

SUPREME COURT OF NIGERIA

18TH MAY, 2001. SC. 45/1996

**CORAM: S. M. A. BELGORE, M. E. OGUNDARE, E. O. OG-
WUEGBU, A. I. KATSINA-ALU, U. A. KALGO, JJSC.**

RAS PAL GAZI CONSTRUCTION APPELLANT
COMPANY LIMITED

AND

FEDERAL CAPITAL DEVELOPMENT RESPONDENT
AUTHORITY

ARBITRATION - Arbitrators award - Interest awarded by trial court -
On the award - Was without jurisdiction (H 5)

ARBITRATION - Conversion to courts judgment - The court has no
jurisdiction - To convert the award into its judgment - Rather it will enter
it as a judgment - And give effect to it - In the absence of a challenge (H
3)

ARBITRATION - Judgment - Arbitrators award - Once filed in court -
Has the force and effect of a judgment (H 1)

ARBITRATION - Jurisdiction of court - Is to give leave to enforce the
award as a judgment - And not to tamper with it in any other way (H 4)

ARBITRATION - Settlement out of court - Differs from an arbitrators
award - Because the award immediately becomes binding on the parties
- And can be enforced by the court on application (H 2)

FACTS

The appellant who was plaintiff at the Abuja High Court sued the
respondent claiming a declaration that it was entitled to payment of the
value of the work done for them and for materials on the construction site

amongst other reliefs. Parties never went to trial as they resolved to refer their dispute to an arbitrator appointed by them and with leave of court this was done. The arbitrator conducted arbitration proceedings and produced a report which he forwarded to the High Court.

Before the trial court the Respondent tried to set aside the award. The court held that both parties were bound by the award and proceeded to declare that the award is hereby made the judgment of the court. It equally awarded 20 percent interest on the award. The Respondent appealed to the Court of Appeal who allowed his appeal on the issue of making the award a judgment of the court and the interest awarded. The plaintiff dissatisfied has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

(i) *Whether the High Court has jurisdiction to convert an arbitral award into its own judgment instead of merely recognising the award as binding on the parties for purposes of enforcement.*

(ii) *Whether the High court has jurisdiction to award interest on the arbitral award in exercise of its judicial discretion under Order 27 Rule 8 of the Abuja High Court (Civil Procedure) Rules 1985."*

HELD (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALUJSC**)

Arbitrators award - Effect as a judgment

1. An arbitrator's award under the provisions of section 4(2) of the Act when filed in Court should for all purposes have the force and effect as a judgment. Section 13 of the Abuja High Court (Civil Procedure) Rules 1985 provides:

"13. If no application is made to set aside the award or to remit any of the matters referred, for reconsideration, or if the court shall have refused any such application, either party may file the award in court, and the award shall thereupon have the same force and effect for all purposes as a judgment." (p. 1661 H)

Arbitration - Different from settlement out of court

2. Arbitration proceedings as I have already shown are not the same thing

as negotiations for settlement out of court. An award made pursuant to arbitration proceedings constitutes a final judgment on all matters referred to the arbitrator. It has a binding effect and it shall upon application in writing to the court, be enforced by the court.

What this means is this. If an award was not challenged then it became and was a final and binding determination of the matters between the parties. (p. 1664 D)

Arbitration - Conversion to courts judgment

3. The simple question to be resolved is whether a court can make the award a judgment of the court. I am in agreement with the Court of Appeal that the court has no such jurisdiction. The reason is obvious as I shall show shortly. Once an award has been made, and not challenged in court, it should be entered as a judgment and given effect accordingly. The losing party cannot be heard to say he wants to argue some point or other. Just as he would not be allowed to do so in the case of a judgment not appealed from, he should not and would not do so in the case of an award that he has not challenged.

If an issue is raised for decision and has been decided, that is final. The parties cannot be allowed thereafter to re-open it. The reason is that just as the parties would not be allowed to do so in the case of the judgment not appealed from, the point so decided is *res judicata* - see Middlemiss v. Hartlepool Corpn. (1973) 1 ALL ER.172. (p. 1664 F)

Jurisdiction of court

4. The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is real ground for doubting the validity of the award. In other words if upon an application to enforce the award, the Judge finds that the validity of the award is doubtful, he can refuse leave. See section 29,30, and 31 of the Arbitration and Conciliation Act. The court has no other business with regard to the award except where it is expressly provided in the Act. Section 34 of the Act buttresses this point. It provides:

"A court shall not intervene in any matter governed by this Act

except where so provided in the Act.”

