

Court Order Staying Proceedings Pending Arbitration – Whether Interlocutory or Final in Nature?

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 4th Day of June, 2025

Before Their Lordships
John Inyang Okoro
Helen Moronkeji Ogunwumiju
Tijjani Abubakar
Haruna Simon Tsammani
Mohammed Baba Idris
Justices, Supreme Court

SC/CV/975/2020

BETWEEN

**GENERAL ELECTRIC INTERNATIONAL
OPERATIONS NIGERIA LIMITED**

... **APPELLANT**

AND

Q OIL AND GAS SERVICES LIMITED

... **RESPONDENT**

(Lead judgement delivered by Honourable Tijjani Abubakar, JSC)

Facts

The Appellant and Respondent entered into a Master Services Agreement (“MSA”) and ancillary documentation, under which the Respondent allegedly provided expatriate manpower and technical services to the Appellant. Claiming that these services remained unpaid for, the Respondent commenced a debt recovery action under the Undefended List Procedure at the High Court of Rivers

State (the “*trial court*”), seeking the sum of **US\$459,123.27** (Four hundred and fifty-nine thousand, one hundred and twenty-three United States Dollars and twenty-seven Cents), alongside post-judgement interest assessed at a rate of 10%. In response to the suit, the Appellant filed a notice of intention to defend and an application for stay of proceedings pending the conclusion of mediation or arbitration as stipulated in the dispute resolution clause of the MSA. The trial court found merit in the application and subsequently issued an order staying proceedings *sine die*. Dissatisfied with this ruling, the Respondent appealed to the Court of Appeal, eighty-six (86) days after the decision of the trial court.

The Appellant raised a preliminary objection to the competence of the appeal, arguing that because the ruling was interlocutory, the Respondent’s failure to seek and obtain leave of the court before filing the appeal, rendered same incompetent. The Court of Appeal dismissed this objection, holding that the ruling of the trial court relates to the issue of jurisdiction, thereby qualifying as an appeal as of right. The court then proceeded to determine the substantive appeal on its merits. Aggrieved by the decision of the Court of Appeal, the Appellant further appealed to the Supreme Court.

Issues for Determination

The following issues were submitted for determination of the court:

- i. WHETHER the lower court was right when it held that the order of the trial High Court of 25th April 2017 staying further proceedings in the suit and referring the parties to mediation or arbitration was a final order appealable as of right under Section 241(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)?
- ii. WHETHER the lower court was right when it held that the filing of a notice of intention to defend by the Appellant amounted to taking a further step in the proceedings, and thereby constituted a waiver of the Appellant’s right to refer the dispute between the parties to mediation or arbitration?

- iii. WHETHER the lower court was right when it held that only the Master Services Agreement (Exhibit 01) and the Purchase Order (Exhibit 02) regulated the contractual relationship of the parties and that the General Purchase Conditions (Exhibit 03) did not form part of the documents to be considered in determining such contractual relationship?

Arguments of Counsel

On issue one, the Appellant contended that the lower court erred by classifying the decision of the trial court on the application for stay of proceedings as a final judgement. The Appellant argued that the decision of the trial court did not determine the rights of the parties but merely suspended the proceedings pending the outcome of mediation or arbitration. In effect, the decision is interlocutory in nature and not final. They relied on the decision in *IGUNBOR v AFOLABI (2001) 11 NWLR (PT. 723) 1483*. The Appellant submitted that since the decision of the trial court is in the nature of an interlocutory decision, the Respondent ought to have appealed against it within 14 (fourteen) days. Therefore, by filing its appeal eighty-six (86) days after the decision without seeking and obtaining the leave of court, the Respondent's appeal is incurably incompetent.

