

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON THURSDAY, THE 14<sup>TH</sup> DAY OF JULY, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE A. H. MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/974/2022**

**BETWEEN:**

**MR ODO ANDREW CHUKWUEMEKA**

**CLAIMANT**

**AND**

**STEPONE PROJECTS DEVELOPMENT LIMITED**

**RESPONDENT**

**RULING/JUDGMENT**

By an Originating Motion on Notice, the Claimant herein brought this application seeking for the following reliefs:-

- 1. An Order of Court granting leave for the recognition and enforcement of the consent Award made on the 4<sup>th</sup> day of March, 2022 by the Sole Arbitrator Usman Muhammad Abashiya as Judgment of this Court in respect of the above-mentioned subject suit.*
- 2. Any other Order(s) as the Court may deem fit to make in the circumstances.*

The Motion is supported by a 4-paragraph affidavit, five exhibits and a Written Address.

In the affidavit, the deponent, one Sarah Otuya, a Secretary in the law firm of Esang Ukpanah Attorneys, the law firm representing the Claimant in this suit, swore that the parties herein were parties before an arbitral proceedings at the Uwais Dispute Resolution Centre, also known as the Abuja Multi-Door Courthouse and henceforth referred to in this Ruling as 'the Centre', wherein the Claimant herein brought an action against the Defendant herein over a dispute arising from an alleged failure of the Defendant to fulfil its part of a contract of sale of the property known as four (4) bedroom terrace duplex (corner piece), FT 15 LOT 29, Plot 57, Cadastral Zone D01, Karsana East District, Abuja, FCT with File Number MISC 116167.

According to the deponent, the Defendant was issued with a Pre-Hearing Notice attached as **Exhibit A** to the affidavit in support of the application. In the course of the proceedings, the parties agreed to settle their dispute and, in consequent of the agreement, the parties executed a Terms of Settlement which is attached to the affidavit as **Exhibit B**. Upon due notification of the Defendant and its Counsel of the intention of the Claimant to apply for the adoption of the Terms of Settlement, the Centre, on the 4<sup>th</sup> of March, 2022, entered the Terms of Settlement as its Consent Arbitral Award. These notifications, together with the Consent Arbitral

Award, are attached to the affidavit in support of the application as **Exhibits C, D and E** respectively. It is the case of the Claimant that the Defendant has refused to fulfil its obligations under the Terms of Settlement rendered as the Centre's Arbitral Award.

In the Written Address in support of the application, learned Counsel for the Claimant did not formulate any issue for determination. Referring this Court to section 31 of the Arbitration and Conciliation Act, CAP A18, Laws of the Federation of Nigeria, 2004, he submitted that the parties having agreed mutually to resolve their dispute, and the terms of their mutual agreement having been entered as the Consent Arbitral Award of the Centre, the next lawful step was to apply for and obtain the leave of this Court for the recognition and enforcement of the said Consent Arbitral Award. He therefore urged the Court to grant the reliefs sought in the application.

The Respondent filed a Counter-Affidavit to the Claimant's Originating Motion on Notice on the 25<sup>th</sup> of April, 2022. He also filed a Notice of Preliminary Objection on the same date challenging the competency of the suit of the Claimant. In the Notice of Preliminary Objection, the Respondent sought the following reliefs:-

1. *An Order of this Honourable Court declining recognition and enforcement of the purported consent award made on the 4<sup>th</sup> day of March, 2022 by the purported Sole Arbitrator Usman Muhammad Abashiya.*
2. *An Order of this Honourable Court setting aside the purported consent award made on the 4<sup>th</sup> day of March, 2022 by the purported Sole Arbitrator Usman Muhammad Abashiya for being a nullity.*
3. *And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.*

The Respondent identified six grounds upon which the Notice of Preliminary Objection is founded. According to it, the suit is incompetent *ab initio* as the Claimant did not comply with the conditions precedent necessary thereto, there is no valid consent award to be recognised by the Court for enforcement, the Respondent was not aware of the appointment of any Sole Arbitrator to adopt the Terms of Settlement, the Respondent did not receive any hearing notice from the Abuja Multi-Door Courthouse to adopt any terms of consent award and the purported consent award was adopted behind the Respondent/Applicant.