I must say nowhere in the Act is the High Court given the power to convert an arbitration award into its own judgment. See Commerce Assurance Ltd. v. Alhaji Buraimoh Alli (supra). What this means simply is this. An award is on par with a judgment of the court. It is in the light of all this that a court cannot make the arbitrator's award its own judgment. This issue was therefore resolved in favour of the Respondent. (p. 1665 A)

C
Award of interest

5. I come now to issue No.2 which questions the power and jurisdiction of the trial court to award 20% interest on the arbitrator's award. The short answer to this is simple. The issues in controversy between the parties were determined by the arbitrator. His award was not challenged. Therefore the award became and was a binding determination of the matters between the parties. In other words, the award constituted a final judgment on all issues referred to the arbitrator. It was therefore the responsibility of the arbitrator to award interest and costs, on the date of the award.

The only jurisdiction the court has in regard to an award is to enforce it upon an application if the validity of the award is not in doubt. This issue also failed. (p. 1665 E)

NOTABLE POINTS OF INTEREST
KATSINA-ALU JSC

1. *Choice of parties to arbitrate as alternative mode of dispute resolution*
A valid award on a voluntary reference no doubt operates between the parties as a final and conclusive judgment upon all matters referred. It should be remembered that when parties decide to take their matter to arbitration, they are simply opting for an alternative mode of dispute resolution. It must be emphasised that the parties have a choice to either go to court and have their dispute determined by the court or refer the matter in dispute to an arbitrator for resolution. Reference to arbitration, the mode adopted by the parties in the present case is consistent with the Agreement

executed by both parties. Arbitration as an alternative mode of dispute resolution has for decades been given legal backing. See Arbitration and Conciliation Act of 1988. See also the cases of Commerce Assurance Ltd. v. Alhaji Buraimoh Alli (1992) 3 NWLR (Pt.232) 710. (p. 1661 E)

B

2. Consent judgment - Terms of settlement - When it becomes binding

I must state here that at this stage, the terms of settlement cannot and do not operate as a final and conclusive judgment.

The parties subsequently submit the terms of settlement to court. After the confirmation of the terms, the court then formally makes the terms of the settlement, a judgment of the court. I must point out here that unless and until the court makes the terms of the settlement a judgment of the court, it is not binding and cannot therefore be enforced.

C

It is a rule of practice that parties may settle their dispute by consent in the course of the trial. Such settlement is a compromise and in order to have a binding effect on the parties, it is imperative that it should have the blessing of the court. So when the court adopts the terms of settlement and makes it its judgment, then the settlement assumes the status of a consent judgment binding upon the parties. See Woluchem v. Wokoma (1974)1 ALL NLR 605 at 617. (p. 1664 A)

D

REPRESENTATION

Chief G.I. Ikokwu (with him Afam Osuigwe) for the Appellant.

Adeniyi Oyeyipo Esq. (with him Rotimi Oguweso & O.A. Falade) for the Respondent.

F

CASES REFERRED TO

Commerce Assurance Ltd. v. Alhaji Buraimoh Alli (1992)3 NWLR (Pt.232) 710 at 725

K.S.U.D.B. v. Fanz Construction Co. Ltd. (1990)4 NWLR (Pt.142) 1 at 37

G

Middlemiss & Gould (a firm) v. Hartlepool Corporation (1973)1 AER. 172

H

The United Nigeria Insurance Co. Ltd. v. Leandro Stocco (1973) ALL

NLR 135 at 144

Onwuanumkpe v. Onwuanumkpe (1993)8 NWLR (Pt.310) 186 at 204

Ojibah v. Ojibah (1991)5 NWLR (Pt. 191) 296

B BOOKS REFERRED TO

Halsbury's Laws of England 3rd Edition Vol.22 Page 765 Para 1631

Russel on Arbitration 17th Edition Page 275

C STATUTES REFERRED TO

Arbitration and Conciliation Decree 1988 s. 4

Arbitration and Conciliation Act Cap.19 LFN 1990 ss. 29 -31

Abuja High Court (Civil Procedure) Rules 1985 s. 13

D LEAD JUDGMENT BY KATSINA-ALU JSC

On 19/2/2001 I dismissed this appeal and indicated that I would give my reasons on 18/5/2001. I now give my reasons.

