applicant before this Honourable Court.

That a final Arbitral Award was made against the Respondent/Applicant in favour of the Applicant/Respondent in the Court – referred Arbitration between ***FEDERAL HOUSING AUTHORITY VS. CITEC INTERNATIONAL ESTATES LTD.*** by the Arbitral Panel of Chief BayoOjo CON, San, FCIArb, Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb on the 31<sup>st</sup> day of January, 2013.

That the total sum awarded to the Applicant/Respondent by the Arbitral Panel is the sum of N401,407,000.00 (Four Hundred and One Million, Four Hundred and Seven Thousand Naira

only) which the Respondent/Applicant ought to have paid within 90 (Ninety days) from the date of the Arbitral Award.

That this Honourable Court refused the application of the Respondent/Applicant to set aside the Arbitral Award and also refused to grant an injunction or set aside the Motion Ex – parte of the Applicant/Respondent on 12<sup>th</sup> December, 2013 Coram Hon. Justice A.S. Umar.

That dissatisfied with the Judgment of the Trial Court, the Respondent/Applicant lodged an appeal against the Applicant/Respondent on the ground that this Court ought to have found that the Motion Ex-parte was an abuse of Court Process.

That the Court of Appeal agrees with the Respondent/Applicant and stuck out the Motion Ex-parte of the Applicant on 28<sup>th</sup> June, 2019.

That the Applicant/Respondent being desirous of properly enforcing the Arbitral Award made against the Respondent/Applicant in favour of the Applicant/Respondent in the Court – referred Arbitration between **Federal Housing Authority Vs. CITEC International Estates Ltd.** by the Arbitral Panel of Chief BayoOjo CON, SAN, FCIArb Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb on the 31<sup>st</sup> day of January, 2013 has now filed before this Court, Motion No: M/9616/2020; Between the Applicant/Respondent and the Respondent/Applicant for the enforcement of the

Arbitral Award made on 31<sup>st</sup> day of January, 2013.

That the enforcement proceeding of the Arbitral Award made on 31<sup>st</sup> day of January, 2013 has commenced and been a subject of litigation in Court since 30<sup>th</sup> May, 2013.

That the Respondent/Applicant cannot file and /or use a Motion on Notice to respond to the Applicant/Respondent's Motion on Notice with Motion No: **M/9616/2020**.

That the Respondent/Applicant's Motion on Notice dated 19<sup>th</sup> January, 2021 and filed on 28<sup>th</sup> January, 2021 is incompetent.

That the Respondent/Applicant's Motion on Notice dated 19<sup>th</sup> January, 2021 and filed on



28<sup>th</sup> January, 2021 does not have a distinct Motion No. which is different from that of Applicant/Respondent filed on 10<sup>th</sup> September, 2020.

That since the Arbitral Award was made on 31<sup>st</sup> day of January, 2013 till date, no appeal or decision has been made by any court against it.

In line with the law, a written address was filed along with the counter wherein a sole issue was raised for determination to wit:-

**“Whether or not upon due consideration of the facts of this case, the Applicant/Respondent’s application dated and filed on 10<sup>th</sup> September, 2020, seeking the enforcement of the final Arbitral Award**

*dated the 31<sup>st</sup> day of January, 2013, is a statute – barred.”*

Counsel submits that it is the law that limitation time does not count during the pendency of litigation of a suit. The law is pretty straight forward that time freezes for purposes of the Statute of Limitation when an action is instituted. ***SIFAX NIGERIA LTD. & 4ORS. VS. MIGFO NIGERIA LTD. & ANOR (2018) 9 NWLR (Pt. 1623) 138 was cited.***

Counsel submits that all sense of responsibility that on the authority of ***SIFAX NIGERIA LTD. VS. MIGFO NIGERIA LTD. (Supra)***, once a party files an action within the time prescribed by the limitation statutes, the statutory period specified by the law will be halted until the matter

is finally determined. In other words, time bar provisions become suspended the moment an aggrieved party sues a Defendant; and it remains suspended until the dispute is resolved with finality.

Counsel therefore urge the court to hold that limitation time does not run during the pendency of a suit and that the suit of the Applicant/Respondent as presently constituted is not caught by Statute of Limitation.

Counsel also respectfully urge the court to refuse the grant of the Respondent/Applicant's application.

On their part, Respondent/Applicant's filed reply on point of law urging the court to grant the

Respondent/Applicant preliminary objection and dismiss the Applicant/Respondent application dated and filed on 10<sup>th</sup> September, 2020 for being statute – barred.

Counsel further urged the court to sustain the Preliminary Objection as prayed.

**COURT:-**

I have read the arguments for and against the application for recognition and enforcement of the Arbitral Award contained in application No. **M/9616/2020** and counter affidavit filed on the 16<sup>th</sup> March, 2021, on the one hand, and the objection raised by Respondent/Applicant to the competence of the Court, jurisdictionally speaking on the premise that the award is statute barred.

