

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI**

**THIS 10<sup>TH</sup> MAY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA**

**SUIT NO: CV/1714/2021**

**BETWEEN:**

**FARI PROPERTIES LTD-----PLAINTIFF**

**AND**

**1. MR. PETER YAKURA**

**2. ECONOMIC AND FINANCIAL**

**CRIMES COMMISSION -**



**-----DEFENDANTS**

**RULING**

This matter was commenced by on originating summons dated the 23<sup>rd</sup> July 2021 filed same day. The Plaintiff is asking this Honourable court for the determination of the questions below:

Whether or not the offer and acceptance letter dated 22<sup>nd</sup> December 2020 in respect of 5 (five) Bedroom Terrance located within plot 1082 cadastral Zone F18 Dawaki District Abuja it is the

only contractual binding the parties to it. Upon the determination of the above question, the plaintiff claims the following reliefs;

1. A DECLARATION that the letter of offer of the 5 Bedroom Terrace located within plot 1082 cadastral Zone F18 Dawaki District Abuja dated 22<sup>nd</sup> December 2020 is the only binding contract between the parties.
2. A DECLARATION that the 1<sup>st</sup> Defendant is not entitled to reinstatement of the offer to 5 Bedroom terrace in view of the breach of clauses 2,4 and 5 of the offer letter dated 22<sup>nd</sup> December 2020
3. A DECLARATION that by virtue of clauses 2, 4 and 5 of the offer letter dated 22<sup>nd</sup> December 2020, the Defendant breached the contract which entitled the plaintiff repudiates the agreement.
4. A DECLARATION that the revocation of the offer dated 22<sup>nd</sup> December 2020 by the plaintiff is consistent with terms agreed on by the parties.
5. An ORDER directing the defendant to provide his account particulars for the purpose of payment of the initial Deposit less 10% administrative charge.
6. An ORDER directing the 2<sup>nd</sup> defendant to forthwith discontinue interfering in the contractual relationship in connection with or

arising from the offer and acceptance dated 22<sup>nd</sup> December 2020.

In support of the application is 25 paragraphs affidavit deposed to by one Yunusa Usman Marwa, the Managing director of Fari Properties Ltd, attached to the affidavit are exhibits A to G.

In his Written Address filed on the 23<sup>rd</sup> July 2021, Counsel to the Plaintiff submitted that the action is principally in respect of the Interpretation of the agreement termed offer for a five bedroom Terrace located within plot 1082 zone F18, Dawaki District Abuja. Learned Counsel to the Plaintiff argued that the law is settled that if time is made the essence of a contract, and the stipulated time is not met, the other party will not be held to the contract. He cited the case of **EDWARD AKINCADE VS MICHAEL ADEMOLA AYINDE (2021) 1 NWLR (PT 1758) PG 443 (PARA 4)** amongst others. It is the submission of counsel that the offer letter dated 22<sup>nd</sup> December 2020 is sacrosanct throughout the length and breadth of the offer letter, that no mention was made to the effect that completion of the terrace No. 33 is a precondition to payment of the balance of N8,000,000,00 (Eight Million Naira) only. Counsel argued that the content of Exhibit A which the 1<sup>st</sup> respondent is holding on to tenaciously as the fulcrum of his case was a letter to the plaintiff

which was not replied and predates the offer and acceptance duly excused before payment of the initial deposit of Thirty Million Naira (N30,000,000) only. Counsel contended that the content of Exhibit B (Offer and Acceptance) dated 22<sup>nd</sup> December 2020 are unequivocal and leaves no one in doubt that the parties have reached a complete agreement on executing same, it is the argument of counsel that it is the only the offer and acceptance that has created a legally binding contractual relationship capable of being enforced by the parties. He relied on **ADEWUMI VS MRS OIL NIG PLC (2020) 8 NWLR PT 1727** to the effect that parties are bound by the agreement they voluntarily entered.

Learned counsel submitted that the plaintiff has been discharged from the contract due to the willful failure and neglect of the 1<sup>st</sup> defendant to fulfill his own obligation contained in the offer and acceptance letter dated 22<sup>nd</sup> December 2020. He cited **ACHONU VS OKWUOBI (2017)14 NWLR PT 1584 PAGE 177** to the effect that times of the essence in the execution of the contract, that there can be no valid sale where only part payment is made.