The Appellant herein was the Plaintiff at the Abuja High Court
E Suit No. FCT/HC/CV/95/89. The Appellant had sued the Respondent claiming as follows:

"(a) A declaration that the Plaintiffs are entitled to payment of the value of the work done by them including materials on site.

(b) An order restraining the Defendants from ejecting the Plaintiffs from the contract construction site until the final determination of this court.

(c) An order of the court that the Defendants should quantify and assess the value of the work and investment so far made by the Plaintiff before re-awarding the contract to any other person."

Although pleadings were ordered by the High Court the parties never exchanged pleadings as they both resolved to refer the issues between them to an arbitrator to be appointed by both parties. They therefore
H sought and obtained leave of the High Court to appoint an arbitrator to resolve the issues between them and report back to Court. The court later ordered that the parties appoint an arbitrator within 7 days and that the arbitrator should submit his report within 30 days.

On 17th January 1990 both parties appointed an arbitrator in the person of patrick Okeke Akunyili Esq. as ordered by the High Court. They agreed that the arbitrator's award shall be binding on them. The arbitrator went into action and produced a Report which was forwarded to the High Court on 20th February, 1990. B

Before the High Court the Respondent tried to set aside the award. The Court in its ruling held that both parties were bound by the award . The Court then declared that *"the arbitration award is hereby made the judgment of this court."* The court also awarded interest of 20% on the arbitration award from 13th March, 1990. C

The Respondent's appeal to the Court of Appeal was allowed. That Court per Mahmud Mohammed, JCA concluded:

"In the result this appeal succeeds and it is hereby allowed. The judgment of the trial court delivered on 13th March, 1990 declaring that- 'The arbitration award is hereby made the judgment of this court' is hereby set aside. In its place, a judgment recognising the arbitral award as binding and striking out the action filed by the respondent against the appellant in Suit No. FCT/HC/CV/95/89 is hereby substituted. The order of the lower court awarding the respondent 20% interest on the arbitral award having been made without jurisdiction is also set aside. D

Having regard to the outcome of this appeal I do not deem it appropriate to make any order as to costs. Each party shall bear its F costs."

The Plaintiff, was dissatisfied with the decision of the Court of Appeal and has appealed against same upon a number of grounds.

The Respondent, on p.3 of the Respondent's Brief raised a preliminary objection to Grounds (i), (ii), (iii) and (iv) of the Grounds of appeal. At the hearing of this appeal, however, learned counsel for the Respondent withdrew the preliminary objection and it was accordingly struck out. G

The Appellant set down four issues for determination in this appeal which read as follows: H

"(i) Whether or not the lower court had power to make the arbitral award its own judgment.

(ii) *Whether, having regard to the order of the lower court on 15th January, 1990 that the arbitrator should make the award within 30 days and report back to court, the parties to the action are still required under Order 22 Rules 13 of Abuja High Court Civil Procedure Rules to file same award in court before it shall have the same force and effect for all purposes as a judgment.*

(iii) *Whether the lower trial court had power and jurisdiction to award 20% interest on the arbitral award, on the ground that it was NOT IT'S OWN JUDGMENT, and therefore contrary to the intendment of Order 27 Rule 8 of Abuja High Court Civil Procedure Rules, when the award was limited to the return date ordered by the lower trial court.*

(iv) *Whether in the circumstance the court was right in setting aside the judgment of the trial court and substituting in its place a judgment recognising the arbitration award as binding and striking out the action filed by this appellant in Suit No. FCT/HC/MC/95/89."*

The Respondent, on the other hand raised two issues for determination. They read:

(i) *Whether the High Court has jurisdiction to convert an arbitral award into its own judgment instead of merely recognising the award as binding on the parties for purposes of enforcement.*

(ii) *Whether the High court has jurisdiction to award interest on the arbitral award in exercise of its judicial discretion under Order 27 Rule 8 of the Abuja High Court (Civil Procedure) Rules 1985."*

Appellant's issue No.1 and Respondent's issue No.1 are identical. Appellant's issue No.3 and Respondent's issue No.2 are also identical. Respondent's issues 1 and 2 were sufficient to dispose of this appeal one way or another.