In the affidavit in support of the Notice of Preliminary Objection, the deponent, Kingsley Magaji, a Litigation Clerk in Nottingham Chambers, the

law firm representing the Respondent, after denying paragraphs 3(c), (f), (g) and (h) of the affidavit in support of the Claimant's application, proceeded to swear that Usman Muhammad Abashiya presided as a staff of the Abuja Multi-Door Courthouse as a guide and not as an arbitrator. He added that the parties, in the course of discussion, decided to resolve their differences. Pursuant to this intimation, the said Abashiya directed the parties to report the progress of the settlement on the 24<sup>th</sup> of August, 2021. Though the parties were unable to conclude their negotiations before that date, they, however executed the Terms of Settlement on the 19<sup>th</sup> of November, 2021 and agreed that the said Terms of Settlement would be adopted at the Centre on an agreed date.

The deponent swore that the Respondent was shocked when it received a letter dated the 3<sup>rd</sup> of February, 2022 informing it of the Claimant's intention to apply for the adoption of the Terms of Settlement as the Consent Judgment of the Centre. He stated further that the Respondent was served with the purported Consent Award on the 3<sup>rd</sup> of February, 2022. For this reason, he averred that the suit was incompetent *ab initio* and liable to be struck out.

In the Written Address in support of the Notice of Preliminary Objection, learned Counsel for the Respondent formulated a sole issue for

determination, namely, *“Whether from the facts and circumstances of this application, the Applicant is not entitled to the reliefs sought.”* In his submission, learned Counsel contended that the Court cannot enforce an invalid award. Referring to the depositions in the affidavit, he maintained that no arbitrator was appointed at the Centre and the Respondent was not a party to the payment of the arbitrator’s fee of ₦200,000.00 (Two Hundred Thousand Naira) only.

Learned Counsel conceded that the parties at the preliminary meeting at the Centre agreed that the Terms of Settlement would be signed by the ADR Judge but not as a Consent Award. On this basis, he further contended that there is no competent application for leave to recognise and enforce the Consent Arbitral Award. Referring to paragraphs 3(k), (l), (m) and (n) of the affidavit in support of the Notice of Preliminary Objection, learned Counsel asserted that the Respondent was never served with any hearing notice from the Centre for adoption of any Consent Arbitral Award and, accordingly, the proceeding at the Centre was a nullity.

Counsel further submitted that even if it was conceded that there was a valid Consent Arbitral Award before the Court, the Claimant has not complied with the provisions of section 31(2) of the Arbitration and Conciliation Act. Counsel drew the Court’s attention to the fact that the

Claimant had referred to a Consent Arbitral Award dated the 4<sup>th</sup> of March, 2021 in paragraph 3(f) of the affidavit in support of the Originating Motion on Notice while he exhibited a Consent Arbitral Award dated the 4<sup>th</sup> March 2022 in the application. He pointed out that the Respondent was not a party to the two consent arbitral awards.

For these reasons, learned Counsel urged this Court to hold that the application is incompetent. For all his submissions on the sole Issue he formulated, learned Counsel cited and relied on section 6(6) of the Constitution of the Federal Republic of Nigeria 1999, sections 29 and 31(2) of the Arbitration and Conciliation Act, ***Kano State Urban Development Board v. Fanz Construction Co. Ltd (1990) 4 NWLR 142, C.C.B. (Nig.) Plc v. A.-G. Anambra State (1992) 8 NWLR (Pt. 261) 528, Emerald Energy Resources Ltd v. Signet Advisors Ltd (2020) LPELR-51385(CA) and Ras Pal Gazi Construction Co. Ltd v. FCDA (2001) LPELR-2941(SC).***

The facts disclosed in the 4-paragraph Counter-Affidavit and the legal arguments encapsulated in the accompanying Written Address are identical to the facts deposed to in the affidavit in support of the Notice of Preliminary Objection and the legal submissions in the Written Address in support of the Notice of Preliminary Objection. For this reason, this Court

will not go into the tedium of recapitulating those, since I have already reviewed them above. I shall therefore proceed to address the issues raised in the Notice of Preliminary Objection first, and, then, if there is any need, I shall proceed to the substantive suit.

It is important to note that the parties adopted their respective processes and argued their respective positions in both the Notice of Preliminary Objection as well as the substantive application on the 11<sup>th</sup> of May, 2022. Thereafter, the Court adjourned for Ruling and Judgment. It is equally important to state that the Claimant did not file any process challenging the Notice of Preliminary Objection. He did not also oppose the application orally on points of law.

