IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS TUESDAY, THE 9TH DAY OF MAY, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

SUIT NO: FCT/HC/CV/3088/2020

BETWEEN:

AUSTEL ELUMELU …… APPLICANT

AND

DESIGN LOGIC LIMITED …… RESPONDENT

JUDGMENT

By an **Originating Summons** filed on 18th January, 2021, the Applicant prayed for the setting aside of the **part of the arbitral award** dated 9th October, 2020 delivered by Mrs. Joy O. Adesina SAN FCArb (Sole Arbitrator) on the ground that it contains **decisions beyond the scope of the submission to arbitration** as it concerns the Respondents claims in the Arbitration. The Applicant accordingly sought for a determination of the following questions:

1. **Was the Arbitrator right in ordering the Applicant to open up the site for the Respondent to ensure completion of the project, when the agreement did not support the finding and she had affirmed the correctness of the Applicant's recovery of possession of the property from the Respondent?**

2. **Did the Arbitrator not exceed her jurisdiction by drawing up a new agreement for the parties when she ordered the Respondent to ensure completion of the project within three months, with priority given to the four units belonging to the Applicant within three months from the date of the award?**

3. **Did the Arbitrator not exceed her jurisdiction by granting reliefs not sought by anybody by ordering the Respondent to pay the Applicant the sum of N10, 000, 000.00 (Ten Million Naira) together with 10% for every month it is in default?**

4. **Did the arbitrator not misconduct herself by acting in the manner stated in Issues 2 and 3 above?**

5. **Did the Arbitrator not misconduct herself by committing error on the face of record when she held that the rescission of the agreement was null and void?**

6. **Did the Arbitrator not misconduct herself when she proceeded to decide on the basis of fairness and equity in the absence of agreement by parties that she could so act, when she held that it will be "against commercial relations and equity to deny the Claimant (Respondent herein) any right in the property"?**

7. **Was the Arbitrator not wrong in dismissing the counter-claim for cost of removal of a basement in one of the units, on the ground that the Applicant was not the Department of Development Control and he was not likely to be saddled with the cost of removing the basement, despite having earlier found that the development of the basement was in violation of the approved building plan for the project and contrary to the MOU.**

8. **Did the Arbitrator misconduct herself by making awards which left room for likely further conflict and/or litigation, thereby robbing the award of finality, conclusiveness and bindingness?**

If the answers to the above questions are in the affirmative, the **Applicant** prayed for the following Reliefs:

1. **AN ORDER of Court setting aside the decision of the Arbitrator ordering the Applicant to open up the site for the Respondent to ensure completion of the project, when the agreement did not support the finding and she had affirmed the correctness of the Applicant's recovery of possession of the property from the Respondent.**

2. **AN ORDER of Court setting aside the decision of the Arbitrator ordering the Respondent to ensure completion of the project within**

three months, with priority given to the four units belonging to the Applicant within three months from the date of the award.

3. **AN ORDER of Court setting aside the decision of the Arbitrator ordering the Respondent to pay the Applicant the sum of N10, 000, 000.00 (Ten Million Naira) together with 10% for every month it is in default.**

The application is supported by a 47 paragraphs affidavit with six (6) annexures marked as **Exhibits A1-A6**.

A written address was filed in support in which nine (9) issues were raised as arising for determination as follows:

"1. Was the Arbitrator right in ordering the Applicant to open up the site for the Respondent to ensure completion of the project, when the agreement did not support the finding and she had affirmed the correctness of the Applicant's recovery of possession of the property from the Respondent.

2. **Did the Arbitrator not exceed her jurisdiction by drawing up a new agreement for the parties when she ordered the Respondent to ensure completion of the project within three months from the date of the award, with priority given to the four units belonging to the Applicant within three months from the date of the award.**

3. **Did the Arbitrator not exceed her jurisdiction by granting reliefs not sought by anybody by ordering the Respondent to pay the Applicant the sum of N10, 000, 000.00 (Ten Million Naira) together with 10% for every month it is in default.**

4. **Did the Arbitrator not misconduct herself by acting in the manner stated in issues 2 and 3 above.**

5. **Did the Arbitrator not misconduct herself by committing error on the face of record when she held that the rescission of the agreement was null and void?**

6. **Did the Arbitrator not misconduct herself when she proceeded to decided on the basis of fairness and equity in the absence of agreement by parties that she could so act, when she held that it will be "against**

commercial relations and equity to deny the Claimant (Respondent herein) any right in the property"?

7. **Was the Arbitrator not wrong in dismissing the counter-claim for cost of removal of a basement in one of the units, on the ground that the Applicant was not the Department of Development Control and he was not likely to be saddled with the cost of removing the basement, despite having earlier found that the development of the basement was in violation of the approved building plan for the project and contrary to the MOU.**

8. **Did the Arbitrator not misconduct herself by making awards which left room for likely further conflicts and/or litigation, thereby robbing the award of finality, conclusiveness and bindingness?**

9. **Was the Arbitrator right in dismissing some of Respondent/Applicant's counter-claimants with regard to the claim for cost of removal/rectification of wrongful construction in one of the units, loss of expected profits and cost of legal fees and expenses in court?**

Submissions were made on the above issues which forms part of the Record of Court. I will summarise and highlight the essence of the submissions as made out on each issue.

On **issue 1**, it was submitted that an award may be set aside if the applicant furnishes proof that the award contains decisions on matters which are beyond the scope of the submission to arbitration so that if the decisions on matters submitted for arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters no submitted may be set aside. It was contended that the Arbitrator was not right in ordering the Applicant to open up the site for the Respondent to ensure completion of the project by the Respondent within 3 months from the date of the award, when the agreement did not support the finding and she had earlier affirmed the correctness of the Applicants recovery of possession of the property from the Respondent. That the decision contradicted the earlier finding affirming that the Applicant was right to unilaterally recover possession from Respondent.

Issues 2, 3 and **4** were argued together.

The courts attention was drawn to **Reliefs (h)** and **(i)** and the Relief in the counter-claim where Applicant sought a declaration that it rightfully took

possession of his property based on the agreement of parties which the Arbitrator granted. It was contended that the orders of the Arbitrator that the Respondent shall complete the project within 3 months; that the units belonging to Applicant be accorded priority and that in default, Respondent will pay a certain amount to Applicant were not claimed by any of the parties and that there is equally no evidence that by the extension, the Respondent will conclude the project.

That the Arbitrator equally found that the Respondents failure to complete the project was as a result of lack of funds and therefore the decisions reached were neither in line with the pleadings or the agreement of parties and was therefore beyond the scope of the arbitration and therefore led to a misconception of the issues in controversy and thereby occasioned injustice to the Applicant making the award liable to be set aside as null and void. The cases of **Savoia Ltd V Sonubi (2000) 12 NWLR (pt.682) 539; Kano State Urban Development Board V Fanz Const' Co. Ltd (1990) LPELR – 1659 (SC)** were cited.