I shall deal first with issue No.1. The Appellant in this regard has submitted that an order or decision which finally disposes of the issues between the parties before a court is nonetheless a judgment of the court even though it was arrived at or made as a result of the consent of the parties in an action commenced by writ, and even before pleadings are ordered or filed by both parties. Reliance was placed on Halsbury's Laws of England 3rd Edition Vol. 22, Page 765 Para. 1631 for the definition of

"consent judgment", Russel on Arbitration 17th Edition page 275, and Section 4 of the Arbitration and Conciliation Decree 1988. It was said that S.4 of the Arbitration and Conciliation Decree 1988 under the heading "*Arbitration agreement and substantive claim before the court*" states clearly the position of arbitration proceedings and pending court actions. B

In order to appreciate the submission of the Appellant, I think it is desirable at this stage to read S.4 of the Decree. It provides thus:

4(1) A court before which an action which is the subject of an arbitration agreement is brought shall, if any party so requests not later than when submitting his first statement on the substance of the dispute, order a stay of proceedings and refer the parties to arbitration. C

(2) Where an action referred to in subsection (1) of this section has been brought before a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court." D

It was contended on behalf of the Appellant that the Arbitration Act of 1988 like the Arbitration Act of 1950 in England does not oust the jurisdiction of the Court. It was said that the issue of stay of proceedings is discretionary and may be made before delivery of pleadings or taking of any steps in the proceedings by any party to the arbitration agreement. E

It was further submitted that a combination of the provisions of S.4 (2) of the Arbitration Decree 1988 and order 22 Rule 4 of the Abuja High Court Civil Procedure Rules gives the arbitrator's award filed in Court in a pending suit the finality of a decision or judgment of the Court similar to a consent judgment. F

In the light of the foregoing it was submitted that the court of Appeal was in grave error when it held: G

"There is nothing in the provision of section 31 of the Act which empowers the court to make the arbitral award the judgment of the trial court. That section of the Act in my view had already given the arbitral award the status of a judgment of a court of law and as such it does not require any act on the part of the trial court to make the arbitral award acquire the status which had already been conferred by law.... it is quite plain therefore that the trial court had no power to make the arbitral H

1660 Ras Pal Gazi Const. Ltd v. F.C.D.A. (2001) 5 KLR Kastina-Alu JSC
award its own judgment particularly when it did not itself adjudicate on the dispute between the parties which dispute the parties decided to submit to arbitration, after refusing to file their pleadings in court.”

B It was the contention of the Appellant that the fact that the court did not itself adjudicate the claim in a pending suit does not remove the power of the court to make the finding of the tribunal its own judgment or the terms of settlement of a suit by the parties a consent judgment which becomes the judgment of the court. The Appellant drew a distinction between this case which was pending in court and a case which never went
C to court but the parties referred the matter to arbitration. The award or submission will in this circumstance, be made to the parties and not to the court.

D For the Respondent it was submitted that when the parties at the High Court decided to refer the matter in dispute between them to an arbitrator for resolution, they were opting for an alternative method of dispute resolution other than through litigation in court. It was pointed out that the method the parties chose to adopt was consistent with the Agreement
E executed by them and is a method that has been given statutory and judicial backing. It was further pointed out that the Arbitration and Conciliation Act Cap.19 Laws of the Federation of Nigeria 1990 gives statutory backing to arbitration as an alternative mode of dispute resolution. With
F respect to judicial authority learned counsel for the Respondent relied on the cases of Commerce Assurance Ltd. V. Alhaji Buraimoh Alli (1992) 3 NWLR (Pt. 232) 710 at 725, K.S.U.D.B. V. Fanz Construction Co. Ltd. (1990) 4 NWLR (Pt. 142) at 37.

