

*Stay of proceedings pending arbitration  
Whether granted as a matter of course  
Need for applicant to proffer sufficient reasons for grant thereof*

IN THE COURT OF APPEAL  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS  
ON FRIDAY THE 15<sup>TH</sup> DAY OF MARCH, 2013  
BEFORE THEIR LORDSHIPS

IBRAHIM MOHAMMES MUSA SAULAWA  
JOSEPH SHAGBAOR IKYEGH  
RITA NOSAKHARE PEMU

JUSTICE, COURT OF APPEAL  
JUSTICE, COURT OF APPEAL  
JUSTICE, COURT OF APPEAL

CA/L/103/2010

**BETWEEN:**

UNITED BANK OF AFRICA PLC

APPELLANT

V.

TRIEDENT CONSULTING LIMITED

RESPONDENT

*"Before a stay may be granted pending arbitration, the party applying for a stay must demonstrate unequivocally by documentary and/or other visible means that he is willing to arbitrate. He does it satisfactorily by notifying the other party in writing of his intention of referring the matter to arbitration and by proposing in writing an arbitrator or arbitrators for the arbitration."*

The above summarizes the holding of the Court of Appeal in this appeal, per Ikyegh, JCA.

The Respondent, an information technology company, entered into a contract with the Appellant to assist the latter with the implementation of its automated Customer Relationship Management) software for certain aspects of its banking business. The above-mentioned contract contained an arbitration clause. Dispute arose between parties as to the payments outstanding to the Respondent in respect of the project. Whilst exploring the resolution of the dispute, the Appellant wrote the Respondent,

terminating the contract. The Respondent considered this act as defamatory; hence, it filed an action against the Appellant at the High Court of Lagos State, claiming damages for breach of contract, libel and Solicitor's fee.

The Appellant entered a conditional appearance in the suit, later filed an application for stay of proceedings for the purpose of referring the dispute to arbitration. The was dismissed by the trial Court. Aggrieved, the Appellant filed an appeal. Four (4) issues were distilled for the determination of the appeal thus: (i) Whether the lower court was right when it held that the subject matter of this action was not within the arbitration agreement; (ii) Whether the dispute that gave rise to reliefs 3 and 4 in the Statement of Claim are not within the arbitration agreement; (iii) Whether the termination of the contract terminates the arbitration agreement; and (iv) Whether the learned trial Judge was right when she refused to stay proceedings in this matter and refer the dispute to arbitration.

On the first issue, the Appellant contended that the first two reliefs of the claim were made pursuant to the arbitration agreement and parties joined issues on same in their pleadings. Thus, the trial Court was wrong in holding that there was no dispute between parties within the compass of the arbitration agreement. On the second issue, Counsel submitted that the third and fourth reliefs of the Claim were within the arbitration agreement; the fact that they raised difficult questions of law was no basis for the Court to hold that they were not fit for arbitration. Counsel submitted on the third issue that an arbitration agreement is a separate, independent and distinct contract between the parties and survives the termination of the contract, except by agreement of the parties or by order of court. Arguing the fourth issue, Counsel asserted that the trial Court failed to appreciate the fact that there was a dispute between the parties which arose from the contract and survived the terminated contract.

The Respondent's Counsel prefaced her submissions with the observation that a stay of proceedings pending arbitration is not automatic and the discretion vested in the court to grant or refuse same must be properly exercised on sufficient reasons proffered by the Applicant. Counsel itemized the conditions under which a stay of proceedings may be granted or refused to include where the dispute raises questions of law particularly suitable for determination by a court; where the balance of convenience is taken into account and a stay is refused to avert multiple proceedings; where there is no real

dispute or controversy arising from the clauses of the agreement; or where a contrary intention is expressed in the contract as to the irrevocability of the clause. It was also argued that since the Respondent commenced the action at the trial Court to recover unpaid invoices from the Appellant and claims 1 and 2 are for what is outstanding post termination of the contract, there was no dispute or differences in the interpretation of any particular clause in the arbitration agreement to refer the matter to arbitration. Moreso, the third and fourth reliefs can only be effectively litigated in a court of law in line with Section 6(6)(a) Constitution of the Federal Republic of Nigeria, 1999, as an Arbitrator cannot grant a relief for damages arising therefrom. It was argued further that even if these reliefs can be referred to arbitration, the appellant failed to present sufficient material of willingness to arbitrate in accordance with Sections 4(2) and 5(2) of the Arbitration and Conciliation Act.

The Court of Appeal held that the first two reliefs of the claim stem from the contract while the third and fourth reliefs were differences outside the contract and arbitration agreement. To the extent that the first relief is moored to the contract and arbitration agreement, the trial Court was wrong to hold that there was no dispute between the parties on the refusal to pay for the outstanding invoices and the corresponding right of the respondent to seek redress under the arbitration clause. The termination of the contract ended the contract but gave life to the arbitration agreement to help resolve the dispute resulting from the terminated contract. Further, the fact the third and fourth reliefs of the claims were outside the purview of the contract and clauses of the arbitration agreement and raise issues of law, cannot be an impediment for parties to resolve issues by accord and satisfaction. Reliance was placed on the Supreme Court decision of *M.V. Lupex v. N.O.C. and S. Ltd (2003) 15 NWLR (Pt. 884) 491* in support of the notion that difficult or complex issues of law better decided in a court of law can still be arbitrated. Also, in *John Mowleem and Co Plc v. Carlton, Gate Development Co. Ltd. (1990) 6 Const. LJ 298 at 303* it was held that where such complex or serious issues of law were involved in a dispute, the court may decide to order a stay of proceedings on condition that a legally qualified arbitrator was appointed to settle the dispute by arbitration.

***Before a stay may be granted pending arbitration, the party applying for a stay must demonstrate unequivocally by documentary and/or other visible means that he is willing to arbitrate. He does it satisfactorily by notifying the other party in writing of***

*his intention of referring the matter to arbitration and by proposing in writing an arbitrator or arbitrators for the arbitration."*

In the instant case, the Appellant merely deposed that parties are unable to resolve the matter amicably and that the Applicant is ready to do everything necessary for the proper conduct of the arbitration in respect of the dispute. There was no documentary evidence showing that the Appellant wrote to the Respondent notifying it of the willingness to resort to arbitration or specifying Arbitrators for the approval of the other party. An affidavit in support of application of this nature must show willingness and readiness of the party to refer the matter to arbitration. The Appellant herein did not satisfy the basic requirements which must co-exist before a stay of proceedings pending arbitration may be granted.

Appeal dismissed. ~~₦~~30,000.00 costs awarded against the Appellant in favour of the Respondent.

COUNSEL:

MRS. H. OVONLEN WITH MR. H.O. AGBELEKALE FOR THE APPELLANT

MS. F. ABOYADE WITH MRS. A.O. JAIYEOBA; MR. A. DAVIES AND MISS L. OBITAYO FOR THE RESPONDENT.