On the whole counsel submitted that the 1<sup>st</sup> defendant is not entitled to any remedy as the breach was occasioned by him in his failure to keep clause 2, 4, and 5 of the letter of offer dated 22<sup>nd</sup> December 2020.

In response, the Defendant filed a 31 paragraphs counter affidavit dated 26<sup>th</sup> of November 2021. The affidavit is deposed to by one Mr. Peter Yakura the 1<sup>st</sup> Respondent in this suit.

The 1<sup>st</sup> defendant avers that he wrote a letter dated 17<sup>th</sup> December, 2020 for expression of interest in purchasing a Five Bedroom Terrace No. 33 located with plot 1082 Cadastral zone F18 Dawaki District Abuja FCT, property of the plaintiff for the agreed price of N38,000,000.00 only (Thirty Eight Million Naira)only and submitted the letter to the plaintiff counsel. In accordance with the Instruction of the plaintiff, the 1<sup>st</sup> defendant devices knowing that the plaintiff is a beneficiary of 40% of the virtue Estate. That the 1<sup>st</sup> defendant in furtherance to the executed offer and acceptance credited the plaintiff's Zenith Bank on the sum of N30,000,000.00 (Thirty Million Naira)only on the 23<sup>rd</sup> December 2020. Having submitted a letter of expression of interest dated 17/12/2020 along with a cheque of N7,000,000.00 (Seven Million Naira)through the plaintiffs solicitors. The 1<sup>st</sup> defendant avers that the plaintiff did not complete work on the property on or before 28<sup>th</sup> February, 2021 as agreed between the two parties. That the plaintiff refused to present the post-dated cheque in the sum of N7,000,000.00 only for clearance and collection. That the plaintiff aver demanded for the payment of

the balance of N1,000,000.00. That there is no evidence that the plaintiff instructed its partner, PIROTTI PROJECTS AND PROPERTIES LTD to issue and serve a letter of relocation on the 1<sup>st</sup> Defendant and the Plaintiff in respect of the property. That the 1<sup>st</sup> Defendant has no business relationship with the PIROTTI PROJECTS AND PROPERTIES LTD in respect of the Unit Terrance Duplex No. 33. That the 1<sup>st</sup> Defendant was insisted on not paying the balance of N8,000,000.00. That the 1<sup>st</sup> Defendant could not have insisted on not paying the balance when he had earlier issued a post dated cheque in the sum of N7,000,000.00 which the plaintiff for reasons best known to him refused to present and collect the sum contained therein. That the Plaintiff never demanded for the payment of the balance of N1,000,000.00 that the 1<sup>st</sup> defendant, worried about the non-completion of the work on the property and the alleged disagreement decided to do a private investigation to know the cause of the dispute that has led to the non-completion of the property as agreed. That it was discovered that the plaintiff's partner found a buyer who was ready to pay a higher price and has told the plaintiff to refund the 1<sup>st</sup> defendant money. That the plaintiff refused to present the cheque having found a buyer who paid a higher price.

In his counter-claim, the defendant repeats and adopted paragraphs 1 to 31 of the counter affidavit by the defendant, stating that issues have been joined by the parties. The Defendant/Counter-claimant claims from the plaintiff/Respondent the following:

- i. A declaration that the purported revocation by the plaintiff of the transaction between the 1<sup>st</sup> Defendant and the plaintiff is improper, invalid, unlawful, null and void and of no effect whatsoever;
- ii. A declaration that the 1<sup>st</sup> Defendant is entitled to reinstatement to the property;
- iii. An order of the Honorable Court reinstating or giving possession of the property to the 1<sup>st</sup> Defendant;
- iv. An order of the Honorable Court mandating or directing the plaintiff to complete and deliver the property to the 1<sup>st</sup> Defendant ;

And where the above are impossible then,

- v. Order for refund of the N30,000,000.00 initial deposit,
- vi. An Order for general/exemplary damages of the sum of N100,000,000.00 as a result of loss of earnings were property completed and handed over to the 1<sup>st</sup> Defendant as

agreed, loss of interest on the sum of 30,000,000.00 deposited

- vii. The cost of defending the plaintiff action and prosecuting the counter-claim assessed at N1, 500,000.00 only.

In his written address, learned counsel to the Defendant/Counter Claimant formulated six issues for determination to wit:

1. Whether from circumstances of this case the offer and acceptance dated 22<sup>nd</sup> December, 2020 is the only contractual (document) binding the parties to the transaction in respect of the property no.33?