G It was also the submission of the Repondent that an award made by an arbitrator before whom parties have submitted themselves has the force and finality of a judgment of the High Court for purposes of enforcement unless it is successfully challenged in Court. Reliance was placed on the following cases: Middlemiss & Gould (a firm) v. Hartlepool Corporation (1973) IAER. 172; The United Nigeria Insurance Co. Ltd. v. Leandro Stocco (1973) All NLR 135 at 144; Commerce Assurance v. Alli (supra); K.S.U.D.B. V. Fanz Construction (supra).
H

It was further submitted that the only jurisdiction conferred on

the High Court with respect to an arbitral award is the jurisdiction to determine the validity of the award where a party makes the appropriate application to court under sections 29 and 30 of the Arbitration and Conciliation Act and the jurisdiction to enforce the award where the appropriate application is made under section 31 of the Act. The High Court has no power under the Act to convert an arbitral award into its own judgment as the High Court did in this case. B

Parties to a dispute have a choice. They may go to court and have their dispute determined both as to the fact and to the law. Or, they may choose an arbitrator to settle their dispute. C

In the present case, the Defendant awarded a contract to the Plaintiff in 1982 for the construction of a Cultural Centre in Abuja. In 1989 the Defendant terminated the contract. The Plaintiff went to court. It brought an action in suit No. FCT/HC/CV/95/89 against the Defendant claiming a declaration that the Plaintiff is entitled to payment of the value of the work done, an order restraining the Defendant from ejecting the Plaintiff from the contract construction site and an order that the Defendant quantify and assess the value of the work done and investment so far made by the Plaintiff before re-awarding the contract to any other person. D E

A valid award on a voluntary reference no doubt operates between the parties as a final and conclusive judgment upon all matters referred. It should be remembered that when parties decide to take their matter to arbitration, they are simply opting for an alternative mode of dispute resolution. It must be emphasised that the parties have a choice to either go to court and have their dispute determined by the court or refer the matter in dispute to an arbitrator for resolution. Reference to arbitration, the mode adopted by the parties in the present case is consistent with the Agreement executed by both parties. Arbitration as an alternative mode of dispute resolution has for decades been given legal backing. See Arbitration and Conciliation Act of 1988. See also the cases of Commerce Assurance Ltd. v. Alhaji Buraimoh Alli (1992) 3 NWLR (Pt.232) 710; KSUDB.v.Fanz Construction Co. Ltd. (1990) 4 NWLR (Pt.142) 1. F G

An arbitrator's award under the provisions of section 4(2) of the Act when filed in Court should for all purposes have the force

and effect as a judgment. Section 13 of the Abuja High Court (Civil Procedure) Rules 1985 provides:

"13. If no application is made to set aside the award or to remit any of the matters referred, for reconsideration, or if the court shall have refused any such application, either party may file the award in court, and the award shall thereupon have the same force and effect for all purposes as a judgment."

This position of the law is however not in contention between the parties. What is in contention is whether the award of an arbitrator can be made a judgment of the court. In this regard the Court of Appeal in the course of its judgment held that:

"The question therefore whether the trial court can adopt the arbitral award as its own judgment after the same had been submitted to the parties upon the resolution of the dispute between the parties by the arbitrator, depends on the provisions of the law. It is an elementary principle of law in the administration of justice in our courts that it is after the parties to an action has stated their respective cases as laid down in the Rules of Court which guide the practice and procedure of the courts that the court may proceed to write its judgment and deliver it. See Onwuanumkpe v. Onwuanumkpe (1993)8 NWLR (Pt.310) 186 at 204. S.31 of the Arbitration and Conciliation Act CAP 19 of the Laws of the Federation 1990 which deals with recognition and enforcement of arbitral award on which the appellant relied in his brief of argument states -

"31(1) An arbitral award shall be recognised as binding and subject to this section and section 32 of this Act, shall upon application in writing to the court be enforced by the court."

S.32 of the Act referred to in S.31 deals with the right of the parties to an arbitration agreement to request the court to refuse recognition or enforcement of the award and it states as follows:-

"32. Any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award."

