IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON TUESDAY THE

22ND DAY OF OCTOBER, 2024.

BETWEEN: ***SUIT NO. B/887/2022***

MR. ENOBAKHARE FRANCIS OSAYANDE-----CLAIMANT/APPLICANT

AND

GUARANTY TRUST BANK ----------DEFENDANT/RESPONDENT

RULING

This is a Ruling in respect of an application brought pursuant to ***Order 40 Rule 10 (1) and (4) and Order 46 Rule 15 of The Edo State High Court (Civil Procedures) Rules 2018 and under the inherent jurisdiction of this Honourable Court***.

In this application, the Applicant is praying this Court for the following orders:

{a}AN ORDER of this Honourable Court setting down this suit for hearing and proper determination on the merit as the real contention of the action was waived aside by a wave of hand at the Edo State Multi-Door Court House.

{b}AN ORDER for an extension of time to apply to this Honourable Court to set aside the Settlement Agreement reached by the Edo State Multi-Door Court House on the 3rd of November, 2023 as the time stipulated by the Rules of Court having elapsed.

{c}AN ORDER of this Honourable Court setting aside the Settlement Agreement reached by the Edo State Multi-Door Court House on the 3rd of

November, 2023 as the Agreement violates the claimant's legal right in relation to the operation of the account.

AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application, the Applicant filed a 12 paragraphs affidavit and a written address of counsel.

In the Applicant's affidavit in support of this application, the Applicant narrated the events that culminated in the filing of this application.

Succinctly put, the Claimant/Applicant's case is that he maintains a current account with the Defendant bank with **Account No. 0123151341**. He alleged that on the 28th of June, 2022, the sum of Fifty Thousand Naira (N50, 000.00) was transferred from the said account to a third party without his authorisation and/or mandate.

Sequel to the foregoing, the Claimant instituted a suit against the Defendant to seek redress for the alleged breach of contract by the Defendant.

Before hearing commenced in the case, the matter was referred to the Edo State Multi-Door Court House for a peaceful settlement. At the hearing of the case at the Edo State Multi-Door Court House, a decision was reached which is contained in a Settlement Agreement, dated the 3rd of November 2023, which is attached to the Applicant's affidavit as Exhibit "A2".

The Claimant/Applicant alleged that the Edo State Multi-Door Court House did not consider the entire issues in dispute between the parties before the signing of the Settlement Agreement hence he has brought this application to set aside the Settlement Agreement and to set down this suit for hearing on its merit.

In his written address, the learned counsel for the Claimant/Applicant, ***Sylvester Ogbe Esq.*** formulated two issues for determination as follows:

1) ***Whether the Court can set down this action for trial on the merit, the claimant having reneged to make the terms of settlement of the Edo State Multi-Door Court House final settlement of the matter; and***
2) ***Whether the decision of the Edo State Multi-Door Court House can be set aside by the Court on the basis that it failed to consider in totality the issues raised by the parties.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE

Arguing issue one, learned counsel submitted that it is trite law that where there is a wrong, there must be remedy. He maintained that an aggrieved party has the exclusive right to seek judicial remedy where his right has been violated and the Court is open to hear and entertain disputes from parties where such falls within its jurisdiction.

He submitted that the jurisdiction of the Court over an action is constrained where such action has been heard on the merit and the Court has made a final pronouncement and he cited the cases of ***Bi Courtney Ltd v Aso Savings and Loan Plc (2023) 17 NWLR (Pt 1912) 1 @ page 34 para F – H;*** and ***Odigwe v J.S.C Delta State (2011) 10 NWLR (Pt 1255) 254 @ page 287 para A – C***. He contended that where a matter has not been heard on its merit, the case can be reopened and heard *de novo* by the Court and he cited the case of ***Abana v Obi (2005) 6 NWLR (Pt 920) 183 @ page 207 para G***.

He said that in the instant case, the parties were referred to the Edo State Multi-Door Court House prior to the hearing of the case in Court, a proposed decision was reached by the Edo State Multi-Door Court House which has not been made the judgement of the Court so the Court is not precluded from hearing the case.

Counsel submitted that the general policy of the law and the interest of justice demand that cases and appeals be heard on their merit and he cited the case of ***Nanaghan v Okomu Oil Palm Co. Plc (2001) 9 NWLR (Pt 719) 603 @ page 609 para B – C***.

He maintained that denying the Claimant the right to be heard on the merit of his case will be in breach of his fundamental right to fair hearing as enshrined in the Constitution.

He referred to ***Order 46 Rule 15 of the Edo State High Court (Civil Procedures) Rules*** which provides thus:

"Where no provision is made of these Rules or by any other written law, the Court shall adopt such procedure as will in its view to substantial justice between the parties."