### **RULING ON THE NOTICE OF PRELIMINARY OBJECTION**

There is no question as to the primacy of jurisdiction in any adjudicatory process before a judicial authority, administrative tribunal or a quasi-judicial body. In ***Owners of the MT “Marigold” v. NNPC & Anor (2022) LPELR-56858 (SC) at pp. 6 – 11 at pp. 6 – 11, para E – E***, the Court per Garba, JSC held *inter alia* that ***“It is never late to raise the issue or question of the jurisdiction of the Court to adjudicate over a matter, case or appeal, even viva voce and once it arises or is raised, the Court has***



*the duty to determine it first before proceeding to deal with other issues that may be raised therein, if necessary...*” In *Skypower Express Airways Ltd v. UBA Plc & Anor (2022) LPELR-56590 (SC)*, the Supreme Court held per Garba, JSC held *at pp. 8 – 9, para C – C* that *“The very intrinsic and extrinsic nature of the issue of jurisdiction in judicial proceedings of a Court of law and the fatal consequence on the part of a Court to entertain an action, are of considerable antiquity to be elementary in our judicial jurisprudence now.”*

In the case of *Ogbuji v. Amadi (2022) 5 NWLR (Pt. 1822) 99 at pp. 131, paras. D-F; 151, paras. F-G; 152, para. F* the Supreme Court proclaimed that *“The importance of jurisdiction in any adjudication cannot be over-emphasised. It is often described as the life wire of the adjudication process. Without it, every step taken in the case amounts to a nullity, no matter how well conducted and no matter how erudite the decision emanating therefrom. The jurisdiction of a court to adjudicate on a matter is a necessary issue. Consequently, without the necessary jurisdiction, a court cannot make any valid order. Without it no court can entertain a matter.”*

The law on jurisdiction, as established in the case of *Madukolu v. Nkemdilim (1962) 1 All NLR, 587; (1962) 2 SCNLR 341* and followed in a long line of judicial decision is stated as follows:

***“...a court is competent when***

- (1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and***
- (2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and***
- (3) the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.***

***Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.”***

In determining whether this Court is competent to hear the application brought by the Claimant for the recognition and enforcement of the Consent Arbitral Award of the Abuja Multi-Door Courthouse, also known as

the Uwais Dispute Resolution Centre, this Court must advise itself that it – that is, this Court – is properly constituted as regards the number and qualification of the *judex*, that the subject matter is within the jurisdiction of the Court, that there is no feature in the case which can prevent it from exercising jurisdiction and, lastly, that due process was followed in the initiation of the case before the Court and upon the fulfilment of all conditions precedent necessary to the assumption of jurisdiction by the Court.

To establish whether the Claimant has complied with these guidelines in so far as this application, as it is presently constituted, this Court shall be guided by the provisions of the Arbitration and Conciliation Act CAP A18 Laws of the Federation of Nigeria 2004. The relevant provisions are sections 25, 26 and 31 of the Act.

Section 25 provides that,

**(1)**

***If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and shall, if requested by the parties and not***

***objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.***

**(2)**

***An award on agreed terms recorded under subsection (1) of this section shall-***

**(a)**

***Be in accordance with the provisions of subsection 26 of this Act and state that it is such an award; and***

**(b)**

***Have the same status and effect as any other award on the merits of case.***

Section 26 provides thus:

***(1) Any award made by the arbitral tribunal shall be in writing and signed by the arbitrator or arbitrators.***

***(2) Where the arbitral tribunal comprises of more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice if the reason for the absence of any signature is stated.***

***(3) the arbitral tribunal shall state on the award-***

***(a) the reasons upon which it is based, unless the parties have agreed that no reason are to be given or the award is an award on agreed terms under section 25 of this Act;***

***(b) the date it was made; and***

***(c) the place of the arbitration as agreed or determined under section 16(1) of this Act which place shall be deemed to be the place where the award was made.***

***(4) A copy of the award made and signed by the arbitrators in accordance with and signed by the arbitrators in accordance with subsection (1) and (2) of this section, shall be delivered to each party.***

On the other hand, section 31 provides that,

***(1) An arbitral award shall be recognized as binding and subject to this section and section 32 of this Act, shall, upon application in writing to the court, be enforced by the court.***

***(2) The party relying on an award or applying for its enforcement shall supply-***

***(a) The duly authenticated original award or duly certified copy thereof;***

***(a) The original arbitration agreement or a duly certified copy thereof.***

***(3) An award may, by leave of the court or a judge, be enforced in the same manner as a judgement or order to the same effect.***

With regards to the first criterion for jurisdiction, the High Court of the Federal Capital Territory, Abuja is duly constituted when it is made up of a Judge. Section 258 of the Constitution of the Federal Republic of Nigeria stipulates that “***the High Court of the Federal Capital Territory, Abuja shall be duly constituted if it consists of at least one Judge of that Court.***” This application, therefore, has passed the first test.