Or.22 R.13 of the Abuja High Court Civil Procedure Rules relied upon by the respondent on the other hand states -

"13. If no application is made to set aside the award or to remit

or any of the matters referred, for consideration, or if the court has refused any such application, either party may file the award in court, and the award shall there upon have the same force and effect for all purposes as a judgment."

"It is quiet clear that what S.31(1) of the Arbitration and Conciliation Act empowers the trial Court to do when the arbitral award was filed in court was simply to recognise that award as binding between the parties and subject to right of the parties under S.32 of the Act to apply to the court and request the court to refuse recognition or enforcement of the award, to enforce the award as if it were the judgment of the court upon an application in writing by the party entitled to enforce the award. There is nothing in the provision of S.31 of the Act which empowers the court to make the arbitral award the judgment of the trial court. That section of the Act in my view had already given the arbitral award the status of a judgment of a court of law and as such it does not require any act on the part of the trial court to make the arbitral award acquire that status which had already been conferred by law. In other words, it is not the making of the award the judgment of the trial court that gives it the status of a judgment capable of being enforced by the court. It is quiet plain therefore that the trial court had no power to make the arbitral award its own judgment, particularly when it did not itself adjudicate on the dispute between the parties which dispute the parties decided to submit to arbitration after refusing to file their pleadings in court."

The Appellant has submitted that the Court of Appeal was in grave error. The first issue raised by the Appellant was to equate an award made by an arbitrator with a judgment by consent. It was said that an order or decision which finally disposes of the issues between the parties before a court is nonetheless a judgment of the court even though it was arrived at or made as a result of the consent of the parties in an action commenced by writ, and even before pleadings are ordered or filed by both parties. A consent judgment is arrived at in this way. The parties in an action before the court asked for leave of court. They hold meetings in this connection more often than not, assisted by counsel representing them. Where there is an agreement, the terms of settlement are drawn up and signed by the

parties. I must state here that at this stage, the terms of settlement cannot and do not operate as a final and conclusive judgment.

The parties subsequently submit the terms of settlement to court. After the confirmation of the terms, the court then formally makes the terms of the settlement, a judgment of the court. I must point out here that unless and until the court makes the terms of the settlement a judgment of the court, it is not binding and cannot therefore be enforced.

It is a rule of practice that parties may settle their dispute by consent in the course of the trial. Such settlement is a compromise and in order to have a binding effect on the parties, it is imperative that it should have the blessing of the court. So when the court adopts the terms of settlement and makes it its judgment, then the settlement assumes the status of a consent judgment binding upon the parties. See Woluchem v. Wokoma (1974)1 ALL NLR 605 at 617.

Arbitration proceedings as I have already shown are not the same thing as negotiations for settlement out of court. An award made pursuant to arbitration proceedings constitutes a final judgment on all matters referred to the arbitrator. It has a binding effect and it shall upon application in writing to the court, be enforced by the court.

What this means is this. If an award was not challenged then it became and was a final and binding determination of the matters between the parties. The simple question to be resolved is whether a court can make the award a judgment of the court. I am in agreement with the Court of Appeal that the court has no such jurisdiction. The reason is obvious as I shall show shortly. Once an award has been made, and not challenged in court, it should be entered as a judgment and given effect accordingly. The losing party cannot be heard to say he wants to argue some points or other. Just as he would not be allowed to do so in the case of a judgment not appealed from, he should not and would not do so in the case of an award that he has not challenged.

If an issue is raised for decision and has been decided, that is final. The parties cannot be allowed thereafter to re-open it. The

reason is that just as the parties would not be allowed to do so in the case of the judgment not appealed from, the point so decided is *res judicata* - see *Middlemiss v. Hartlepool Corpn.* (1973) 1 ALL ER.172.

The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is real ground for doubting the validity of the award. In other words if upon an application to enforce the award, the Judge finds that the validity of the award is doubtful, he can refuse leave. See section 29,30, and 31 of the Arbitration and Conciliation Act. The court has no other business with regard to the award except where it is expressly provided in the Act. Section 34 of the Act buttresses this point. It provides:

"A court shall not intervene in any matter governed by this Act except where so provided in the Act."