On **issue 5,** it was submitted that the Arbitrator misconducted himself by committing error on the face of the record as it concerns claimants/respondents claim in the arbitration when she held that the **rescission** of the agreement by the Applicant was null and void. That the arbitrator erroneously arrived at the decision notwithstanding having earlier held that the Applicant rightly recovered possession in the event of breach of the project duration and that there was nothing in the MOU stipulating the time within which Applicant could take over the property. That paragraph 4 of the agreement gave the Applicant the right to terminate the MOU on failure of the Respondent to complete the project as envisaged under the agreement. That where an arbitrator has misconducted himself or where the award has been improperly procured, the award may be set aside. The case of **BUA Int'l Ltd V Sketahyz Consulting Ltd (2019) LPELR – 47374 (CA)** was cited.

It was further submitted that in contract law, rescission is an equitable remedy which allows a contractual party to cancel the contract. That in this case the power to rescind (terminate) the contract is provided for in Clause 4 of the Agreement and it was an option exercised by the Applicant in this case and that it was therefore wrong for the arbitrator to hold that the agreement did not provide for rescission and that the rescission by Applicant was null and void.

On **issue 6**, it was submitted that the respondent misconducted herself and thereby made a decision beyond the scope of the submission to arbitration when she proceeded to decide on the basis of fairness and equity in the absence of agreement by parties that she could so act. That the decision the arbitrator made that it will be "against commercial relations and equity to deny the claimant (Respondent herein) any right in the property" was outside the scope of the arbitration as parties did not expressly authorize the arbitrator that the dispute be decided on the basis of fairness and equity. That in arbitration, there is a principle of "party autonomy" which allow parties to choose the means of resolution of dispute. That this concept in the context of arbitration requires that the parties grant the arbitrator power to dispense with the consideration of law and consider solely what they consider to be fair and equitable in the case at hand. That in the absence of an authorization by the parties, the arbitrator could not have decided any issue on the basis of equity and fairness and therefore misconducted herself in the process. The provision of **Section 22 (3) of ACA** was cited.

With respect to **issue 7**, it is noted that the submissions made were in respect of **issue 8**. It was submitted that the arbitrator made awards which left room for likely further conflicts and litigation thereby robbing the award of finality, conclusiveness and bindingness. That the extension of the time to complete the project and the award of some amount in the event of default among some other awards, for example, were not asked for and thereby amounted to making a contract for the parties and this robbed the award of finality as the applicant was denied the right to fair hearing in that he did not have an opportunity to join issues on the point or to address the arbitrator on the propriety of making such an order.

There were thus no direct submissions on **issues 7** and **9** in the address.

At the hearing, learned **Senior Counsel to the Applicant** relied on the supporting affidavit and adopted the submissions in the written address in urging the court to set aside a part of the **arbitral award dated 9th October, 2020** on the grounds that it contains decisions beyond the scope of the submission to arbitration as it concerns Respondents claim in the arbitration. He equally prayed that the decision on matters submitted to arbitration can be separated from those not submitted, thereby justifying the setting aside of only those parts of the award which contain decisions on matters not submitted to arbitration.

In **opposition**, the **Respondent filed a 63 paragraphs** counter-affidavit with 26 annexures marked as **Exhibits A-K4**. The Respondent equally filed a written address in support in which five (5) issues were raised as arising for determination as follows:

"i. Did the Sole Arbitrator rightly hold that the rescission of the Memorandum of Understanding by the Applicant is null and void?

ii. Did the Sole Arbitrator misconduct herself by holding that it will be against commercial relations and equity to deny the Respondent herein any right in the property considering that the Memorandum of Understanding already vests equitable interest in addition to legal ownership on the Respondent?

iii. Was the Sole Arbitrator right in ordering the Applicant to open up the site for the Respondent to ensure completion of the project?

iv. Was the Sole Arbitrator right to have ordered the Respondent to ensure completion of the project within three months from the date of award, with priority given to the four units belonging to the Applicant and ordering the Respondent to pay the Applicant the sum of N10, 000, 000.00 (Ten Million Naira) together with 10% for every month of default?

v. Did the Sole Arbitrator rightly dismiss the Applicant's counter-claim for cost of the removal of a basement in one of the units, loss of expected profits and cost of legal expenses?"

The submissions on these issues equally forms part of the Record of Court. I shall here too summarise and highlight the essence of the submissions made on each of the issues.

On **issue (i)** on whether the rescission of the MOU made by Applicant was right or not, it was contended that an arbitral proceeding is a *sui generis* proceeding and that an application to set aside an award is not in the nature of an appeal as an award is regarded as final and conclusive judgment on all matters referred. That the arbitrator rightly construed the provision of **clause 4** of the MOU in coming to the conclusion that rescission of the MOU by the Applicant was null and void as a proper construction of the clause 4 and the entire MOU does not give the Applicant the power to rescind the agreement and that parties are bound by the terms of the MOU and that the arbitrator did not misconduct

herself in the finding that rescission was not available. That there is no **contradiction** in her findings that the Applicant has "right to recover possession and not a right to a rescind" the MOU as the two are different things. That while the former is in the MOU, the right to rescind is not in the MOU. That clause 4 of the MOU may have the title "Duration, Delay and Termination" but the use of the word termination in the heading has no bearing with the clause 4 and offers no legitimate aid in the constitution of the clause and cannot control the language used therein.

That the right given to Applicant to recover possession does not amount to a right to rescind the contract as the agreement or MOU recognises the **equitable interest and legal ownership of the Respondent in the six units on the plot vide Clauses 1 (f) and 3 of the MOU**.

It was submitted that the construction placed on **Article 4 of the MOU** as it applies to the nullity of the Applicants rescission of the MOU is valid and that where an Arbitrator makes a decision or findings on critical clauses in an agreement, such decisions cannot be set aside by a court even if the court would have come to a different conclusion. The cases of **NNPC V Roven shopping Ltd (2019) 9 NWLR (pt.1676) 67 at 89 and Campt. Comm & Ind. Inv. V O.G.S.W.C (2002) 9 NWLR (pt.773) 629 at 656** were referred to. It was thus submitted that there is no error of law in the circumstances.

On **issue (ii)**, it was submitted that the arbitrator did not misconduct herself when she held that it was against commercial relationship and equity to deny the Respondent any right in the property. It was submitted that the commercial relations between the parties are governed by the MOU which recognizes the equitable interest of the Respondent in six units of the property. That **Section 22 (3) of ACA** relied on by Applicant has no application as the arbitrator only decided as the parties expressly authorized her and made findings based on the provisions of the MOU as reflected clearly in the final award which was based on the MOU and the materials before the arbitration.