He submitted that substantial justice can only be done in this case where this case is set down for hearing on the merit and he cited the case of ***Ogbogoro v Omenuwoma (2005) 1 NWLR (Pt 906) 1 @ page 16 para G – H***.

ISSUE 2

Arguing issue two, he referred to the case of ***Baker Marina Nigeria Ltd v Danos and Carole Marina Contractors Inc (2001) 7 NWLR (Pt 712) 337 @ pp 350 – 351 para H – D*** where the Court outlined the conditions upon which an arbitral award may be set aside to be as follows:

a. The Arbitration Award has been improperly procured e.g. where the arbitrator has been deceived or material evidence has been fraudulently concealed; or
b. The arbitrator has misconducted himself or the proceedings; or
c. There was an Error of Law on the face of the Award.

He posited that in this case, the Defendant in **paragraph 12** of **Exhibit "A3"** alleged that the Claimant was debited on the 28/6/2022 by *Interswitch* on realising that it ought not to reverse the money to the Claimant that was initially debited on the 18th of August 2021. He said that there was no material evidence presented by the Defendant to buttress this point to ascertain the veracity or otherwise of its assertion. He said that the Edo State Multi-Door Court House relied on the above assertion of the Defendant in arriving at the Settlement Agreement dated the 3rd of November 2023.

He said that the act of the arbitrator falls within the purview of the first criteria highlighted in the case of ***Bakar Marina Nigeria Ltd v Danos and Carole Marina Contractors Inc Supra*** for setting aside an arbitrary award.

He maintained that the Settlement Agreement reached by the Edo State Multi-Door Court House on the 3rd of November 2023 was improperly procured as the said agreement was predicated upon false facts.

He said that the Court cannot enforce the Agreement by making same a judgement of the Court with respect to this case as it does not reflect the intentions of parties. He maintained that the proper order that should be made in this instance is to set aside the Settlement Agreement and set the case down for hearing in the interest of justice.

In conclusion, he urged this Honourable Court to grant this application in the interest of justice.

In opposition to this application, the Defendant/Respondent filed a Counter-Affidavit and a written address of their counsel.

In his written address, the learned counsel for the Defendant/Respondent, ***C.Obaro Umeh Esq.*** formulated three issues for determination as follows:

1. ***Whether the Claimant/Applicant can elect, and apply to the court to set aside the Settlement Agreement freely entered into and executed by him;***
2. ***Whether in fact it is true that the Multi-Door Court House, did not consider the issues in dispute between the parties, to warrant a setting aside of the Agreement; and***
3. ***Whether this Court can, in the circumstances of this case, set aside the settlement Agreement between the Claimant and the Defendant and set down the matter for trial "on the merit.***

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE 1

Whether the Claimant/Applicant can elect, and apply to the court to set aside the Settlement Agreement freely entered into and executed by him;

Arguing this first issue, learned counsel contended that it is trite law that no party can rescind from an agreement he has freely entered into, as same is binding on the parties and he relied on the case of ***OFORISHE V NIGERIAN GAS CO. LTD (2017) LPELR-42766 (SC) P.26 PARA A*** where the Supreme Court held that: **"Parties are bound by the agreement they freely entered into"**

He also relied on the case of ***ORAKA V. ORAKA & ANOR (2019) LPELR-47675 (CA) PP. 35-36 PARAS. E-B***.

He posited that in the instant case, the Claimant/Applicant has not informed the Court that the Settlement Agreement was made under duress, fraud and misrepresentation. He said that the Claimant/Applicant voluntarily and willingly signed the Settlement Agreement and he cannot at this point be seeking to set same aside.

He referred the Court to Clause 1(1.1) of the document attached as Exhibit A2 to the Applicant's Application which states thus:

"The following Settlement is binding on both parties upon signature. Each clause accurately reflects the Settlement terms."

He referred to the case of ***ANYAEGBUNAM V OSAKA & ORS*** where the Court held that parties are bound by the contents of any written agreement duly executed by them.

He posited that both parties were given fair hearing contrary to what the Claimant/Applicant stated in his Application. He referred to the case of ***INEC V MUSA (2003) LPELR-24927 (SC) P.94 PARAS. A-B*** where the Supreme Court held that where parties are given opportunity to be heard, they cannot complain of breach of the fair hearing.

ISSUE 2

Whether in fact it is true that the Multi-Door Court House, did not consider the issues in dispute between the parties, to warrant a setting aside of the Agreement.

Counsel posited that as a Conciliator the MDC only facilitates the settlement of disputes between parties. It helps to narrow the issues and make parties appreciate the fact that, conciliation is possible.

He said that the MDC cannot impose its decision on the parties, if the parties are not ad idem about settlement.

He said that the MDC, in this matter, upon sifting the facts, saw the need to appoint a Neutral Fact Finder (NFF), who was accepted by both parties. He said that the Defendant accepted the Appointment of EDOGIS, as the NFF, irrespective of the fact that the Claimant was a staff of EDOGIS.