I must say nowhere in the Act is the High Court given the power to convert an arbitration award into its own judgment. See *Commerce Assurance Ltd. v. Alhaji Buraimoh Alli* (supra). What this means simply is this. An award is on par with a judgment of the court. It is in the light of all this that a court cannot make the arbitrator's award its own judgment. This issue was therefore resolved in favour of the Respondent.

I come now to issue No.2 which questions the power and jurisdiction of the trial court to award 20 percent interest on the arbitrator's award. The short answer to this is simple. The issues in controversy between the parties were determined by the arbitrator. His award was not challenged. Therefore the award became and was a binding determination of the matters between the parties. In other words, the award constituted a final judgment on all issues referred to the arbitrator. It was therefore the responsibility of the arbitrator to award interest and costs, on the date of the award.

The only jurisdiction the court has in regard to an award is to enforce it upon an application if the validity of the award is not in doubt. This issue also failed.

The foregoing are the reasons why I dismissed the appeal on 19/2/2001 and affirmed the decision of the Court of Appeal with costs of

N10,000.00 in favour of the Respondent.

BELGORE JSC

B There is nowhere in Arbitration and Conciliation Act that a court
of law would convert the arbitral award to its own judgment. The role of
the High Court in an arbitral award is merely to enforce when the award
is not challenged. Otherwise an arbitral award, once made, is enforce-
C able like a judgment of court, the only difference is that the arbitrator is
functus officio after the award, the enforcement shall be in the normal
court of law. Section 31 of the Act was therefore misconstrued by the
High Court. A party can challenge an award on appropriate application in
the High Court as provided in sections 23 and 30 of the Act but not make
D the award judgment of the High Court. Otherwise the valid award is as
good as judgment of the High Court, thus there is no question making the
award judgment of the High Court.

It is for the foregoing reasons and the fuller reasons given by my
E learned brother, Kastina-Alu J.S.C. that I dismissed this appeal on 19th
day of Febuary 2001 with N10,000.00 costs to the respondent.

OGUNDARE JSC

F On 19th Febuary 2001, after listening to oral arguments adduced
by learned counsel for the parties and considering also the submission in
their respective written briefs of argument, I dismissed this appeal as
lacking in merit and indicated then that I would give my reasons for so
G deciding today. I have had the advantage of a preview of the reasons
given by my learned brother, Kastina-Alu JSC for also dismissing the
appeal. I agree entirely with his reasons which I hereby adopt as mine. I
need, however, to add a few words.

H The Plaintiff who is the appellant in this appeal had on 3/7/89
sued the Defendant, now respondent, claiming-

*"(a) A declaration that plaintiffs are entitled to payment of the
value of the work done by them including the materials on site.*

(b) *An order of the court restraining the defendants from ejecting the plaintiffs from the contract - construction site until the final determination of this court.*

(c) *An order of the court that the defendants should quantify and assess the value of the work and investment so far made by the plaintiff before re-awarding the contract to any other person.”* B

On 27/7/89, pleadings were ordered but not filed. For on 20/11/89 on the oral application of both learned counsel for the parties; the court of trial ruled:

“In view of the fact that both parties have agreed to go to arbitration to resolve the issues out of court, the application is hereby granted. The order of this court is that the parties are to appoint an arbitrator to resolve the issues between them and report back to court. The motion is hereby struck out. Case adjourned to 1/2/90 for report” C D

The parties eventually went to arbitration at the end of which the arbitrator, P.O. Akunyili Esqr. made an award in the total sum of N7,807,897.68 in favour of the Plaintiff which amount included interest at the rate of 25% p.a. on unpaid balance of payment due the Plaintiff from 1987 to the date of the award. While arbitration was on, the suit in court adjourned from time to time for mention. On completion of arbitration, the arbitrator's report containing his award was filed in Court. E

On 13/3/90 when the matter came up in court for mention the Defendant made an unsuccessful oral application to have the award sent back to the arbitrator for reconsideration. In turning down the request, the learned trial Judge in a ruling delivered on the same date made the arbitrator's award the judgment of the court and awarded 20% interest on the judgment sum effective from the date of judgment, that is 13/3/90. F G

The Defendant appealed to the Court of Appeal against the orders of the trial court (a) entering judgment in the suit for the Plaintiff in terms of the arbitrator's award, that is, making the arbitrator's award the judgment of the court in the suit and (b) awarding interest at the rate of 20% p.a. on the judgment debt from the date of the judgment. The Court of Appeal allowed the appeal and held (1) that the trial court was in error in making the arbitral award its own judgment and (2) the award of 20% H

interest was without jurisdiction. Both orders were set aside. The Plaintiff, being aggrieved by the decision of the Court of Appeal has now appealed to this Court.