On **issue (iii)**, it was submitted that the arbitrator was right in ordering that the site be opened for the completion of the project within 3 months as the MOU supports this findings. That the fact that the arbitrator found the Applicants recovery of "possession" as right does not conflict with the order for the site to be reopened. That the Reliefs claimed by Respondent at the arbitration amongst others included **Reliefs (a), (b)** and **(d)** for declaration that the respondent was

wrong in unilaterally taking over possession of the project site including the 6 units belonging to claimant (Respondent in this case); that the Respondent (Applicant in this case) is not entitled to any property other than the four units agreed under the MOU and an order directing the Respondent to re-open the site and forthwith hand over same to the claimant to enable it complete the project.

That clause 3 of the MOU recognizes the legal ownership and interest of **Respondent in 6 units of 5 bedroom** on the plot while Clause 1(f) of the MOU provides that the land owner is to execute a deed of partition/assignment when construction is at lintel level in respect of the units which the developer has legal and equitable interest and shall be registered at AGIS. That it is in **recognition of these clauses** and the fact that the **arbitrator found during a visit to the locus in quo that all the "ten units"** (of building) has been built up including roofing and the heavy investment made by Respondent that informed the decision made which cannot be faulted.

That the Arbitrator recognized and upheld the existing legal and equitable Right of the Respondent by virtue of the MOU and that this does not conflict with the sole arbitrators holding that the Applicant rightly recovered "possession" of the plots. That while the Applicant may have exercised his right to recover possession, the Respondent still has **rights over the six units** and that is why the arbitrator ordered for the site to be re-opened to complete the project. That the arbitrator did not order Applicant to relinquish possession but ordered for re-opening of the site to enable Respondent complete the project in recognition of Respondents own rights, equitable and legal in the **6 units on the land**.

That in the circumstances, there is no erroneous legal proposition forming the basis of the award and the arbitrator did not decide on inadmissible evidence or principles of construction which the law does not countenance.

On **issue (iv),** it was submitted that the arbitrator did not exceed its jurisdiction or draw up a new agreement in making the order extending the three months time for completion with priority given to the units belonging to the Applicant and the monetary award in the event of default.

That all these orders are all tied to **Relief (d)** on the claimants Reliefs before the arbitrator. That the Reliefs related to time lines and penalty provision in default are essentially consequential reliefs which flow from the inherent powers of the arbitrator. The cases of **Eze V Gov. Abia State (2014) 14 NWLR (Pt.1426)**

192 at 216; Akinbobok V Plisson Fisko (1991) 1 NWLR (pt.167) 270 at 288 were cited on what constitutes a consequential order.

That the **consequential orders** made by the arbitrator in this case were necessary and deserving because the Applicant has held out time to be of essence for the project and that was his reason for rescinding the MOU. It was submitted that it would have been counter-productive for the arbitrator to make an order to re-open the site and complete the projects, without more, especially after holding that the Respondent has defaulted with respect to the project duration. That the arbitrator was right in invoking her inherent powers in granting the reliefs with respect to time line, priority of development of the units of Applicant penalty for default and that these reliefs are specifically targeted at Respondent, not Applicant.

It was further submitted that there was **abundant evidence** before the court to support the decision of the arbitrator that the project can be completed within the three months extension as the arbitrator had already found that the project **was at roofing stage and the Respondent had made a case that the project was 90% completed** and that the Respondent had amply demonstrated willingness to complete the project within the said time line but the Applicant was not interested.

The Respondent also submitted that the order re-opening the project site also takes care of the provision of two units of generators and two boreholes as stipulated in Clause 2 (a) of the MOU.

It was submitted that all the **orders** made by the arbitrator flow from the MOU of parties and does not amount to rewriting the agreement of parties.

On **issue (v)**, it was again submitted that arbitration proceedings are *sui generis* and that the role of the court in an application to set aside is not appellate and therefore the court cannot go into the merits of the award.

It was submitted that in the circumstances, the complaints relating to refusal by the arbitrator to grant the counter-claim for cost of removal/rectification of wrongful construction in one of the units, loss of expected profits and cost of legal fees is an attempt by the Applicant to appeal the final award which is not availing. That the award of the Arbitrator with respect to the claim for wrongful construction of the basement in one of the units is clear and should be upheld.

It was further contended that Applicant believes erroneously that title in 6 units of the property was only to pass to respondent upon successful completion of the project but that **Clause 20 of the MOU** properly understood only provides for timeline for eventual management of the Estate as well as the allocation made to Applicant. That **Clause 1 (f) of the MOU** provides clearly that a deed of partition/assignment shall be executed by the Applicant with respect to the 6 units when construction gets to lintel level and that the arbitration confirmed during her visit to the locus that the building had reached Roofing level far beyond the provision of the clause. The court was urged to uphold the final award of the arbitrator.

At the hearing, **learned Senior Counsel to the Respondent** equally relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to hold that the award of the arbitrator is final and conclusive judgment on all the matters referred and accordingly valid.

I have carefully considered all the issues raised by parties and the submissions made. Parties may have raised so many issues, but the very fundamental question is whether the Applicant has furnished or established clear legal grounds or parameters, allowed by law, that would allow for the setting aside of a part of the arbitral award. The questions raised by Applicant are essentially the grounds which, if successful, would provide both factual and legal basis to grant the application and the Reliefs claimed.

The issue thus raised by court is not raised as an alternative to the issues raised by parties. The issue however provides broad platform to consider and cumulatively treat all the questions and issues raised by parties and it is on the basis of this issue that I will now proceed to consider all issues raised by parties and the submissions made.

It is however important to state that this originating summons, **once again, essentially puts into focus** the fundamental question of the remit of the powers of court to intervene in **arbitral proceedings**. It is a matter that continues to generate considerable debate in legal circles, perhaps because of the fluidity and interplay of principles and it is thus a matter that must be approached and dealt with carefully and or with circumspection.

Let us start by briefly defining the term arbitration as it provides a general philosophical basis in understanding what it entails and how the issues raised perhaps ought to be situated and dealt with.

In **NNPC V Lutin Invest. Ltd (2006) 2 NWLR (pt.965) 427**, the Supreme Court adopted the definition in Halbury's law of England where an arbitration was defined as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. See also **Kano State Urban Development Board V Fanz Const' Ltd (1990) LPELR – 1656 (SC)**.

Arbitration is therefore essentially a private mechanism for the resolution of disputes which takes place pursuant to an agreement between two or more parties, under which, the parties agree to be bound by the decision to be given by the arbitrator according to law after a fair hearing and such decision being enforceable at law.

In **Nigeria**, it is **common ground** that arbitration and indeed arbitral proceedings are generally governed by the Arbitration and Conciliation Act (ACA) cap. A18, LFN and the Rules made pursuant thereto.

Arbitration is essentially therefore driven by the parties and our courts are duty bound to promote arbitration as a freely adopted contractual desire of the parties, not merely as a means of decongesting our heavy dockets but also as a necessary adjunct to the entire legal system. Arbitration it must be underscored erupts from the contracts of parties and because of that, our courts have usually exercised very liberal jurisdiction in other to ensure that arbitral proceedings are not bedeviled by the normal bottlenecks associated with regular civil proceedings. See **L.S.W.C V Sakamori Const. (Nig.) Ltd (2011) 12 NWLR (pt.1262) 569**.