He said that the NFF, went to work, and came up with its findings which both the Claimant and Defendant accepted and formed the basis for the eventual signing of the Settlement Agreement. He said that the NFF found out that the Defendant was not responsible for the withdrawal of the Claimant's funds and the Claimant accepted this finding.

He maintained that the Claimant/Applicant cannot now renege on the Agreement and seek to set same aside; on the ground that the MDC did consider all issues raised by the Claimant.

He alleged that the crux of the Claimant's case is that the debit to his account, to reverse the wrong credit, was unlawfully done without his consent; and the Defendant stated that, though it was not responsible for the debit, INTERSWITCH which did the debit did not require any authorization, since it was the reversal of an earlier transaction.

He urged the Court to discountenance the Claimant's request to set aside the Settlement Agreement, on the ground that all the issues were not considered by the MDC.

ISSUE 3

Whether this Court can, in the circumstances of this case, set aside the settlement Agreement between the Claimant and the Defendant and set down the matter for trial "ON THE MERIT".

Counsel posited that the question of hearing the case on the MERIT does not arise or apply to consent Judgment/Agreements. He said that hearing on the merit arises where a matter goes to trial and the matter is determined on technical grounds instead of substance.

He referred to the case of ***BAUCHI STATE GOVT VS GUMAU & ANOR. (2019) LPELR – 47061 (CA)*** where the Court defined hearing on the Merit as follows:

"A Judgment on the Merit is a Judgment that determines an issue, either of law or fact, which party is right."

He also relied on the case of ***UTC (NIG) LTD VS PAMOTEI (1989) 2 NWLR PT 103, 244 & 298***.

He submitted that hearing in this matter has been exhaustively done; by way of mediation, which involved a Neutral Fact Finder, so the issue of not being heard on the Merit cannot arise: both parties were duly heard on the "MERIT", and the dispute resolved based on the findings of the NFF, which were accepted by the parties.

He said that the allegation that the MDC arrived at a decision based on the Defendant's presentation alone is completely unfounded. He said that the MDC did not reach a decision for the parties but only sanctioned the Agreement of the parties.

He said that the Claimant was free to walk away from the Agreement, if he felt he was not heard "ON THE MERIT", but he did not. He said that having signed the Settlement Agreement, by himself and under legal guidance from his Counsel, the Claimant cannot now seek to walk away and have another hearing or trial. It is too late in the day, to reprobate after approbating. He said that the Law, frowns seriously and forbids a party from blowing hot and cold and he referred to the decision of the Supreme Court in the case of ***SCOA (NIG) PLC V. TAAN & ORS (2018) LPELR-44545(CA).***

He posited that the Applicant can go on Appeal, after the judgment of the Court is delivered. He therefore urged the Court to refuse the Claimant's Application and enter judgment in the terms of the Settlement Agreement for the parties.

Upon receipt of the Respondent's Counter-Affidavit and written address, the Applicant's counsel filed a Reply to the Counter-Affidavit and a further written address where he contended that the Settlement Agreement signed by the parties is different from a Consent Judgment as postulated by the Respondent's counsel.

Before the adoption of their written addresses, the Applicant's counsel submitted a list of additional authorities in support of this motion. In the said additional list of authorities, he referred the Court to the case of ***CDR. ODUFA KADIRI AND ANOR V. MRS. SHIZAWALI ABU (2024) 8 NWLR (Pt 1940) 337 @ 363, para D – H*** where the Court exposited on the interpretation of plain and unambiguous words of a statute by stating thus:

"The provisions of a Statute must not be constructed in a way as would defeat the intendment of the Statute and the desire of the Legislative. The Court should not interpret the provisions of the Statute to defeat the obvious end it was meant to serve otherwise it will entail injustice. Where the words of the Statute are plain and unambiguous, the literal interpretation should be followed."

He also relied on the case of ***CDR. ODUFA KADIRI AND ANOR V. MRS. SHIZAWALI ABU SUPRA @ p.364 para F – H*** where the Court exposited on the principles governing interpretation of statute –

"A Statute is 'the will of the Legislative' and any document which is presented to it as a statute is an authentic expression of the Legislative will."

I have carefully examined the relevant court processes in respect of the application together with the addresses of the learned counsel for the parties.

I am of the view that the sole issue for determination in this application is whether the Applicant is entitled to an order to set aside the Settlement Agreement signed by the parties at the Edo State Multi-Door Court House on the 3rd of November, 2023 in respect of the substantive suit.

In the instant application, it is an indisputable fact that at the Edo State Multi-Door Court House, the Claimant/Applicant and the Defendant/Respondent agreed on some terms of settlement which are contained in a Settlement Agreement, dated the 3rd of November 2023, signed by the parties and their counsel which is attached to the Applicant's affidavit as Exhibit "A2".

