

ALP | **NG & CO.**
AFRICA LAW PRACTICE NG & COMPANY
WWW.ALP.COMPANY

CASE DIGEST

Contract: Contractual Agreement; Can a person who has benefitted from an illegal contract subsequently contend that such contract was illegal?

**PAN OCEAN OIL CORPORATION (NIG.) LTD
v. KCA DEUTAG DRILLING GMBH & ANOR.**

COURT OF APPEAL (NIGERIA)

OGBUINYA; OTISI; OZIAKPONO-OHO, JJ.CA

Case Digest: The Topic

Contract: Contractual Agreement; Can a person who has benefitted from an illegal contract subsequently contend that such contract was illegal?

PAN OCEAN OIL CORPORATION (NIG.) LTD v. KCA DEUTAG DRILLING GMBH & ANOR.
 COURT OF APPEAL (NIGERIA)
 (OGBUINYA; OTISI; OZIAKPONO-OHO, JJ.CA)

Background

KCA Deutag Drilling GMBH & KCA Deutag (Nigeria) Limited (1st & 2nd Respondents) entered into a Land Drilling Agreement (the "Land Drilling Agreement") with the Appellant for the provision and operation of a land drilling rig T-76 and other associated drilling services to the Appellant. This also included the provision of other supporting equipment, spare parts, supplies, services, and personnel to drill oil and gas wells in locations designated by the Appellant. The 1st Respondent did not execute any part of the Contract in Nigeria rather it was the 2nd Respondent who, in accordance with the terms of the Contract, carried out the performance and execution in Nigeria of the Contract.

The Respondents duly issued invoices to the Appellant for services rendered under the Land Drilling Agreement, which invoices were not paid by the Appellant. Following several unsuccessful demands by the Respondents for the payment of the outstanding invoices and pursuant to the arbitration agreement contained in clause 13 of the Land Drilling Agreement, the Respondents submitted the dispute regarding the refusal of the Appellant to settle the outstanding invoices to arbitration under the Arbitration Rules of the International Chamber of Commerce ("ICC").

In the course of arbitration, the parties advised the Arbitral Tribunal that they had entered into a settlement agreement, which was respectively executed by the parties and requested the Arbitral Tribunal to enter an award by consent in terms of the Settlement.

The Arbitral Tribunal made a Consent Award (based on the Settlement Agreement) in favour of the Respondents in respect of services provided by the Appellant to the Respondents under the Land Drilling Agreement. The Appellant thereafter made voluntary payment of part of the award sums and the Respondents also recovered some portions of the award sums through garnishee proceedings.

However, a significant part of the award debt remained outstanding. Following the refusal and failure of the Appellant to liquidate the award sums, the Respondents applied for and by an Order, the High Court of Lagos State (Lower Court) ordered that the award be enforced in the same manner as a judgment, of the lower Court.

The Appellant subsequently filed an application seeking an order for stay of further execution of the arbitral award and an order setting aside the Ruling of the lower Court recognizing the arbitral award as enforceable as a judgment of the High Court of Lagos State on the ground of lack of jurisdiction of the Court. The lower Court heard the application and, in a Ruling, dismissed same for lacking in merit.

The Appellant on appeal to the Court of Appeal, against the decision of the Lower Court raised certain issues for determination, one of which is:

Whether the lower Court had jurisdiction to adjudicate on the matter at all.



Arguments

Learned Counsel for the Appellant on this issue began by conceding to the fact that having willingly chosen arbitration and arbitrators, the parties should be bound by the decision reached by their chosen arbitrators. However, he argued further, that where the award is discovered to have been tainted by illegality or against public policy, the Court ought to decline to recognise or enforce it.

The contention of Counsel in this wise is that the 1st Respondent is a foreign company incorporated outside Nigeria, carrying on business in Nigeria, particularly the Land Drilling Agreement.

For this reason, Counsel stated that the 1st Respondent has not satisfied the condition precedent to it doing business in Nigeria. That by failing to comply with Section 54 of the Companies and Allied Matters Act (CAMA) Cap C20 LFN 2004 (Now Section 78 CAMA 2020), which provides for foreign companies intending to carry on business in Nigeria, to register as a separate entity for that purpose, all acts carried out in the performance of the Drilling Agreement is illegal and void. Counsel further submitted that just as the contract is illegal and void between the 1st Respondent and the Appellant, it is also illegal and void between the 2nd Respondent and the Appellant, and urged the court to so hold that the lower Court has no jurisdiction to recognise or enforce the final arbitral award.

In response, Counsel to the Respondents submitted that to the extent that the Appellant has characterised the issue of the alleged illegality of the Land Drilling Agreement, they were bound to raise the issue during the arbitration and having not done so, it is too late in the day to raise the issue.

Furthermore, Counsel contended that the 1st Respondent company complied satisfactorily with the provisions of Section 54 of the Companies and Allied Matters Act (Now Section 78 CAMA 2020) by incorporating a Nigerian Company (2nd Respondent) to carry out its part of the contract and that the contract, which formed the subject of the arbitral award was not illegal as argued by the Appellant.

Decision of the Court

In resolving this issue, the Court of Appeal held that:

Equity requires that the Court has a duty to prevent injustice in any given circumstance and avoid rendering a decision, which enables a party to escape from his obligation under a contract by his own wrongful act or otherwise profit by his own wrongful act. The Appellant having taken benefit of the services performed by the Respondents in respect of the provision and operation of the land drilling rig T-76 and other associated drilling services, cannot now turn around to contend that the contract is void on the alleged unsubstantiated grounds that the 1st Respondent is a foreign corporation and cannot carry on business in Nigeria.

It is morally despicable for a person who has benefited from an agreement to turn around and argue the agreement is null and void.

Counsel finally submitted that the Appellant having taken benefit of the services performed by the Respondents in respect of the provision and operation of the land drilling associated drilling services, cannot now turn around to contend that the contract is void on the alleged unsubstantiated grounds that the 1st Respondent is a foreign corporation and cannot carry on business in Nigeria.

Issue resolved in favour of the Respondents.

Olalekan Bade-John, Esq., for the Appellant
 Festus Onyia, Esq., for the Respondents

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

www.clrndirect.com

info@clrndirect.com