Or

whether from the circumstances of this case the honourable court can interpret and consider the offer letter dated 22<sup>nd</sup> December, 2020 in isolation of the letter of expression of interest dated 17<sup>th</sup> December,2020 as the only contractual binding the parties to it.

2. Whether the acceptance dated 22<sup>nd</sup> December, 2020 is not a conditional acceptance in view of the letter of expression of interest dated 17<sup>th</sup> December,2020 by the 1<sup>st</sup> defendant
3. Whether the letter of revocation dated 13<sup>th</sup> April, 2021 by the plaintiff's partner was proper, valid, sufficient and



competent to repudiate or nullify the transaction of the parties in respect of the property

4. Whether the silence of the plaintiff to the 1<sup>st</sup> defendant's condition that the property be completed and finished on or before January /February ending 2021 does not amount to laches and acquiesce
5. Whether from the circumstance of the case it can be said the 1<sup>st</sup> defendant refused, failed or neglected to make his payment for the property as to justify the purported revocation by the plaintiff.
6. Whether by virtue of clause 22 of the offer and acceptance this court can be entertain and determine this suit by the plaintiff.

On issue one above, it is the contention of counsel that the offer and acceptance letter dated 22<sup>nd</sup> December 2020 cannot and is not only the contractual (document) binding the parties to the purchase. Counsel argued that the terms and conditions contained in the letter of expression of interest dated 17<sup>th</sup> December 2020 by the 1<sup>st</sup> defendant, Exhibit A were agreed by the parties and ought to be included in the main, original or primary agreement. He relied on **BALOGNL VS BALOGUAL (1969)1 ALL NLR 349 AT 351** to the effect that time is of

essence. Counsel submitted further that the time for the Plaintiff to complete and deliver the property to the 1<sup>st</sup> defendant is unambiguously slated to be January/February ending 2021. He relied on **CITEC INTERNATIONAL ESTATES LIMITED VS THE MINISTER OF THE FEDERAL CAPITAL TERRITORY & 2 ORS (2018)LPELR 45955** to the effect that courts should endeavour at all times to enforce the terms and conditions contained in the agreement by parties.

Learned counsel argued that the defendant performed his obligation under the contract, by first paying the sum of N30,000,000.00 and issuing a post-dated cheque which the plaintiff failed to present at the bank.

Counsel argued that the case of **ACHONU V. OKWUOBI (2017)14 NWLR PT.1584 AT PAGE 177 PARA G.** heavily relied upon by the plaintiff is distinguishable from this case and offers no help to the plaintiff. Counsel argued that the parties in the above case are different from the parties here and while the purchaser in the case refused, failed or neglected to make full payment, the 1<sup>st</sup> defendant have made his payment.

On issue two, counsel to the defendant/counter-claimant argued that the acceptance letter dated 22<sup>nd</sup> December 2020 (Exhibit B)

is a conditional acceptance in view of the letter of expression of interest, Exhibit A, by the 1<sup>st</sup> defendant dated 17<sup>th</sup> December 2020. Counsel submitted that the law is trite that a conditional acceptance amounts to a counter offer which entitles the other party to accept same. An offer duly accepted constitutes an agreement he relied on the case of **N.B.N. LTD VS SAVOL W.A. LTD (1994)3 NWLR (PT.333)435 AT 457.** Counsel argued that the plaintiff having failed to reply to the counter offer is deemed to have accepted same by conduct and is therefore bound by the condition imposed therein, that the 1<sup>st</sup> Defendant expressly stated in his letter of expression of interest Exhibit A that the plaintiff amongst others request “Completion/delivery of the said Terrance No. 33 by January/February 2021 ending. Counsel contended that the act of the plaintiff, who went ahead to collect the money paid by the 1<sup>st</sup> defendant on the property constitute acceptance by conduct.

On issue three, Counsel contented that the letter of revocation dated 13<sup>th</sup> April 2021 by the plaintiff’s partner was improper, invalid and incompetent to repudiate or nullify the transaction of the parties in respect of the property no. 33. He relied on the case of **UNIVERSITY OF ABUJA VS OROKE (1996)4 NWLR (PT.445)706 AT 720** to the effect that the partner (**PIROTTI**

**PROJECTS AND PROPERTIES LTD)**\_acted ultra vires, counsel argued that an agent must act within the scope of the authority given to him by his principal, he relied on **OKWEJIMINOR VS GBAKEJI (2008)5 NWLR (PT.1079)172 at 223-224** amongst others.