Yes the process may essentially be driven by the parties, but the courts are permitted to intervene in arbitral proceedings but only in the manner allowed by law or the Act. It is only where there is an express provision in the Act that the courts may intervene. See **Section 34 of the ACA** which is the bedrock of the intervention of courts in Arbitration. There can therefore not be any intervention outside the scope of **Section 34** and other sections of the Act permitting the intervention of courts.

In the present case, the intervention sought by the Applicant is in relation to setting aside **an arbitral award**. **Sections 29 and 30** of the Act provide the clear grounds upon which an arbitral award may be set aside. They are that:

(a) Where the award contains decisions on matter which are **beyond the scope** of submission or arbitration;

(b) Where the arbitral proceedings or award has been **improperly procured** as for example, where the arbitrator **has been deceived** or

(c) Where the arbitrator or umpire has **misconducted himself**; or

(d) Where there is an error of law on the face of the award.

In interpreting the provision of a statute, the courts have been enjoined to confine themselves to the specific words of the statute. Therefore where a party seeks to set aside an arbitral award, he must come within the confines of **Sections 29 and 30 of the ACA** and the courts in intervening must also confine itself to the wordings of the section, because an arbitral award cannot be set aside willy nilly or on whimsical grounds or no grounds at all.

I must equally underscore the point now before I shortly start situating the extant complaints or grievance that the exercise of the power to set aside an award are unambiguous. The jurisdiction the court exercises is a **special one** and limited in scope. Consequently, the exercise of the power must be shown to arise or be situated within clear restricted confines and scope of **Sections 29** and **30**. The rationale for this position as stated by authorities of our Superior Courts is not farfetched as it is apparent by the Act that the legislation intended to give as much support and recognition to awards and in so doing has limited the circumstances under which an attack can be made to such award(s). See **G.K.N V Mathro (1976) 2 Lloyd's Rep. 555 at P.575 and Olleifficio Zucchi S.P.A. V Northern Sales Ltd (1965) 2 Lloyd's Rep. 496.**

I had at the beginning of this judgment situated the **questions and grounds** of the present complaint or challenge. The validity or otherwise of these complaints must be situated within the facts of this case and most importantly the award. I note that in the addresses of parties on both sides of the aisle, extensive submissions were made over findings of facts and conclusions of law made by the arbitrator as if this is an appeal and it appears to me that there is a misconception on the specific role of a court in matters like this.

The High Court does not sit as an **appellate court** over the award of an arbitrator(s). The High Court is not **empowered** to determine whether or not the findings of the arbitrators and their conclusions were **wrong in law**. The **High Court is to look at the award and determine whether on the state of**

the law as understood by them and as stated on the face of the award, the arbitrator complied with the law as they themselves rightly or wrongly perceived it. The approach is **subjective**. The court must place itself in the position of the arbitrators, not above them, and then determine on the hypothesis whether the arbitrators followed the law as they understood and expressed it. This is what is meant by the expression "error of law on the face of the record." See **Mutual Life & Gen. Ins. Ltd. V Iheme (2014) 1 NWLR (pt.1389) 671; Baker Morine (Nig.) Ltd V Chevron (Nig.) Ltd (2002) 12 NWLR (pt.681) 393**.

Without going into too much details, except of course it is essential to the resolution of this case, it is a fact not in dispute on the materials, that **following a dispute with respect to the application of and or remit of a memorandum of understanding executed on 15th March, 2016, the Honourable Chief Judge of the High Court, FCT appointed Mrs. J.O. Adesina SAN, FC Arb as the sole arbitrator to arbitrate the dispute between the parties**.

Parties then filed their pleadings. The Respondent/Claimant Reliefs as contained in the **points of claim** on pages 7-8 of the award are as follows:

(a) A Declaration that the Respondent was wrong in unilaterally taking over possession of the project site including the 6 units belonging to the claimant/subscribers.

(b) A Declaration that the Respondent is not entitled to any property other than the four units agreed under the Memorandum of Understanding.

(c) A Declaration that even though the project was not completed within the duration in the Memorandum of Understanding, the Respondent cannot rely on Clause 4A or any other Clause thereof to take over the whole property as by his actions/conduct and time lapse between the end of the duration and time purported takeover he had waived his right if any.

(d) An Order directing the Respondent to reopen the site and forthwith handover same to the claimant to enable it complete the project.

(e) An Order Restraining the Respondent whether by himself, his privies, agents howsoever from further closing the project site or otherwise preventing the Claimant from access to the project site at Plot No.1105 Cadastral Zone A09, Guzape District, Abuja.

(f) An Order directing the Respondent to comply with the Memorandum of Understanding concerning passing of title of the six units belonging to the claimant.

(g) An Order directing the Respondent to pay to the Claimant the sum of N100, 000, 000.00 (One Hundred Million Naira) as damages for damaging the reputation and goodwill of the Claimant.

The **Applicant/Respondent** filed a **defence** and set up a **Counter-Claim** on page 19 of the award thus:

(a) A Declaration that the contract in the Memorandum of Understanding executed by parties in issue was fundamentally breached by the claimant.

(b) A Declaration that the Respondent (Land Owner) rightfully took over possession of his property based on the Agreement inter parte.

(c) The sum of N240, 000, 000 (Two Hundred and Forty Million Naira) at the rate of N48, 000,000 naira per annum being loss of expected income rent on the Respondent/Counter-claimant's 4 units building for 5 years as contained in the lease agreement hereto attached between the Respondent Counter Claimant and E. Dums Properties and Investment Co. Ltd.

(d) N20, 000,000 (Twenty Million Naira) being the cost of removal/rectification of wrongful construction of basement in one of the units of building earlier alluded to.

(e) N2.5 Million Naira being the cost of legal representation and expenses in court over a dispute that should have been resolved by Arbitration as agreed by parties but wrongly instituted at the High Court of the Federal Capital Territory, Abuja by the claimant.

(f) N3 Million naira representing the cost of legal representation at this arbitral proceeding.

(g) The cost of this arbitration as may be assessed by this Honourable Tribunal.

(h) General damages in the sum of N30, 000, 000 (Thirty Million Naira) for breach of contract by the claimant.

It is stating the obvious that the above processes filed by parties streamlined and or defined the facts in dispute between parties before the arbitrator. It was upon these issues that the arbitrator will adjudicate between them.

At the end of the hearing, after considering all the pleadings, evidence presented during trial and the final submissions, the arbitrator formulated three issues for determination as follows at **page 45** of the award thus:

"1. Whether the Respondent was right when it took over the property when he did, having failed to so do at the end of the sixteen months' time frame provided by the Memorandum of Understanding and therefore not liable to pay damages to the claimant.

2. Has the Claimant conducted itself in such a manner in the execution of the agreement that it will entitle the Respondent to damages?