In this present application, the Claimant/Applicant is applying to set aside the agreement on the ground inter-alia that the Edo State Multi-Door Court House did not consider the entire issues in dispute between the parties before the signing of the Settlement Agreement.

On the issue of a Settlement Agreement after mediation proceedings, the provisions of the ***Sections 82 and 86 of the Arbitration and Mediation Act, 2023*** are quite relevant. They state as follows:

"82. (1) Where parties conclude an agreement settling a dispute, the mediator shall participate in the preparation and drafting of the settlement agreement, where the parties agree.

(2) Subject to section 87 of this Act, the settlement agreement resulting from the mediation is binding on the parties and enforceable in Court as a contract, consent judgment or consent award.

86. Unless otherwise provided in this Part -

(1) A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this Part.

(2) Where a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down under these provisions, to prove that the matter has already been resolved."

It is trite law that parties are bound by agreements entered into, especially agreements in commercial settings such as in the present transaction.

It is settled law that an agreement entered into between parties are binding where the agreement is made voluntarily without any compulsion, misrepresentation and fraud. The reverse is also correct; an agreement entered between parties will not be binding and enforceable when the agreement is made under duress, fraud and misrepresentation. See: ***Osun State Govt. vs. Dalami Nig. Ltd NASCQR Vol. 29 2007 page 765; A.G. Rivers vs. A.G. Akwa-Ibom & Ors NSCQR Vol. 45 2011 page 1041; Aina & Anor vs. Ariyo & Anor (2017) LPELR-42888(CA); and Oraka v. Oraka & Anor (2019) LPELR-47675(CA) (Pp. 35-36 paras. E).***

Furthermore, in the case of ***Isheno vs. Julius Berger (Nig.) Plc (2008) NWLR (Pt. 1084) 582***, it was held thus: ***"It is settled law that parties to an agreement or contract are bound by the terms and conditions of the contract they signed."***

Thus, the position of the law is that when parties enter into an agreement and there is nothing to show that same was obtained by fraud, mistake, deception, or misrepresentation they are bound by the terms of the agreement. In the case of ***AG Rivers State v. AG Akwa Ibom State (2011) 8 NWLR (Pt.1248) 31***, the Supreme Court cited with approval its earlier decision in ***Arjay Ltd. v. Airline Management Support Ltd (2003) FWLR (Pt.156) 943 at 990***, where the Court held thus: ***"It is elementary law that where parties have entered into a contract or an agreement, they are bound by the provision of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found out that the conditions of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement."***

Coming to the present case, there is no evidence to show that Agreement which was signed by the parties and their respective counsel was obtained by duress, fraud, mistake, deception, or misrepresentation.

The argument of the Applicant's counsel on lack of fair hearing before the multi door court is not borne out by the affidavit evidence of both parties. There is evidence that both parties were heard at the multi door court. Where parties are given opportunity to be heard, they cannot complain of a breach of fair hearing. See the case of ***INEC V MUSA (2003) supra***, aptly cited by the Respondent's counsel.

Furthermore, the argument of the learned counsel for the Applicant that the Edo State Multi-Door Court House did not consider the entire issues in dispute between the parties before the signing of the Settlement Agreement is clearly not tenable because the Multi-Door Court merely played the role of a mediator and was not a party to the dispute. The terms of settlement were agreed upon by the parties. The provisions of ***Sections 82(1) of the Arbitration and Mediation Act, 2023*** which I earlier referred to in this ruling stipulate that ***Where parties conclude an agreement settling a dispute, the mediator shall participate in the preparation and drafting of the settlement agreement, <u>where the parties agree</u>*** (underlining, mine).

Furthermore, ***Section 82(2)*** states that ***"… the settlement agreement resulting from the mediation is binding on the parties and enforceable in Court as a contract, consent judgment or consent award."***

Finally, ***Section 86(2)*** of the Act provides that: ***"Where a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down under these provisions, to prove that the matter has already been resolved."***

From the above provisions of the Act, it is clear that the Claimant/Applicant is bound by the terms of the Agreement which he voluntarily signed at the Edo State Multi Door Court House. He cannot resile from that agreement because there is nothing to show that it was obtained by duress, fraud, mistake, deception, or misrepresentation.

On the whole, I am of the view that the Applicant is not entitled to an order to set aside the Settlement Agreement signed by the parties at the Edo State Multi-Door Court House on the 3rd of November, 2023 in respect of the substantive suit. The sole issue for determination is therefore resolved against the Applicant.

I hold that this application lacks merit and it is dismissed with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Defendant/Respondent.

Hon. Justice P.A.Akhihiero
JUDGE
22/10/2024

<u>COUNSEL:</u>

1. Sylvester Ogbe Esq.……..…Claimant/Applicant

2. C.Obaro-Umeh Esq…..…….……...……DefendantRespondent