The second benchmark for measuring jurisdiction is that the subject matter of the suit must be within the subject matter jurisdictional competence of the Court. It is the settled principle of law that the jurisdiction of a Court is determined by the Constitution, statutes and the claim or claims of the Plaintiff. ***Ogbuji v. Amadi (2022) 5 NWLR (Pt. 1822) 99, Supra; (2022) LPELR-56591(SC) at p. 13, para C-E*** the Supreme Court per Kekere-Ekun, JSC, proclaimed that “***The jurisdiction of a Court to adjudicate in***

***any cause or matter is conferred on it and circumscribed by the Constitution and/or statute that created it.***

In this case, the claim of the Claimant herein is for the recognition and enforcement of the consent arbitral award rendered by the Abuja Multi-Door Courthouse, also known as the Uwais Dispute Resolution Centre, on the 4<sup>th</sup> of March, 2022. Section 31(1) of the Arbitration and Conciliation Act provides that an arbitral award shall be recognized as binding by a Court and, accordingly, enforced by the Court upon application to the same Court in writing subject to the fulfillment of the conditions stipulated in subsection (2) of section 31. Section 57(1) of the Act defines the Court vested with the jurisdiction in respect of the subject covered in the Act to mean “***the High Court of a State, the High Court of a Federal Capital Territory, Abuja or the Federal High Court***”. I therefore have no hesitation in arriving at the inevitable decision that the subject matter of this application is well within the jurisdictional competence of this Court.

On the last yardstick, which is, that the case came to this Court initiated by due process of the law and upon the fulfilment of all conditions precedent to the exercise of jurisdiction, section 31 of the Act is very relevant. I have reproduced the provisions of this section earlier. An application to the Court for recognition and enforcement of an arbitral award must be accompanied

with (a) the duly authenticated original award or duly certified copy thereof; and (b) the original arbitration agreement or a duly certified copy thereof. These two documents must be exhibited, or attached to the affidavit in support of the application for recognition and enforcement of the arbitral award. These requirements under that section are conjunctive and not disjunctive. The direction is also mandatory and not discretionary.

In ***North Pole Navigation Co. Ltd v. Milan (Nig.) Ltd (2015) LPELR-25865(CA) at pp. 19 – 21 paras F – A***, the Court of Appeal per Nimpur, JCA recognized the conditions stipulated in section 31(2) of the Act as being cardinal to the invocation of jurisdiction of the Court in recognizing and enforcing an arbitral award.

The Respondent has contended in its Notice of Preliminary Objection that its right to fair hearing was breached by the failure of the Centre to serve it with the hearing notice for the date the consent arbitral award was to be adopted. It has also contended that the Claimant did not comply with the condition precedent stipulated in section 31(1) of the Act. While the issue of breach of fair hearing is one that can be taken only upon the hearing of evidence, and, therefore, inappropriate at this stage of this proceedings, the issue of compliance with condition precedent is one that touches on the competency of this Court to hear this suit.



I have carefully scrutinized the Claimant's Originating Motion on Notice vis-à-vis the provisions of section 31(1) of the Act. I do not see the original arbitration agreement or a duly certified copy of same among the documentary exhibits attached to the affidavit in support of the Originating Motion on Notice.

For the sake of clarity, the Act in section defines an arbitration agreement as follows:

- (1) Every arbitration agreement shall be in writing contained-***
- (a) in a document signed by the parties; or***
  - (b) in an exchange of letters, telex, telegrams or other means of communication which provide a record of the arbitration agreement; or***
  - (c) In an exchange of points of claim and of defence in which the existence of an arbitration agreement is alleged by one party and denied by another.***
- (2) Any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract.***

Paragraph 2.2. of the Consent Award reproduced Clause 12 of the Agreement for the Sale of the property known as four (4) bedroom terrace duplex (corner piece), FT 15 LOT 29, Plot 57, Cadastral Zone D01, Karsana East District, Abuja, FCT with File Number MISC 116167. There is no doubt that this Agreement for the Sale of the property comes within section 1(1)(a) of the Act. Accordingly, the Claimant ought to have exhibited it along with the consent award in the affidavit in support of his application. His failure to do so is a fundamental breach of the mandatory provision of section 31(1) of the Act. The failure or omission to attach the said Agreement of Sale which contains the arbitration clause and which is, within the meaning of the Act, the arbitration agreement, is fatal to his case. I so hold.