The same arguments advanced in the respective briefs of the parties. I have considered these arguments and I am of the firm view that the court below was right. I think the error of the learned trial Judge lies in her treating the arbitral award as terms of settlement that could be made the judgment of the court. What the learned trial judge ought to have done on the filing of the arbitrator's report was to have struck out the suit before her, leaving it to the Plaintiff in whose favour the arbitrator's award was given to apply to have the award enforced pursuant to section 31(1) of the Arbitration and Conciliation Act, Cap 19 Laws of the Federation of Nigeria 1990 and the award, with leave of the court, would be enforced in the same manner as a judgment or order to the same effect - see section 31(3). It is the learned Judge's error in making the arbitral award her judgment that led her to the other error of awarding interest on a judgment debt pursuant to Order 27 rule 8 of the Rules of the High Court of Abuja. By awarding interest, the learned trial Judge was interfering with the arbitral award which she had no jurisdiction to do.

It is for the above reasons and the fuller reasons given by my learned brother Kastina-Alu JSC that I, too, dismissed this appeal on 19th February, 2001.

OGWUEGBU JSC

On the 19th day of February, 2001 this appeal came up before us for hearing and after oral submissions by both learned counsel, I dismissed the appeal and indicated on that day that I would give my reasons for doing so today. I now give my reasons.

I had the privilege of reading in advance the leading reasons given by my learned brother Kastina-Alu, J.S.C. I entirely agree with the reasons and I adopt them as mine. The High Court of the Federal Capital Territory Abuja has no jurisdiction to convert the award made by the arbitrator as its own judgment for the purposes of its enforcement. That

court equally has no jurisdiction to award interest on the award since the award is not the judgment of the court. It is for these reasons that I dismissed the appeal.

KALGO JSC

This appeal was dismissed by me on 19th February 2001 as lacking in merit and I agree to give my reasons for dismissing it today. I now do so.

I have had the privilege of reading in draft the judgment of my learned brother Kastina-Alu JSC in which he fully set out the reasons for dismissing this appeal on 19th February 2001, and I find myself in agreement with all the reasons he had therein which I adopt as mine.

It is very clear and without an iota of doubt, that an arbitral award made by an arbitrator to whom a voluntary submission was made by the parties to the arbitration, is binding between the parties. See K.S.U.D.B v. Fans Construction Co. Ltd. (1990)4 NWLR (pt. 142)1 at P.37; Commerce Assurance Ltd. v. Alli (1992)3 NWLR (pt.232)710 at 725; Ojibah v. Ojibah (1991)5 NWLR (pt. 191)296. The parties have the right to challenge the award in court but until any of the parties succeeds in challenging the award, the award has the force and effect, for all purposes, as a court judgment. And the award once filed in court shall be recognised and enforced by the court on the application of any of the parties to the award. See Section 29, 30, 31 and 32 of the Arbitration and Conciliation Act Cap. 19 of 1990 Laws of Federation of Nigeria.

In the instant appeal there was a challenge to the arbitral award which was unsuccessful. This meant that the award remained binding and enforceable in the new manner as a judgment of court. Order 22 rule 13 of the Abuja High Court (Civil Procedure) Rules, 1985, provides that if any such challenge is unsuccessful or refused, the award shall have the status of a judgment of Court. This means that there was no need for any further order or declaration that the award be the judgment of the court. I therefore agree with the Court of Appeal that the trial judge was wrong to make the arbitral award in this case, a judgment of court. For similar reasons

and the fact that there is no legal support for so doing, the learned trial judge was wrong to order payment of interest on the award.

For the above and the more detailed reasons given by my learned brother Kastina-Alu JSC, I also found no merit in the appeal and dismissed B it on the 19th of Febuary, 2001.

C

D

E

F

G

H