Permit me to frontally state the general rule with respect to Arbitration generally... where parties choose their own Arbitrator to be the Judge on the dispute between them, they cannot when the award is good on the face object to his decision either upon the law or the facts.

There are however circumstances upon which an award so made can be set aside.

Where an Arbitrator misconducts himself or where the Arbitral proceedings or award was improperly procured, such can be set aside.

See ***COMPAGNIE GENERALE DE GEOPHYSIQUE VS. ETUK (2003) LPELR – 5516 (CA);***

***ESSO EXPLORATION & PRODUCTION (NIG) LTD. & ANOR VS. FED. INLAND REVENUE SERVICE (FIRS) (2017) LPELR – 51618 (CA).***

In view of the potency of the objection to oust the competence of this Court jurisdictionally speaking to determine the application for Recognition/ Enforcement of the said award, I shall therefore deal with the issue of the limitation of time by computing when the said cause of action arose and or when the Enforcement ought to have been enforced.

It is the law that limitation shall begin to run from the date or time the cause of action arose.

See ***BROSSA VS. EXECUTIVE GOVERNOR (EDO STATE) & ORS (2020) LPELR 49684 (CA)***

Such computation of time to determine limitation period would however not apply once an action is

filed in Court within the period the cause of action arose.

See *AKINJOKUN VS. LUFTHANSA GERMAN AIRLINES & ANOR (2018) LPELR – 46729 (CA)*; *OKOYE & ANOR VS. KUTI (2016) LPELR – 40166 (CA)*.

I have looked at the dates involved in which issues surrounding the Enforcement of the award in question was being questioned at the FCT High Court Coram Sadiq M. Umar, J., now JCA and the Court of Appeal.

It is on record that the Arbitral Award was made on the 31<sup>st</sup> January, 2013 consequent upon which the Award Creditor commenced preparation for the enforcement of same at the FCT High Court Coram, Sadiq Umar, J., as he then was, now JCA. The

decision of this Court on the recognition and enforcement of the award was challenged at the Court of Appeal by the Award Debtor i.e Respondent in this case, thereby making it impossible for the said award to have been enforced in law. Court of Appeal delivered its Judgment on the 28<sup>th</sup> June, 2019 thereby paving the way for the instant move by the Award Creditor to file application No. **M/9616/2020** for the recognition and enforcement of its award which Respondent/Applicant now challenges on grounds of being statute barred.

It is evident from what has played out that clearly, the Award Creditor could not have initiated any such proceedings in Court for the recognition and enforcement of such an award which was a subject of Litigation and or Appeal.



It is elementary law that a party who is not satisfied with the outcome of a decision is at liberty to appeal against such a decision. This right is constitutional in nature.

See ***PAN OCEAN OIL CORP. (NIG.) LTD. VS. FMON (NIG) LTD. (2018) LPELR – 44173.***

I had mentioned in the preceeding part of this ruling and cited Case Laws which supports the fact that computation of limitation shall be frozen once an action is filed in Court. This is the situation here.

It is therefore my ruling that the time allowed for Award Creditor to file for recognition and enforcement of the Arbitral Award is still alive and running.

The argument of Award Creditor's Counsel i.e Applicant/Respondent clearly seem to have dwarfed that of the Award Debtor's Counsel.

I have no difficulty coming to the conclusion that the instant application ought to be dismissed. Same is hereby dismissed.

*Justice Y. Halilu*  
*Hon. Judge*  
*8<sup>th</sup> June, 2022*

With the dismissal of the said objection, I shall beam my searchlight on the main application i.e Motion **M/9616/2020** which was countered by the Award Debtor.

I have already stated the law with respect to Arbitration and its building effect. I have equally

stated circumstances upon which an award can be set aside.

I adopt the said position of ruling dwelling on these issues.

It is the averment of the Award Debtor i.e Respondent that the Arbitral Panel misconducted itself by refusing to fully consider and determine the case referred to it by FCT High Court, Coram Sadiq Umar, J., (as he then was), which both comprised of the suit of the Applicant and Counter-Claim of the Respondent/set off as contained in the Notice of Intention to Defend and affidavit filed in Suit No. **FCT/HC/CV/873/2010**, hence a denial of fair hearing in the proceeding culminating in the award sought to be enforced. Award Debtor equally raised the issue of statute barred.

I have already dealt with the issue of statute barred in my earlier ruling contained in the preceding part of this Judgment. I hereby adopt the ruling in dismissing the same argument in the main application on the same issue bothering on statute barred for the same reason and reasoning.

I am now left with the issue of fair hearing on account of the counter-claim/set off as argued by Respondents' Counsel.

I have read paragraphs 23, 24, 25 and 26 of the Arbitral Award. It is the decision of the Arbitral Tribunal that the dispute between the Applicant and Respondent arose from Tripartite Construction Agreement between Ministry of the FCT and the Claimant on the one hand, and the Respondent on the other hand.