3. Whether the principle of *quic quid plantatur solo solo cedi* will apply in this case."

The arbitrator found in favour of the Applicant/Respondent on **issue 1**. On issue 2, the arbitrator held that the Applicant/Respondent was entitled to damages due to his inability to make use of the property and assessed the sum of **N50, 000, 000** only as damages payable to the Respondent by the claimant with 10% interest from the date of the award until the sum is paid.

With respect to **issue (3)** from where the bulk of the present complaint arises from, the arbitrator held at **pages 57-58** of the award and I will quote her ***in extenso*** as follows:

> **"I have taken time to critically evaluate the Memorandum of Understanding and I find nowhere where it was stated that the Land owner may terminate or rescind the contract. What it provided under clause 4a is that in the event of the Developer breaching the time frame agreed by the party, "the Land owner may recover possession of the aforementioned land/plot"**
>
> **I have no evidence placed before me by either parties to this arbitration to demonstrate that other than the provision of the Land for development, that the respondent invested anything else in the project. As rightly submitted by the respondent, as held by the Supreme Court in the case of NEPA V Mudasiru Amusa & Anor**

(supra), the maxim *qui quid plantator solo solo cedi* is still good law except that it is subject to any contract entered into by the parties and also to the doctrine and rules of equity.

In this case it was sequel to the agreement between the parties that the claimant moved into the land and commenced construction thereon. It is in evidence before the tribunal that the Claimant was responsible for the clearing and construction of all the structures on the land which has been admitted by the Respondent to be at 60% stage of development while the Claimant states it is at 90%, neither of the parties called an estate valuer to assist the tribunal with the percentage of the total development of the project. The Claimant has no doubt invested funds based on the Respondent holding out to it that it will be compensated/rewarded with ownership of six out of the ten units of five bedroom detached duplexes with boy's quarters it was to construct on the plot.

From the visit to the locus, the tribunal observed that all the ten units had been built up including the roofing. The finishing of some of the units belonging to the Claimant had even commenced although it said it was the subscribers that are responsible for the work on their units.

It will thus be against the spirit and intent of good commercial relationship and equity to deny the claimant of any right in the property it had invested so heavily into. It is for this reason that I hold that the ancient principle of *qui quid plantatur solo solo cedi* is inapplicable in this case.

In view of the fact that the contract has been partly performed, it will in the interest of good commercial relations that the claimant is allowed to as a matter of urgency complete the project within three months from the date this award is published and the four units belonging to the Respondent is to be accorded priority along with the provision of the amenities i.e. two units of generators and two boreholes as stipulated in clause 2 (e) of the Memorandum of Understanding. Where the Claimant fails to complete the project within three months of this Award, he shall be liable to pay to the Respondent the sum of ten Million (N10, 000,000) Naira only for

every month the claimant is in default, which sum will also attract an interest of 10%."

Following the above, the arbitrator made the **final conclusions at pages 58-60 of the Record**.

I have deliberately and at some length related the material facts and the findings made and conclusions reached. The key question here is whether from the entire proceedings leading to the award made, the Applicant has established that the award is caught by any of the grounds contained in **Sections 29** and **30** of the Act. Again at the risk of prolixity, this court in exercising its supervisory oversight functions does not sit as an appellate court over the decision of the Arbitrator.

Now **questions 1-4** (supra) essentially projects that the order(s) by the arbitrator to open the site to ensure completion of the project when the agreement did not support the finding and after she had affirmed the applicant right of recovery of possession was wrong and that she exceeded her jurisdiction by drawing up a new agreement when she streamlined a time frame for the completion of the contract with priority to the Applicants four units and also a penalty sum in the event of a default.

I had earlier deliberately at length situated the claims before the arbitrator. **Reliefs (a)** and **(b)** situates claims with respect to 6 units of the property as belonging to the claimant/respondent and 4 units of the property for the Applicant within the context of the Agreement of parties. **Relief (d)** prays for an order that the respondent re-open the site to enable claimant complete the project and **Relief (e)** seeks a restraining order preventing Applicant from seeking to restrict access to the site.

In the context of the facts and issues streamlined for determination on the pleadings and findings of the arbitrator, it is difficult to situate on the basis of **Question 1-4**, the specific matters which can be said to be beyond the scope of submission or arbitration. The **agreement or MOU** dated 15th March, 2016 was one in which it was agreed that the claimant is to build and construct **10 units of 5 bedroom detached duplexes with boys quarters on Respondents plot located at Plot 1105, Guzape District Abuja within a defined time frame** and or where there is an extension. The Arbitrator may have found that the claimant did not meet up with the time frame but **clause 3** on

consideration/compensation and **clause 1 (f)** of the memorandum provides as follows:

> ***CONSIDERATION/COMPENSATION***
>
> ***"In consideration of the land/plot (Plot No. 1105 Guzape District, FCT, Cadastral Zone A09, evidenced by C-of-O No. 1807w .633br .3ae8u. 20 with File No MISC 56450, dated 25th September, 2003 and measuring about 4, 348.09m2 with the name International Trading and Contracting Ltd) which the Landowner shall make available to the Developer, for building and construction which the developer shall undertake on the aforementioned plot, the Land Owner shall have legal ownership and equitable interest in 4 (four) units of 5 (five) bedroom detached duplexes with Boy's quarters, while the developer shall have legal ownership and equitable interest in 6 (six) units of 5 (five) bedroom detached duplexes with boys quarters on the aforementioned land/plot."***
>
> ***Clause 1 (f):***
>
> ***"The Landowner covenants to execute a deed of partition/assignment when construction is at lintel stage, in respect of the units which the Developer has legal and equitable interest and shall be registered in the Abuja Geographical Systems (AGIS)."***

The above provisions are clear.

It was based on the **specific claims** made with respect to the **units** and the claim for the site to be re-opened and the above clauses, that the following findings which ought to be highlighted again at the risk of prolixity, can be situated at **pages 57-58** of the award thus:

> "**In this case it was sequel to the agreement between the parties that the claimant moved into the land and commenced construction thereon. It is in evidence before the tribunal that the Claimant was responsible for the clearing and construction of all the structures on the land which has been admitted by the Respondent to be at 60% stage of development while the Claimant states it is at 90%, neither of the parties called an estate valuer to assist the tribunal with the percentage of the total development of the project. The Claimant has no doubt invested funds based on the Respondent holding out to it**

that it will be compensated/rewarded with ownership of six out of the ten units of five bedroom detached duplexes with boy's quarters it was to construct on the plot.

From the visit to the locus, the tribunal observed that all the ten units had been built up including the roofing. The finishing of some of the units belonging to the Claimant had even commenced although it said it was the subscribers that are responsible for the work on their units.

It will thus be against the spirit and intent of good commercial relationship and equity to deny the claimant of any right in the property it had invested so heavily into. It is for this reason that I hold that the ancient principle of *qui quid plantatur solo solo cedi* is inapplicable in this case.