The Courts have held that the purpose of a Notice of Preliminary Objection which strikes a challenge at the jurisdiction of the Court is to terminate a suit *in limine* where the Court finds that it lacks jurisdiction to proceed in the hearing and determination of the matter. See the case of **Zenith Bank Plc v. John & Others (2015) LPELR-24315(SC) per Peter-Odili, JSC at pp. 28 – 29, paras G – E; SPDC v. Amadi (2011) 14 NWLR (Pt. 1266) 157 at 192; and Manko & Ors v. Lafiagi Sugar Co. & Ors (2013) LPELR-20495(CA) at pp. 12 – 13, paras F – A per Galinje, JCA (as he then**

**was). In *IRC v. Askira (2022) LPELR-57704(CA) at pp. 4 – 6, paras F – D per Tobi, JCA*, the Court of Appeal held that “*the essence of the preliminary objection is to terminate the appeal. It is like aborting a baby before he is born. When a baby is aborted, the destiny of the baby is destroyed and it cannot be fulfilled. When a case is terminated at the stage of preliminary objection depending on the nature of the objection, it can be struck out or dismissed...*”**

The Respondent in its Notice of Preliminary Objection seeks inter alia the following reliefs: “(i) *An Order of this Honourable Court declining recognition and enforcement of the purported consent award made on the 4th day of March, 2022 by the purported Sole Arbitrator Usman Muhammad Abashiya; and (ii) An Order of this Honourable Court setting aside the purported consent award made on the 4th day of March, 2022 by the purported Sole Arbitrator Usman Muhammad Abashiya for being a nullity.*” I must say that the Respondent was in misapprehension of the law when it sought these reliefs through a Notice of Preliminary Objection. The purpose of a Notice of Preliminary Objection is to challenge the competence of a suit simpliciter; it cannot be used to seek for the kind of reliefs sought in the present Notice of Preliminary Objection.

The reliefs sought in the Notice of Preliminary Objection are not grantable *vide* the Notice of Preliminary Objection. By virtue of a combined reading of sections 29, 30, and 32 of the Act, such reliefs can be only heard through *an application to the Court* because they go into the validity and competence of both the composition of the arbitral tribunal and the proceedings conducted at the arbitral tribunal. Such reliefs are not threshold matters; they are matters for which evidence is required. They cannot be heard, not by way of a Notice of Preliminary Objection, but *vide* an Originating Motion on Notice.

In ***EcoBank v. Admiral Environmental Care Ltd & Ors (2021) LPELR-56130(CA) at pp. 23 – 24, paras D – A***, the Court of Appeal per Affen, JCA held that “***...in the light of the decision of the Supreme Court in Araka v. Ejeugwu (1999) 2 NWLR (Pt. 589) 107 at 121 to the effect that a party seeking to set aside an arbitral award cannot “seek to do so by way of pleading counter-affidavit in an action for enforcement of the award” but by an independent action to set aside the award brought before the Court seized of the application for registration (or recognition and enforcement) of the award, the legal propriety of the Appellant’s setting aside application brought by way of a motion in the 1<sup>st</sup> Respondent’s enforcement action is doubtful.***”

To this end, therefore, the two main reliefs sought in the Notice of Preliminary Objection are accordingly refused. Having found, however, that the Claimant has not complied with the condition precedent stipulated in section 31(2) (a) of the Act in bringing this application for the recognition and enforcement of the Consent Arbitral Award rendered on the 4<sup>th</sup> day of March, 2022 by the Sole Arbitrator Usman Muhammad Abashiya of the Uwais Dispute Resolution Centre, the Originating Motion on Notice filed on the 24<sup>th</sup> of March, 2022 seeking the leave of Court for the recognition and enforcement of the Consent Arbitral Award rendered on the 4<sup>th</sup> day of March, 2022 by the Sole Arbitrator Usman Muhammad Abashiya as Judgment of this Court is hereby struck out. The Claimant can return to this Court after he has complied with the mandatory provision of section 31(2) (a) and (b) of the Act. I will make no pronouncement on the other grounds of the Notice of Preliminary Objection as doing so will necessarily involve probing into the merits of the suit. I also make no order as to costs.

This is the Ruling of this Court delivered on the 14<sup>th</sup> day of July, 2022.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**14/07/2022**