Respondent based on the suit of the Applicant under the undefended list, now counter claimed against Applicant relying on yet another joint Partnership Agreement between Claimant and Respondent.

The Arbitral Panel found that the dispute before them rests squarely on the tripartite Agreement dated the 6<sup>th</sup> August, 2001, for the provision of 5000 Housing Units in Mbora District and not agreement for the provision of infrastructure in Gwarinpa Project dated the 19<sup>th</sup> March, 2003, and that misconduct will arise once the Arbitral Tribunal goes outside the said tripartite agreement.

Once there is a written contract and there seem to be disagreement in the realm of breach of any such terms of the contract or complete repudiation of the contract, it is the contract document, and the contract

document only that shall be considered in the determination of the conundrum. Court would not create contract for parties.

See ***FEBSON FITNESS CENTRE & ANOR VS. CAPPA HOLDINGS (2014) LPELR 24055 (CA)***.

The all-time position of the law on sanctity of contract cannot be over emphasized.

Parties to a contract cannot be encouraged to resile from such contract.

See ***ALI & ANOR VS. MAZADI (2018) LPELR – 49383 (CA)***.

The essence of Arbitration Clause in an agreement is to essentially ensure that issues bothering on such an agreement which is the ad-idem of the parties

mentioned therein are resolved on the strength of their agreement.

The respect for such sanctity of contract is the reason Courts would refer parties who initiate proceedings in Court back to Arbitration as agreed in their contract agreement.

Award Debtor's desire to introduce a different contract agreement as basis for counter claim/set off was rightly ignored by the Arbitral Tribunal as that would have amounted to misconduct.

What Respondent/Award Debtor seeks to do is to be allowed to dribble and cheat Applicant/Award Creditor from enjoying the benefit of the Arbitration Clause contained in the Tripartite Construction Agreement, same having shirked from its obligation. God forbid...

I have no difficulty agreeing with the findings of the Arbitral Tribunal. Respondent/Award Debtor is merely crying foul when clearly the law is against them.

Applicant are deserving of recognition and enforcement of the award.

I hereby so grant all the reliefs contained in 1, 2, 3, 4 and 5 accordingly, as follows:-

1. An Order of this Honourable Court recognizing the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief Bayo Ojo CON, SAN, FCIArb, Chief Jim Okey Nwagbara MCIArb; and Chief Eflix Okereke – Onyeri FCIArb dated the 31<sup>st</sup> day of January, 2013, is **hereby granted.**



2. An Order of this Honourable Court granting leave to the Applicant to enforce the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief Bayo Ojo CON, SAN, FCIArb, Chief Jim Okey Nwagbara MCIArb; and Chief Felix Okereker – Onyeri FCIArb dated the 31<sup>st</sup> day of January, 2013, is **hereby granted.**

3. An Order of this Honourable Court mandating the Respondent to pay the sum of N401,407,000.00 (Four Hundred and One Million, Four Hundred and Seven Thousand Naira only) to the Applicant, being and representing the sum awarded in the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief Bayo Ojo CON,

SAN, FCI Arb Chief Jim Okey Nwagbara MCI Arb; and Chief Felix Okereke – Onyeri FCI Arb dated the 31<sup>st</sup> day of January, 2013, is **hereby granted.**

4. An Order of this Honourable Court mandating the Respondent to pay the sum of N168,590,940.00 (One Hundred and Sixty – Eight Million, Five Hundred and Ninety Thousand, Nine Hundred and Forty Naira) to the Applicant, being the accrued interest for seven (7) years at N24,084,420.00 (Twenty Four Million, Eighty Four Thousand, Four Hundred and Twenty Naira) per annum at the agreed interest rate of 6% from 31<sup>st</sup> April, 2013 (when the Respondent ought to have satisfied the Arbitral Award) till

10<sup>th</sup> September, 2020 (when this suit is filed), pursuant to the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief BayoOjo CON, SAN, FCIArb Chief Jim OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb dated the 31<sup>st</sup> day of January, 2013, is **hereby granted**.

5. An Order of this Honourable Court mandating the Respondent to pay to the Applicant 6% of the Arbitral Award from the 10<sup>th</sup> day of September, 2020, till the date that judgment is satisfied being the agreed interest rate pursuant to the Final Arbitral Award delivered by the Arbitral Panel/Tribunal, Coram Chief BayoOjo CON, SAN, FCIArb, Chief Jim

OkeyNwagbaraMCIArb; and Chief Felix Okereke – OnyeriFCIArb dated the 31<sup>st</sup> day of January, 2013, is similarly **hereby granted.**

*Justice Y. Halilu*  
*Hon. Judge*  
*8<sup>th</sup> June, 2022*

**APPEARANCES**

J.T. Mchiana, Esq. - for the Respondent/Applicant.