In view of the fact that the contract has been partly performed, it will in the interest of good commercial relations that the claimant is allowed to as a matter of urgency complete the project within three months from the date this award is published and the four units belonging to the Respondent is to be accorded priority along with the provision of the amenities i.e. two units of generators and two boreholes as stipulated in clause 2 (e) of the Memorandum of Understanding. Where the Claimant fails to complete the project within three months of this Award, he shall be liable to pay to the Respondent the sum of ten Million (N10, 000,000) Naira only for every month the claimant is in default, which sum will also attract an interest of 10%."

The above **pronouncements** were in the clear context of the scope of the issues submitted for arbitration. If the subject of dispute is about completion of a project and the claimant has invested huge funds for which he is to be compensated with 6 units and the arbitrator on a visit to the locus had found that all the 10 units has been built up including the roofing and that some of **"the finishing of some of the units belonging to claimant had even commenced"** even if there is no clarity as to who is responsible for the finishing, I am not sure the argument will really fly that in extending the time for completion of the project within a defined time frame with priority to the 4 units of Applicant and with a default penalty clause in the event the extended time was not met, that

the arbitrator exceeded her jurisdiction or made a new agreement for parties. If a clear specific request or claim was made for re-opening of the site for the project to be completed as done here, it appears to me that the extension could certainty not be at large or without an end. The fact that it was circumscribed within proper or reasonable limits and not allowed to run wild with particular attention first to the units of applicant with a default penalty in the event of failure to meet with the extension appear to me a balanced approach to the peculiar dynamic of the facts before the arbitration and ensuring fairness and an even handed approach to the complaint or issue.

The Fundamental question, stripped of all niceties of legal arguments is this: Where is the justice and fairness of the position taken by the Applicant particularly in the context of the MOU, Arbitration Agreement, the facts of the case and the clear findings of the Arbitrator?

If the purpose of this present challenge is for the Applicant to ultimately appropriate all the 10 (ten) units of 5 (five) bedroom detached duplexes with Boy's Quarters to himself which have all reached **advanced roofing stage** with finishing having already started on the 4 units belonging to him, after having not invested a kobo, apart from the provision of land, leaving the Respondent with literally nothing after the huge investments they made in the construction, then that cannot be right or fair. The validity of such a position advanced in the present challenge must be rooted in justice. If however justice to all parties, influenced and propelled solely by the MOU is the goal and or objective, and it necessarily ought to be and indeed must be so, then the decision of the arbitrator clearly rooted in the arbitration agreement which will enable parties enjoy the benefit of the agreement within a specific time frame, as a legal but also moral imperative, must be respected by the parties to the MOU.

The **additional orders** thus made result clearly from the finding related to the claim for the re-opening of the site for the claimant to complete the project. These are off shoots of the main relief sought and owes its existence to the main **Relief (d)**. See **Adedeji Adeoyin V Doyin Sonuga & ors (1999) 13 NWLR (pt.635) 355 at 363**. These were orders necessarily flowing directly and naturally from and inevitably consequent upon it. In my opinion, it simply gave effect to it and it is not a fresh claim(s) or an unclaimed or unproven Relief. See **Dr. M.T.A. Liman V Alhaji Shehu Mohammed (1999) 9 NWLR (pt.617) 116 at 134 (SC) citing Akinbobok V Plisson Fisko Nog. Ltd & ors (1991) 1 NWLR (pt.167) 270 at 288**.

A **consequential order** as made here by the arbitrator is merely incidental to a decision properly made but one which gives effect to the decision. It arises logically and inevitably by reason of the fact that the order in question is per-force obviously and patently consequent upon the decision given by the court and does not need to be specifically claimed as a distinct or separate head or item or relief. See **Ogbahon V The Registered Trustees of Christ Chosen Church of God & Anor (2002) 1 NWLR (pt.749) 675 at 701; Liman V Mohammed (supra); R.S.C.S.C.V & Anor V Toboinengi Fubara (2002) 5 NWLR (pt.759) 109 at 117**.

The complaints covered by **Questions 1-4** do not come under the purview of the grounds covered by **Sections 29 and 30 of the ACA.** I cannot factually situate here where the award on the basis of the questions formulated or covered by **Questions 1-4** dealt with or contains decisions on matters which can be said to truly be beyond the scope of submission or arbitration.

Questions 5 and **6** relate to whether the finding that the rescission of the agreement was null and void and the finding based on fairness and equity in the absence of agreement did not amount to a misconduct.

Now it is true that on the authorities, the word **"misconduct"** is said to be an expression of wide import and that it is difficult to give an exhaustive definition of what may amount to misconduct on the part of the arbitrator. Different texts and judicial authorities explain misconduct in terms of or by reference to examples or different scenarios. See **Mutual Life & Gen. Ins. Ltd V Iheme (2014) 1 NWLR (pt.1389) 671; A. Savois Ltd V Sonubi (2000) 12 NWLR (pt.682) 539**.

However in the **Halbury's laws of England, (4th ed.) volume 2 para. 622**, it was stated that every irregularity of procedure does not amount to misconduct and it then listed examples of when misconduct might occur.

I am not sure, here again, that the findings with respect to rescission and the reference to equity and fairness forms the grounds for setting aside of an arbitral award within the context of the facts of this case and the purview of **Sections 29 and 30 of ACA**.

The pronouncements here all flow directly from issues arising from the subject matter of dispute and the **MOU** itself which provides the basis for the mutual reciprocity of legal obligations. The finding with respect to **rescission** was one

made within the context of the MOU which the arbitrator found does not provide for it particularly in the context of how much the **breaching party has already done to fulfill its end of the bargain**? **This factor hinges on timing: how far along the parties are in carrying out their contractual obligations**? The arbitrator found amongst others that the claimant/respondent has made huge investments and the applicant did nothing apart from providing the land; the 10 units have already **reached roofing** with finishing on Applicants units having already commenced and bearing in mind that other clauses of the MOU provide that a **deed of partition/assignment be executed once construction reach lintel level**, in respect of the units which the developer has legal and equitable interest shall be registered at AGIS, the arbitrator found that rescission was not available to Applicant.

It cannot be argued here with any conviction that the arbitrator failed to comply with the terms, express or implied of the arbitration agreement; or made an award which on ground of public policy ought not to be enforced; or failed to act fairly towards both parties or failed to decide matters which were offered to her.

Now with respect to the complaints of reference to equity and fairness, again **clause 1 (f)** and **clause 3** on **consideration/compensation** of the Agreement or MOU of parties unequivocally talks about **legal and equitable interest of parties**. The agreement thus recognizes implicitly that equity and fairness is a fundamental pillar on which the whole agreement is based on; but it was not the sole basis for the findings made. The MOU or Agreement itself at the risk of prolixity reaffirms the following self evident truths:

"1. BACKGROUND:

(a) The Developer is a company, incorporated under the Companies and Allied Matters Act, CAP C20 Laws of the Federation of Nigeria, 2004 and carries on the business of real estate building, designing and construction in Nigeria and also has its registered office address in Nigeria.