On issue four, Counsel to the defendant/counter-claimant, contended that the silence of the plaintiff to the 1<sup>st</sup> defendant's condition that the property be completed and finished on or before January/February ending 2021 amounts to laches and acquiescence. Counsel argued that where a party has a right and he unreasonably delays in asserting the right and accept a state of affairs without protest he is deemed to have been caught by the twin equitable doctrine of laches and acquiesce. He relied on the case of **NSIEGBE VS MAEMENA (2001)10 NWLR (PT. 1042)364 AT 374.**

Learned counsel submitted that the 1<sup>st</sup> defendant while accepting to make the full payment of the agreed N38,000,000.00 on or before 28<sup>th</sup> February 2021 for the property no. 33, however requested and gave a condition that the plaintiff complete/deliver the property by January/February ending 2021 to the 1<sup>st</sup> defendant. Counsel submitted that the plaintiff did not reply to the letter or in any way counter the offer or reject the

request/demand/condition but went ahead and accepted the consideration for the property. Counsel argued further that the plaintiff having collected the consideration offered by the 1<sup>st</sup> defendant made him believe that the plaintiff has accepted the condition and as such the plaintiff cannot turn around to deny that he did not accept the request as the plaintiff is stopped, he relied on **AWURE V. IIEDE(2008)12 NWLR (PT. 1098/249 AT 287.**

On issue five, learned counsel contended that from the circumstances of this case it cannot be said that the 1<sup>st</sup> Defendant refused, failed or neglected to make payment for the property with the time stipulated by the contract agreement so as to justify the purported revocation of the contract by the plaintiff. He argued that the 1<sup>st</sup> defendant paid the sum of N30,000,000.00 to the plaintiff as first deposit, gave a post dated cheque of N7,000,000.00 to be presented before 28<sup>th</sup> February by the plaintiff in line with the agreement it is the contention of counsel that the plaintiff has not deserved the above, that the plaintiff did not complete the property to entitle him to be paid the N1,000,000.00.

On issue six, counsel argued that by virtue of clause 22 of the offer and acceptance dated 22<sup>nd</sup> December 2020(1<sup>st</sup> defendant)

duly executed by the parties this court cannot interterm and determine this suit as parties by their agreement have stipulated that any dispute arising out of or relating to the arrangement after the allottee has fully paid and complied with the obligations embedded shall be settled by Arbitrators, in accordance with the arbitration and conciliation Act.

Learned counsel argued that the plaintiff has not complied with the provision of clause 22 of the agreement (offer and acceptance) dated 23<sup>rd</sup> December. He submitted this court lacks the requisite jurisdiction to entertain and determine this suit. Counsel cited the case of **SKENCONSULT NIG LTD V. UKEY (1981)15 SC 6** to the effect that where a court lacks jurisdiction to entertain and assume jurisdiction any judgment or decision given in respect thereof will amount to a nullity no matter how well considered. Counsel also cited **MADUKOLU V. NKEMDILIM (1962)2 ALL NLR PAGE 581 AT 589** laying emphasis on the ingredients that must exist for a court to assume jurisdiction.

On the whole, counsel urged this honourable court to apply the internal or ordinary meaning to the words in the agreement between the parties.

In response, the plaintiff filed a further and better affidavit dated and filed on the 29/11/2021, the further and better affidavit was deposed to by one Alhaji Yunusa Usman Marwa, the managing director of Fari Properties Ltd. Wherein the plaintiff avers that the 1<sup>st</sup> defendant's letter of expression of interest is not a contract and cannot take the place of the offer and acceptance dated 22/12/2020. That the 1<sup>st</sup> defendant cheque of N7,000,000.00 fall short of the purchase/sale consideration by N1,000,000.00 hence the 1<sup>st</sup> defendant is still in breach. That the equitable relief of specific performance cannot be available to the 1<sup>st</sup> defendant in view of his failure and neglect to pay the full consideration.

