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CASE DIGEST

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NIGERIAN NATIONAL PETROLEUM CORPORATION v. FUNG TAI ENGINEERING COMPANY LIMITED

SUPREME COURT OF NIGERIA

(KEKERE-EKUN; AUGIE; ABBA-AJI; GARBA; JAURO, JJ.SC)

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Case Digest: The Topic

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Background Facts

Pursuant to an arbitration clause in the contract between Nigerian National Petroleum Corporation (the Appellant) and Fung Tai Engineering Company Limited (the Respondent), a dispute arising therefrom was referred to arbitration by the Respondent. Upon the conclusion of the arbitral proceeding, an award of the sum of $17,505,000.00 was made in favour of the Respondent by the Arbitration Tribunal (Tribunal) as well as the sum of 22,854,184 as cost of the Arbitration. The Respondent then approached the Federal High Court, Lagos (trial court) for the recognition and enforcement of the award, while the Appellant also applied to that court to set aside the said award. The trial recognised and ordered the enforcement of the award and dismissed the Appellant's application to set it aside.

Dissatisfied with the decision of the trial court, the Appellant appealed to the Court of Appeal, Lagos Division (lower court) against the decision by the trial court, which was dismissed.

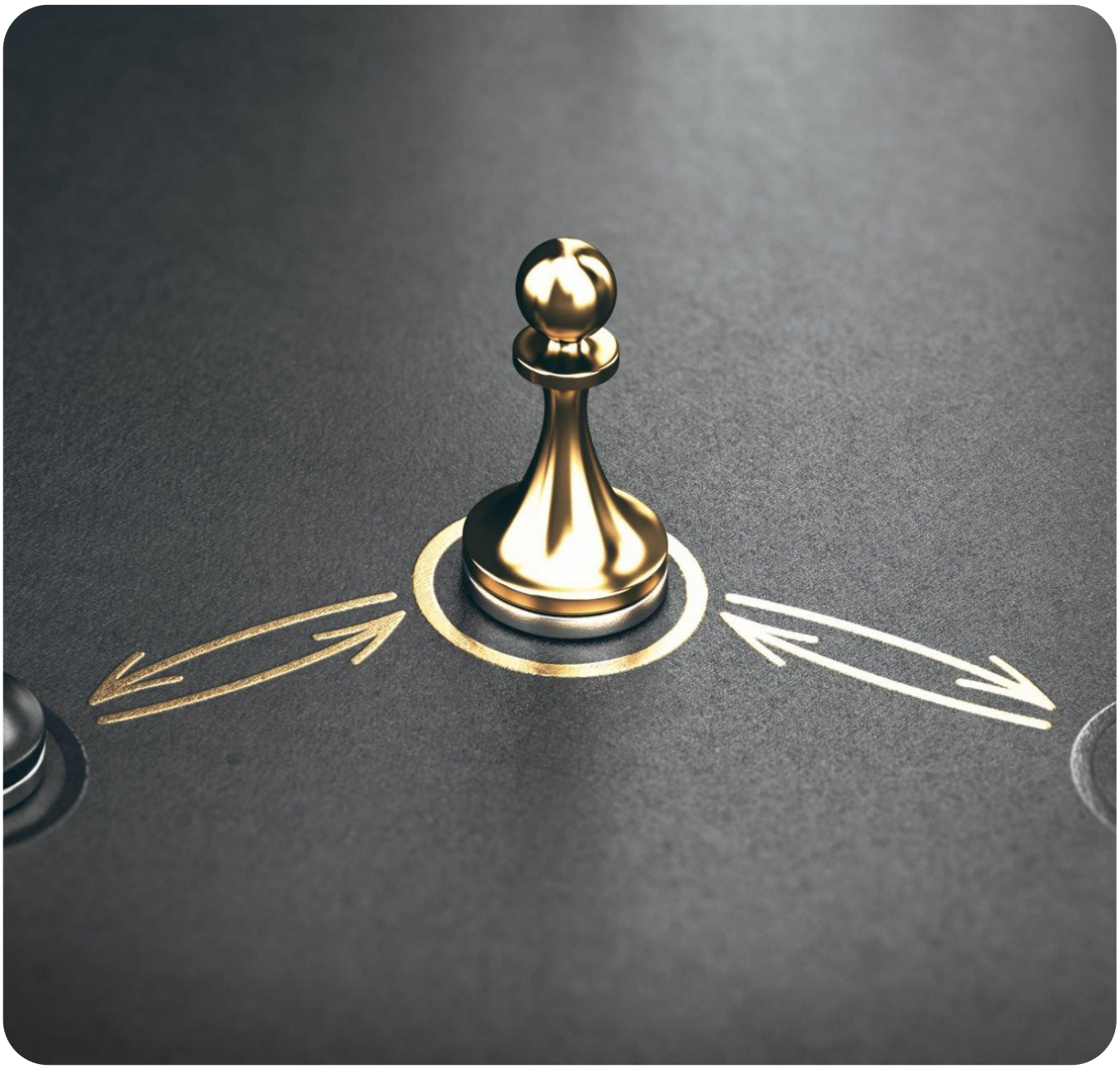
Further aggrieved the Appellant appealed to the Supreme Court. In the Supreme Court, one of the issues distilled for determination was: *Whether or not the lower court's decision ought to be set aside and the Respondent suit for recognition and enforcement of the award struck out, given the Federal High Court's lack of jurisdiction to entertain matters arising from or relating to simple contracts.*