(b) The Landowner is the beneficial owner of the plot of land situated at Plot No. 1105 Guzape District, FCT Zone A09, evidenced by C-of-O No. 1807w-1dboz-633br-3ae8u-20 with File No. MISC 56450, dated 25th September, 2001 and measuring about 4, 348.09m^2 with the name International Trading & Contracting Ltd…

(e) The Developer is desirous of building and constructing 10 (ten) units of 5 (five) bedroom detached duplexes with Boy's Quarters on the aforementioned plot, and the Landowner has agreed to go into partnership with the Developer by providing the aforementioned plot for the building and construction of the 10 (ten) units of 5 (five) bedroom detached duplexes with Boy's Quarters.

2. THE PROJECT

(a) The Land owner shall partner with the Developer, by making available the aforementioned plot of land, (Plot No. 1105 Guzape District, FCT Cadastral Zone A09, evidenced by C-of-O No. 1807w-1dboz-633br-3ae8u-20 with File No. MISC 56450, dated 25th September, 2001 and measuring about 4,348.09m^2 with the name International Trading & Contracting Ltd) for the building and construction of 10 (ten) units of 5 (five) bedroom detached duplexes with Boy's Quarters on the aforementioned plot of land…

(c) The Landowner and the Developer covenant that the original title documents shall remain in the custody of the Landowner for safe custody. However where and when it becomes necessary for a prospective client to conduct search at the Abuja Geographic Information Systems (AGIS), the Landowner shall release same from safe custody and accord the prospective buyers and the Developer access to the title documents for such purposes.

3. CONSIDERATION/COMPENSATION

(a) In consideration of the land/plot (plot No 1105 Guzape District, FCT Cadastral Zone A09, evidenced by c-of-O No. 1807w-1db0z-633br-3ae8u-20 with File No. MISC 56450, dated 25th September, 2001 and measuring about 4,348.09m2 with the name International Trading & Contracting Ltd) which the Landowner shall make available to the Developer, for building and construction which the Developer shall undertake on the aforementioned plot, the Land Owner shall have legal ownership and equitable interest in 4 (four) units of 5 (five) bedroom detached duplexes with Boy's quarters, while the Developer shall have legal ownership and equitable interest in six (6) units of 5 (five) bedroom detached duplexes with boy's quarters on the aforementioned land/plot.

15. OBLIGATION TO CO-OPERATE

The parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement. Whenever a consent or approval is required by one party from the other party, such consent or approval shall not be unreasonably withheld, delayed, or conditioned.

20. ENTIRE AGREEMENT

(a) After completion of the building and construction, execution of the deed of partition, the eventual management of the estates shall revert back to the Landowner and may partner with the Developer if he so wishes.

(b) Houses D1004, D1006, D1008 and D1010 will be allocated to the Landowner after completion."

The above provisions again are clear projecting parties working together towards realizing the objectives of the agreement/MOU which is the building and construction of 10 (ten) units of 5 bedroom detached duplexes with Boy's Quarters. The interest with regards to the specific units have been largely defined and assigned. Indeed a **deed of partition** by now ought to have even been prepared and registered in favour of Respondent with respect to their 6 units. The intended target or objective of the project having essentially been substantially completed, the arbitrator at **page 58** stated thus:

> **"From the visit to the locus, the tribunal observed that all the ten units had been built up including the roofing. The finishing of some of the units belonging to the claimant had even commenced although it said it was the subscriber that are responsible for the work on the units."**

It cannot therefore be right or correct to use a **phrase or sentence** in the entire decision and isolate it and then use or project it as the sole basis of the decision to serve a particular purpose. The sentence or phrase was part of a greater whole and to therefore properly place or situate the decision, it must as of necessity be read as a whole and not pockets of it to arrive at a fair reflection of what the arbitrator decided and the basis**. Questions 5** and **6** clearly do not provide a proper legal basis to set aside the award within the purview of **Sections 29** and **30** of the Act.

Questions 7 and **8** were framed as follows:

"7. Was the Arbitrator not wrong in dismissing the counter-claim for cost of removal of a basement in one of the units, on the ground that the Applicant was not the Department of Development Control and he was not likely to be saddled with the cost of removing the basement, despite having earlier found that the development of the basement was in violation of the approved building plan for the project and contrary to the MOU.

8. Did the Arbitrator not misconduct herself by making awards which left room for likely further conflicts and/or litigation, thereby robbing the award of finality, conclusiveness and bindingness?"

The above questions clearly do not contain grounds streamlined by the Act under **Sections 29** and **30 of the Act**. These questions or grounds are clearly not grounds contemplated by the Act and they are thus incompetent. I find support for this position in the case of **Abrico (Nig.) Ltd V N.M.T Ltd (2002) 15 NWLR (pt.789) 1** where the appellant applied to the court to set aside an arbitral award. In support of its application to set aside the award, the appellant had stated numerous grounds which were not contemplated by the **Act.** Some of the grounds include:

1) **The Arbitrator which failed to consider and determine the breaches of contract conditions by the claimant, as alleged by the respondent and thereby deprived the respondent of its constitutional right to fair hearing.**

2) **The decision of the Arbitrator that the claimant was not *estopped* from complaining about the defects was erroneous.**

3) **The Arbitrator rejected the oral and written evidence of a consulting architect.**

4) **The holding of the Arbitrator that the respondent failed to proceed regularly and diligently with the works was wrong.**

5) **The decision of the Arbitrator that the respondent refused to comply with the written instructions of the consulting architect was erroneous.**

6) **The Arbitrator ought not to have held that the claimant properly terminated the respondent's contract.**

In dismissing the appellant's motion to set aside the award, the Court of Appeal Per Aderemi JCA (as he then was of blessed memory) held that:

> **"I have read the entire proceedings and I do not see where the proceedings leading to the award or the award itself is caught by any of the *above grounds* (grounds contained in Section 29 & 30 of the Act)"**

The said application to set-aside the award was therefore refused and dismissed for failing to contain grounds prescribed by the **Act.** Also and this is important; even where an attack is taken to the **substance of the award**, the courts have also elevated the yardstick which a party must surmount in order to succeed in setting aside an award such that in the case of **G.K.N v. Mathro (supra),** an application to set aside an award on the ground that there was ***insufficient evidence upon which the award could have been based*** was refused. In refusing the application the inimitable Lord Denning M. R (of blessed memoey) held that:

> **"I do not think that the awards of arbitrators should be challenged or upset on the ground that there was not sufficient evidence or that it was too tenuous or the like…"**

Also, in **Olleifficio Zucchi S.P.A v. Northern Sales Ltd (supra),** the applicant sought to set aside the award of the arbitrator on the grounds that:

1) **The findings were erroneous.**
2) **The decision of the arbitrator was perverse.**
3) **There was no evidence to support the finding.**

which grounds ordinarily in regular appellate proceedings are by themselves sufficient to set aside a lower court's judgment. The appeal court refused to adopt the normal reasoning associated with regular jurisdiction and stated that:

> **"It is never possible to set aside an award merely because there was no evidence supporting a particular finding…**

The findings of an arbitrator are final and it is of no avail to state on the ground for setting aside the award that the findings were erroneous…

The difficulty cannot be got over by dressing the matter up under the heading "perversity"…"

The above authorities are clear to the effect that any ground which is not contemplated by the **Act** cannot and should not be entertained by the court.