Learned counsel to the plaintiff in his written address dated 29/11/2021 submitted that even if the cheque dated 28/02/2021 is accepted as constituting payment to the plaintiff, the shortfall of N1,000,000 constitutes a lacuna or breach of the offer and acceptance letter dated 22/12/2021. Counsel cited **ACHONU V. OKUWOBI (2017)14 NWLR PT. 1584 PAG 181** to the effect that failure to pay purchase price in a contract of sale of land constitutes a fundamental breach which goes to the root of the case. Counsel relied on **FCDA V. NZELU (2014)5 (NWLR PT. 1401)** to the effect that the principles followed in the

Interpretation of statutes are those for the Interpretation of documents.

It is the contention of learned counsel to the plaintiff that the invocation of clause 22 of the offer letter is belated in view of the fact that the 1<sup>st</sup> defendant has taken steps by filing a counter affidavit, written address and a counter claim. Counsel cited **R.C.O. & S. VS RAINBOWNET LTD (2014) 5 NWLR PT 1401 Pg 543 (para C.-H)** to the effect that a defendant applying for a stay of proceeding in an action pending arbitration must not have delivered any pleadings or taken any steps in the proceedings beyond entering of formal appearance.

On her own part, the 2<sup>nd</sup> defendant filed a 19 paragraphs counter affidavit deposed to by one Charlya Gurunnaan an operative with the Economic and Financial Crimes Commission. The counter affidavit is dated 14<sup>th</sup> January 2022 and filed on the same day. Annexed to the counter affidavit are Exhibits EFCC 1, EFCC 2, EFCC 3, EFCC 4.

The 2<sup>nd</sup> defendant avers that on the 17<sup>th</sup> May 2021 a petition was received from one Mr. Peter Yakura Vaudu (1<sup>st</sup> defendant) against Mr. Elele Oge, Mrs. Mustapha, Alhaji Yunusa Usman Maruwa and Arch Abdullahi Suleiman over a criminal breach of trust, cheating



and fraud in respect of a Unit of 5 bedroom terrace duplex No. 33 Plot 1082 at Palms Estate, Dawaki Abuja. That the 1<sup>st</sup> defendant paid N45,000,000.00 (Forty-five Million) for 3 units of 3 bedroom bungalow at N15,000,000.00 (Fifteen Million Naira) each at Piroth Project Ltd and the developers of plot 1081 Cadastral zone F18 Dawaki. That the plaintiff unilaterally shifted the delivery dated of the houses to 31<sup>st</sup> December 2020 while date came and passed and further shifted the delivery date to the 2<sup>nd</sup> quarter of 2021 still with no progress to their various promises. That the attitude of the plaintiff prompted the 1<sup>st</sup> defendant to transmit a letter of petition to the 2<sup>nd</sup> defendant. That the 2<sup>nd</sup> defendant is saddled with the duties/functions of investigating all Economic and Financial Crimes.

Learned counsel to the 2<sup>nd</sup> defendant in his written address dated and filed on the 14<sup>th</sup> January 2022, formulated a sole issue for determination to wit:

*Whether the 2<sup>nd</sup> defendant are clothed with the powers to investigate and prosecute financial crimes?*

On the lone issue above, learned counsel argued in the main that the 2<sup>nd</sup> defendant is vested with the powers to Investigate Financial Crimes, he cited section 6 of the Economic and Financial

Crimes Commission (Establishment Act 2004), he in the same vein cited the case of **NWEKE VS FRN (2009)- 46946** to the effect that the apex court affirmed the powers of the Economic and Financial Crimes Commission. Counsel relied on the case of **FAWEHINMI V IGP )2000(7 NWLR (PT. 665)481 at 519** to the effect that in the performance of their important statutory duty, the police in trying to discover whether or by motion an offence has been committed is entitled to question any person whether suspected or not from whom they think that information may be obtained, learned counsel submitted that the statutory duties under section 4 of the police Act provides the same womb for investigation powers of the 2<sup>nd</sup> defendant contained in section 6, 7 and of the Economic and Financial Crimes Commission (Establishment )Act 2004 and as such are entitled to question any person including the plaintiff herein, whether suspected or not in connection with the complaints made by any person.

Learned counsel cited the provisions of section 35(1)(c) of the 1999 constitution of the Federal Republic of Nigeria which provides thus:

*"Every person shall be entitled to his personal liberty and no persons shall be deprived of such liberty same in the following cases and in accordance with a procedure*

*permitted by law-for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonable necessary to prevent his committing a criminal offence”.*

Counsel submitted on the whole, that the 2<sup>nd</sup> defendant are simply doing what the above law permits them to do, which is to investigate financial crimes.

