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CASE DIGEST

ARBITRATION: PARTIES ARE BOUND BY THE OUTCOME OF ARBITRATION PURSUANT TO A VALID AGREEMENT TO ARBITRATE

CHEVRON NIGERIAN LTD v. OWAH UNIK CONSULTANTS

COURT OF APPEAL (NIGERIA)
(LAGOS DIVISION)

(DANIEL-KALIO; BANJOKO; AFFEN, JJ.CA)

Chevron Nigerian Ltd. (the Appellant) and Owah Unik Consultants (the Respondent) having entered into an Agreement for architectural and engineering services had a dispute in relation to the performance of certain terms, and in accordance with the Agreement, referred the dispute to a Sole Arbitrator. Upon the conclusion of the arbitral proceedings, the Arbitrator decided in favour of the Respondent, stating that payments due to the Respondent shall be calculated at the rate of US $1: N116 being the Central Bank of Nigeria (CBN) foreign exchange rate prevailing at the date of the award, as against US$1: N4.2 found in the Agreement, consequent upon which the Appellant approached the lower Court by way of an Originating motion, to set aside the arbitral award. The learned trial Judge, after considering the application of the Appellant, refused to set aside the award of the sole arbitrator and consequently, dismissed the Originating Motion.

Dissatisfied, the Appellant appealed to the Court of Appeal. One of the issues for determination is *Whether the lower Court was right when it held that the arbitrator had given sufficient reason for the application of the prevailing rate of exchange to the contract between the parties.*

Learned counsel for the Appellant argued that the rate of exchange of US $1: N4.2 did not apply to any of the payments due to the Respondent. He submitted that the arbitrator found that the Respondent is entitled to payment by reference to US Dollars and the reference exchange rate of US$1: N4.2 in the Agreement, is applicable in computing the value of services rendered by the Respondent to the Appellant. It was submitted that the Appellant has no grouse against that finding but has a grouse that having made that finding, the arbitrator failed to put it into effect and instead, went outside/beyond the scope of the Agreement of the parties to base his award on another exchange rate. Learned counsel further contended that it was the error of the arbitrator in basing his award on the prevailing exchange rate, that the Appellant sought to remedy at the lower Court unsuccessfully.

Learned counsel for the Appellant argued that the rate of exchange of US $1: N4.2 did not apply to any of the payments due to the Respondent. He submitted that the arbitrator found that the Respondent is entitled to payment by reference to US Dollars and the reference exchange rate of US$1: N4.2 in the Agreement, is applicable in computing the value of services rendered by the Respondent to the Appellant. It was submitted that the Appellant has no grouse against that finding but has a grouse that having made that finding, the arbitrator failed to put it into effect and instead, went outside/beyond the scope of the Agreement of the parties to base his award on another exchange rate. Learned counsel further contended that it was the error of the arbitrator in basing his award on the prevailing exchange rate, that the Appellant sought to remedy at the lower Court unsuccessfully

In resolving the issue, the appellate Court observed a provision in the agreement which states that: *Any payments pursuant to this Agreement shall be subject to and always in accordance with all applicable Nigerian Laws including the Nigerian Banking Currency Exchange Laws and the Tax Laws of the Inland Revenue Department.* Consequent upon which the award was made in favour of the Respondent. On this, the Court held that:

Having regard to the Agreement of the parties submitted to the arbitrator which contains a provision which permits an application of the Nigerian Banking Currency Exchange Laws and having regard also to the submission of the parties, particularly the Appellant's learned Counsel on the applicability of the prevailing exchange rate in the arbitral award, the argument of the Appellant's learned Counsel that the arbitrator went beyond the scope of the submission before him, cannot be taken seriously… **Once there is element of voluntariness in the Agreement by Parties to submit themselves to Arbitration, and there is also Acceptance by them to be bound by the outcome of that Arbitration, any arbitral decision emanating from that Arbitration Proceeding shall be binding on the parties that have consented to it.** Since the parties in this instant Appeal voluntarily submitted themselves to Arbitration and the Arbitrator did not exceed its scope in the arbitral proceeding by predicating its decision on the evidence made available to it, the Parties are bound by the decision. Reliance is placed on *Ojibah v. Ojibah (1991) 4 LRCN 1215; Online & Ors v. Jacobs Obodoo & Ors (1958) 3 F.S.C. 84 AT 86; Ume v. Okoronkwo (1996) 43 LRCN 2068 AT 2081; F. Iwuala v. Chima (2016) LPELR - 40970(CA).*

It is my view that having agreed to have an arbitrator decide the dispute of the parties, the spirit of good sportsmanship demands that the decision of the arbitrator be respected and accepted in good faith, except in clear cases. It is simply not cricket to refuse to abide by the decision of an arbitrator for no clear-cut reason.

Appeal dismissed. Issue resolved in favour of the Respondent.

Ladipo Soetan and John Uche for the Appellant.

D.E. Agbaga for the Respondent.

This summary is fully reported at (2022) 5 CLRN

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