The bottom line is that I have not been persuaded that misconduct or an error of law appearing on the face of the award has been creditably established. As I have repeatedly stated, jurisdiction to set aside an award on these basis is not lightly exercised.

Indeed on the authorities, in order to be a proper ground for setting aside the award, an error in law on the face of the award must be such that there can be found in the award, or in a document actually incorporated with it, some legal proposition which is the basis for the award and which is erroneous. If a specific question of law is submitted to the arbitrator for his decision and he decides it, the fact that the **decision is erroneous** does not make the award bad on its face so as to permit it being set aside; and where the question referred for arbitration is a question of construction, which is generally speaking, a question of law, **the arbitration decision cannot be set aside only because the court would itself have come to a different conclusion**, but if it appears on the face of the award, that he has proceeded illegally, as for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error of law which may be ground for setting aside the award. **But the court is not entitled to draw any inference as to the findings by the arbitrator of facts supporting the award; it must take the award at its face value**. See **Mutual Life & Gen. Ins. Ltd V Iheme (2014) 1 NWLR (pt.1389) 671; Taylor Woodraw (Nig.) Ltd V S.E. GMBH (1993) 4 NWLR (pt.286) 127.**

The court is therefore bound to accept findings of fact and even errors of law which do not appear on the face of the record provided the arbitrators acted within the agreement of parties. An award will not be set aside on ground that facts are wrongly found; that conclusion is wrong in fact; that there is no evidence on which the facts could be found because that would be mere error in law.

Also, it is not misconduct to come to a **wrong conclusion in law** and would be no ground to set aside an award unless the error in law appear on the face of it. As this court is not sitting on appeal over the arbitral award, it is not empowered to determine whether or not the findings of the arbitrators and their conclusions were wrong in law. See **Mutual Life & Gen. Ins. Ltd V Iheme (supra) 671.**

In a decision of the Ugandan High Court in **Kalokoka V Ndaga (Misc. App. No 497 of 2014) (2013) UGH – CCD 112 (18/11/2015)** published in the African Journal of Arbitration and Mediation Vol. 1, No. 1 at page 77, an error on the face of the award was defined which I find persuasive as follows:

"An error apparent on the face of the record was defined in Batukk Vyas Vs. Surat Municipality AIR (1953) Bom 133 thus:

"No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it…"

The questions raised by Applicant require an examination and or arguments to establish same and clearly do not qualify as an error apparent on the face of the record.

The key point here is that the arbitrator remains the final umpire or arbiter on question of facts and law and the award of the panel is not subject to deliberations or reassessment of the court, neither is the role of the arbitrator as the judge of law and fact to be usurped by the courts. The **Supreme Court** in **Taylor Woodrow's case (supra)** citing Maule J. stated the law in **Fuller V Fenwick (1846) 16 LJC P79; 136 ER 282; 285** thus:

> **"If the case had been left to follow the ordinary course, it would have been decided, as to the facts, by a jury, and, as to the law, by the judge, with an ultimate appeal to a court of appeal. The parties, for some reason, thought fit to withdraw the case from that mode of trial, and to refer the whole to an arbitrator, thinking, probably, that the facts would be more conveniently ascertained, and the law more conveniently determined by one from whose judgment there was no appeal, and that an arbitrator would, in the particular case, be a better judge of the facts than a jury, and of the law than the court.** ***It is quite true that it is sometimes advantageous to have a matter decided by a person possessing the smallest possible knowledge of law. These***

***considerations have, in modern times, induced the courts to deal much more liberally with awards than was formerly their practice, and generally speaking to hold them to be final, unless some substantial objection appears upon the face of them*.**"

The Apex court also in the same **Taylor Woodrow**s case (supra) instructively stated that the court will protect the sanctity and binding effect of the arbitrators' decision thus:

"The law has for many years been settled, and remains so at this day, that, where a cause or matter in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact. Many cases have fully established that position, where awards have been attempted to be set aside on the ground of the admission of an incompetent witness or the rejection of a competent one. The court has invariably met those applications by saying, "You have constituted your own tribunal; you are bound by its decision." The only exceptions to that rule, are, cases where the award is the result of corruption or fraud, and one other, which, though it is to be regretted, is now, I think, firmly established, viz. where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established. This is simply the case of a reference to an arbitrator before whom has arisen a question of law which he has decided, and, for the purpose of this motion, must be assumed to have decided it. I think we have no right to interfere."

The Arbitration and Conciliation Act recognizes the enormity of the Role of Arbitrators in respect of finality, that is why arbitration is **essentially party driven**. Once parties have chosen and submitted themselves to arbitration and which is often done to adopt a quick, simple, inexpensive and technicality free procedure to resolve their dispute, no one of such party is allowed to subsequently back out of the decision of the arbitrator. He is estopped from objecting to the final decision of the arbitrator w hen the award is good on its face even if the award does not favour him. See **Ebokan V Ekwenibe & Sons Trading Co. (2001) 2 NWLR (pt.696) 32**.

The finality of arbitral awards is therefore a cornerstone of arbitration and must be treated as such, hence the court cannot or should not reassess the evidence that was presented before the panel, neither can it or should it challenge the reasonableness, propriety or otherwise of the award except there is clear evidence of misconduct. **This case does not present such features** instead what I see, and I say this with all sence of responsibility is that Arbitral proceedings are now being unwittingly or even wittingly dragged into the court system and the narrative of long drawn out disputes or cases. What the parties sought to avoid by entering into the arbitration agreement in the first place unfortunately is now being undermined as cases subject of arbitration now go through the entire tiers of our court system up to the Apex Court spending years before a final determination one way or the other. How that builds or engenders necessary investor confidence in the country and even in Arbitral Proceedings *ab initio*, is open for debate and not subject of this Ruling. I leave it at that.

On the whole, the eight questions posed by the originating summons are answered in the negative and are not availing.

With the failure of these questions, all the **three Reliefs** sought are equally not availing and fail. The principle is once the principal is taken away, the adjunct is similarly taken away. The originating summons accordingly fails and it is hereby dismissed.

……
Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Afam Osigwe, SAN for the Applicant with Mina Nwaghe and Precious Fred.***
2. ***M.A. Magaji, SAN for the Respondent with Aliyu D. Hussaini, Ayodele Babalola, Cordelia William Yisa, Zacheaus J. Kolo and Inuwa Bilkisu Muhammad.***