In response to the arguments of the Appellant on the first issue, the Respondent argued that it is fundamentally flawed for the Appellant to contend that the decision of the trial court is interlocutory. It is the Respondent's contention that the decision of the lower court, though arising from an interlocutory application, it is final in nature. The crux of the Respondent's argument is that the decision pertained to jurisdiction considering that the trial court refused jurisdiction to delve into the substance of the suit pending the outcome of mediation or arbitration. Stressing the argument further, the Respondent argued that the decision of the trial Court on a jurisdiction issue has the effect of determining the rights of the parties as nothing is left for the trial court to adjudicate on. Relying on Section 30 of the Court of Appeal Act, which defines judgement to include any decision or order of the court, and Section 318(1) of the 1999 Constitution (as amended), counsel argued for the Respondent that the ruling in question finally determined the rights of the parties in respect of the jurisdictional issue and left

nothing more for the trial court to adjudicate on in the matter. Further relying on the decision in *UGO v UGO (2017) ALL FWLR (PT. 902) 903 AT 919-920*, the Respondent submitted that having held that it could not entertain the suit pending the outcome of mediation or arbitration, the trial court became *functus officio* on the issue of jurisdiction, rendering the decision of the trial court final.

Court's Judgement and Rationale

The gravamen of issue one before the Supreme Court was the characterization of the trial court's decision to stay proceedings *sine die* pending mediation or arbitration. Their Lordships strongly emphasized that the importance of distinguishing between a final and an interlocutory decision lies in the fact that failure to obtain leave in an appeal against an interlocutory decision renders the appeal incompetent and liable to be struck out.

The Supreme Court reaffirmed the age-long test for determining finality of a decision, relying on its earlier decision in the case of **OMONUWA v OSHODIN (1985) 2 SC 1**. The apex court noted that a decision is final when it determines the rights of the parties in the manner before the court, leaving nothing else for the trial court to address or pronounce upon. Conversely, a decision is interlocutory if it does not finally determine the substantive rights of the parties, but rather preserves the subject matter of the suit, regulate proceedings, or addresses a procedural question pending the determination of the substantive claim, or put in another way, defer determination pending another event. *The test is to examine the nature of the order made and whether the legal rights of the parties have been finally and conclusively determined by the order made. The crucial consideration in determining the character of a decision is not the form or label of the order, nor the function performed by the court, but rather whether the order finally resolves the substantive claim between parties. Thus, the determining factor is not whether the court has exhausted its jurisdiction or brought the proceedings to an end, but whether the order made has conclusively settled the legal rights in controversy between the contending parties* - **BACKBONE CONNECTIVITY NETWORK (NIG) LTD v BACKBONE TECH NETWORK INC & ORS. (2021) LPELR-56884(SC)**. *Therefore, where the trial*

court retains jurisdiction to revisit the matter, or if the matter can be revived upon the occurrence of a future event, then the decision is interlocutory.

Applying the principles above, the Supreme Court held that the decision of the trial court did not determine the substantive rights of the parties. The court clarified that the use of the term “*sine die*” by the trial court does not connote finality; rather, “*the suit remains on the docket of the trial court and may be revived upon the happening of a contingency, in this case, the conclusion or failure of arbitration.*”

The apex court stressed further that *an arbitration agreement does not oust the jurisdiction of the court*, citing the decision in **OBI OBEMBE v WEMABOD ESTATES LIMITED (1977) 5 SC (REPRINT) 70 AT 79-80**. Consequently, the court found that *the Court of Appeal erred in equating the trial court's deference to arbitration with a full and final disposal of the action*. The Supreme Court concluded that the trial court neither became *functus officio* by staying the proceedings nor did it divest itself of all further authority in respect of the matter.

Finally, the Supreme Court resolved issue one in favour of the Appellant. Regarding the other issues, the court held that they had been rendered academic by virtue of its pronouncement on issue one.

Appeal Allowed.

Representation

R. Ebokpo, Esq. with M. Aigbe, Esq. for the Appellant.

Mike A. Ozekhome, SAN; with him, Oshmha Mike Ozekhome, Esq.; Jamilat Kassim Ali (Miss); Yusuf Amuda-Kannike, Esq.; and Osikhuemhe Mike Ozekhome, Esq. for the Respondent.

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