Arguments

In arguing this issue, the learned counsel for the Appellant argued that since the underlying cause of action in the suit is contractual or based on a contract between the parties, the trial court has no jurisdiction to entertain the Respondent's application for recognition and enforcement to the arbitral award and that the mere fact that the Appellant is a Federal Government Agency does not confer the requisite jurisdiction. Counsel argued further that even the provisions of Section 251 (1) (n) of the Constitution deal with oil and natural gas mining and geological survey and not construction and renovation work at a jetty, which was the contract between the parties and so does not vest jurisdiction in the trial court. It was submitted that a simple contract remains one even if one of the entities engaged in the oil and gas business so long as the terms of the contract have nothing to do with oil and gas mining and so the trial

court lacks jurisdiction to adjudicate over it.

In response, learned counsel for the Respondent argued that the provisions of Sections 57 of the Arbitration and Conciliation Act (ACA); an Act of the National Assembly confers additional jurisdiction on the trial court as provided for under Section 251 (1) of the Constitution, therefore vesting the trial court with the requisite jurisdiction to recognise and enforce arbitral awards irrespective of the subject matter. The court was urged to resolve the issue in the Respondent's favour and hold that the Federal High Court has jurisdiction to recognise and enforce an arbitral award pursuant to Section 57 of the ACA.



DECISION OF THE COURT

In resolving this issue, the Supreme Court held that:

The jurisdiction expressly vested in the trial court under the above provisions of Section 31 and 57 of ACA to recognize and enforce an arbitral award, is a specific additional jurisdiction to the exclusive jurisdiction conferred on that court under section 251 (1) of the Constitution and since the arbitral award to be recognised and enforced by that court was not classified, qualified or restricted in any manner, the clear intention of the provisions is that the Federal High Court shall have the requisite jurisdiction to recognize and enforce any and all arbitral awards. This position arises from the fact that all arbitral awards arise from agreements by parties to a contract to refer any dispute arising therefrom, to arbitration or resolution, rather than direct resort to litigation, as an alternative dispute resolution mechanism. In that regard, the underlining origin or foundation for all arbitral awards would be traced to a dispute arising from contractual agreements on rights and obligations of the parties thereto…Therefore, recognition and enforcement of an arbitral award is not the same thing and cannot reasonably be equated with the original jurisdiction of the trial court provided for under the Constitution and has no material bearing or connection with such jurisdiction to entertain and try causes or matters specified under the Constitution since it is purely a post-judgment/decision procedure after the resolution of the dispute arising from the contract by the Arbitral Tribunal freely chosen by the parties. It must be remembered that the law is that, save in recognised circumstances, the resolution/decision by an Arbitral Tribunal over a dispute referred to it by the parties, the award made is effectual, complete, conclusive, final and binding on the parties and none of them would be allowed to object to or challenge it subsequently simply on the ground that it was not in its favour.

Issue partly resolved in favour of the Respondent.

The Supreme Court further expressed concern about the attitude of parties towards arbitration as follows:

There may not be many better ways to express, judicially, what is now becoming a worrisome practice of parties/counsel to arbitration proceedings and awards of turning such alternative dispute resolution mechanism freely chosen by them, merely as testing ground for litigation in regular courts which was the initial mechanism, sought to be avoided by the resort to arbitration. It would appear that parties now, without the requisite good faith, provide for arbitration clause/s in their contracts, as a way of frustrating and avoiding the due and prompt performance of their obligations under the contract, by challenging the proceedings and awards made by an arbitration tribunal, endlessly. That attitude should not only be discouraged but strongly deprecated and penalized by the courts, otherwise, the primary purport of alternative dispute resolution mechanism of arbitration would be eventually subverted in the country thereby making it unattractive, anymore. The courts in Nigeria should sustain, maintain and strictly apply the general principle that when parties to a contract freely choose to submit any dispute arising from the contract to arbitration and agree on the arbitrator's to settle the dispute, they cannot and should not be permitted, when the award is good on it face, object to the decision of the arbitrator/s either upon points of law or fact merely on the ground that the award did not favour them.

Kehinde Ogunwumiju, SAN; O. Adekunle, Esq., T. A. Adejumo, Esq., and A. Obiwebri, Esq., for the Appellant.
Dele Adesina, SAN, and Dr. V.I.O. Azinge, SAN, with P. Abhulimen, Esq., Ademola Adesina, Esq., and A. I. Asuzu, Esq., for the Respondent.

This summary is fully reported at (2023) **8 CLRN**.

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