In response to the counter affidavit of the 2<sup>nd</sup> defendant, the plaintiff filed an 11 paragraphs further and better affidavit dated and filed on the 15<sup>th</sup> February, 2022. The affidavit is deposed to by one Alhaji Yunusa Marwa a managing director of the plaintiff the instant suit.

The plaintiff avers that the statutory power of the 2<sup>nd</sup> defendant to investigate all petitions is not in question but what happens thereafter in the face of manifest absence of any element of crime may be questioned.

That exhibit EFCC 1 attached to the 2<sup>nd</sup> defendant counter affidavit shows that the 1<sup>st</sup> defendant refused and neglected to pay the balance consideration of N8,000,000.00) Eight Million Naira) that the willful refusal and neglect of the 1<sup>st</sup> defendant to

pay the balance of his averments in his counter affidavit filed on 26/11/2021 that it was the plaintiff that refused to cash the cheque of N7,000,000 (Seven Million Naira) and demand for the N1,000,000. That the 2<sup>nd</sup> defendant in the face of the content of Exhibit EFCC 1 ought to have discontinued further investigation as redress is available to the 1<sup>st</sup> defendant in civil action. That civil dispute and breach of contract simpliciter are not within the scope of the Economic and Financial Crimes Commission.

Learned Counsel in the written address attached to the further and better affidavit. Wherein counsel submitted that the Economic and Financial Crimes Commission (EFCC) is endowed with the powers of investigation and prosecution of Financial Crimes that are reported to it by virtue of the provisions of section (6)(a) and (b) 7(1)(a) of the Economic and Financial Crimes Commission Establishment Act 2004. He relied on the case of **EGUBE V FRN (2020)11 NWLR PT. 1734.**

Learned counsel argued that the 1<sup>st</sup> defendant in a sudden twist of narrative contained in the 1<sup>st</sup> defendant counter affidavit and written address filed on 26/11/2021 that he tried to mislead this honourable court by menacing that the plaintiff refused to cash the cheque of N7,000,000.00. Learned counsel submitted that the transaction between the plaintiff and the 1<sup>st</sup> defendant is

purely a contractual agreement for which any of the parties to same could approach a court for redress for alleged breach. Counsel relied on the case of **AJAYI V TOTAL NIG (LTD)PLC (2013)15 NWLR PT 1378.**

Learned counsel submitted that the 1<sup>st</sup> defendant act of refusal and neglect to pay the balance of N8,000,000.00 he cannot later be heard to say that the plaintiff refused to present the cheque. He relied on the case of **GUINNESS (NIG) PLC V OYEGBADAN (2012)15 NWLR PT (1322)32 at pg 50 para A-B** where it was held that:

*"It is trite law that a person who was not under any legal disability should be the best judge of his own interest, when he had full knowledge of his rights, interest benefits or profits conferred on him by statutes or accorded to him under a statute and intentionally yet interestingly decided to quite up all or some of these statutory rights, he therefore cannot be held to complain afterwards".*

On the whole the plaintiff submitted that the rights which inure to the 1<sup>st</sup> defendant to own the property was waived by his failure to pay the balance consideration of N8,000,000.00.

I have considered the originating summons, the affidavit in support of the application, and the written address of learned counsel to the plaintiff. I have in the same vein pursued the counter affidavit of the Defendants in opposition to the originating summons, the counter claim and the written address of counsel to the 1<sup>st</sup> defendant. I have also considered the further and better affidavit of learned counsel to the plaintiff.

### **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 22 as contained in the agreement between the parties which reads:

*"Any dispute arising out of or relating to this arrangement after the Allotee has fully paid and comply with the obligations embedded in this offer letter shall be settled by Arbitrators. In accordance with the Arbitration and Conciliation Act Capt A18 Laws of the Federation of Nigeria 2004".*

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 contractual agreement binding, them marked as Exhibit B 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 22 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.

**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 22 of the offer and acceptance A between the parties. I so Hold. The case is adjourned sine dine.

**Appearances:**

Magarita Essien for the plaintiff

N Oko for the defendants, Maris Sherif for the 2<sup>nd</sup> defendant

Ruling read in open court

**Signed**  
**Presiding Hon Judge**  
**10<sup>th</sup>/05/2022**