

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH JUNE, 2003. SC. 21/2000  
**CORAM:- M L. UWAIJ CJN, M. E. OGUNDARE,**  
**U. MOHAMMED, A. I. IGUH, D. MUSDAPHER, JJSC**

THE OWNERS OF THE M.V. LUPEX ..... APPELLANT  
AND  
NIGERIAN OVERSEAS CHARTERING  
AND SHIPPING LIMITED ..... RESPONDENTS

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ARBITRATION - Submission to - Implication - By submitting to arbitration - Respondent had compromised its right to resort to litigation in court (H1)

ARBITRATION - Stay of proceedings - Grant - Grounds - Where parties agree that all dispute shall be referred to arbitration - It is a strong ground for granting stay (H2)

ARBITRATION - Agreement - Binding effect - Where parties have chosen to refer any of their disputes to arbitration instead of regular courts - Courts must act upon such agreement (H3)

**FACTS**

Plaintiff/respondent sued defendant/appellant in the Federal High Court, Lagos claiming damages for loss it suffered as charterer of appellant's ship under a charter-party dated 11<sup>th</sup> April, 1991. The loss was alleged to be in consequence of appellant's breaches of the said charter-party. After filing the suit, respondent applied through a motion ex-parte for the arrest of the vessel (M.V. Lupex) which was berthed at the port of Warri at the material time. The trial court granted the order as prayed whereupon appellant brought an application to the court praying for an order setting aside the order of arrest and another order staying proceedings in the suit sine die. The basis of appellant's application was that the charter-party agreement had an arbitration clause under which the parties were to submit any arising dispute to arbitration in England.

It was in evidence that an arbitration tribunal was already hearing the matter in England and that both parties had already made

representations to the tribunal. After hearing appellant's application, the trial judge declined to stay proceedings. It also made an order for release of the ship on the condition that appellant should supply a bank Guarantee to the tune of \$735,000.00 or its naira equivalent before the ship could be released. Dissatisfied, appellant appealed to Court of Appeal. But the appeal was dismissed. Still dissatisfied, appellant has come on a further and final appeal to the Supreme court.

### **ISSUE FOR DETERMINATION**

Whether in the circumstances of the case the Court of Appeal rightly affirmed the decision of the learned trial Judge in exercising his discretion to refuse the appellant's application for stay of the proceedings in the suit in consequence of arbitral proceedings pending in London between the parties.

**HELD** (Unanimously allowing the appeal per **MOHAMMED JSC**)

*ARBITRATION - Submission to - Implication*

**1. Sonnar's case could easily be distinguished from the case in hand. The facts which have been averred by the appellant in the appellant's affidavit, in support of the application for stay of proceedings in the High Court clearly show that the respondent had in fact submitted to the jurisdiction of the English tribunal in London. The respondent had filed a counter-claim against the appellant's affidavit stating its claim before the tribunal there.**

**These uncontroverted facts explain clearly that by submitting to arbitration, the respondent had compromised its right to resort to litigation in court. The averments in the appellant's affidavit show that the arbitration proceedings had commenced and the respondent had entered appearance before the tribunal.**

**Unlike in Sonnar's case where, on the grounds of balance of convenience, the proceedings in Germany were time-barred, in this case, the tribunal in England had started hearing the dispute and parties had begun to present their respective cases before it. (p. 1976 A/ H/ 1977 B)**

*ARBITRATION - Stay of proceedings - Grant - Grounds*

**2. Grounds for granting a stay of proceedings in cases where parties agree to resort to arbitration are many. Where the parties agreed that ‘all disputes that may arise between them in consequence of this contract having been entered into shall be referred to arbitration’ is held to be a strong ground for granting a stay of proceedings.**

**In the case of the Chaparral (1968) 2 Lloyd’s Rep. 158 at 164, Lord Diplock dealt with the importance attached by the courts to the affirmation of voluntary agreement of parties and said as follows:-**

**“Where parties have agreed to submit all their disputes under a contract to the exclusive jurisdiction of a foreign court, I myself should require very strong reasons to induce me to permit one of them to go back on his word...” (p. 1977 F)**

*ARBITRATION - Agreement - Binding effect*

**3. Judges and courts exercise their discretion in accordance with rules of law and justice and not according to private opinion. An exercise of discretion is a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law. Where parties have chosen to determine for themselves that they would refer any of their disputes to arbitration instead of resorting to regular courts, a prima facie duty is cast upon the courts to act upon their agreement.**

**Taking into consideration all what I have considered above in this judgment, it is crystal clear that the trial High Court could only have acted judicially and judiciously if it exercised its discretion by ordering a stay of proceedings in the case in hand. It is abundantly clear that the trial court had acted on wrong principles of law and that it misapprehended the facts of this case when it refused to grant the appellant’s application for stay of proceedings of the action filed before it by the respondent. The court below is therefore in error to affirm the decision of the trial Federal High Court in refusing to grant a stay**

1970 M.V. Lupev v. Nig. Overseas Chartering & Shipping Ltd. (2003) 6 KLR  
*of proceedings.* (1978 E)

## NOTABLE POINT OF INTEREST

### **IGUH JSC**

#### ***1. Relative convenience of litigation is no basis for refusing a stay***

In my view, the statutory discretion of the court under Sections 4 and 5 of the Arbitration and Conciliation Act for the stay of court proceedings in favour of arbitration may not be exercised to refuse a stay with a view to favour the allegation of a party that litigation within jurisdiction is more convenient than arbitration as expressly agreed to by the parties. The law is also settled that the mere fact that a dispute is of a nature eminently suitable for trial in a court is not a sufficient ground for refusing to give effect to what the parties have, by contract, expressly agreed to.

So long as an arbitration clause is retained in a contract that is valid and the dispute is within the contemplation of the clause, the court ought to give due regard to the voluntary contract of the parties by enforcing the arbitration clause as agreed to by them. (p. 1981 E)

### **REPRESENTATION**

Babajide Koku, Esq., for the Appellant

Robert Clarke, Esq., with Y. Paiko, for the Respondent

### **CASES REFERRED TO**

Chaparral (1968) 2 Lloyd's Rep. 158

Willesford v. Watson (1873) 8 Ch. App. 473

Union of India v. E.B. Aabys Rederi A/S (1974) 2 All ER 874

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

Sonnar Nig. Ltd v. Nordwind (1987) 3 NWLR (Pt. 66) 520

Niger Progress Ltd. v. North East Line Corp. (1989) 4 S.C. (Pt. II)

### **STATUTE REFERRED TO**

H Arbitration & Conciliation Act Cap. 19 LFN 1990, ss. 4, 5 & 57

### **BOOK REFERRED TO**

DICEY A Morris, "The Conflict of Laws, p. 255, rile 31

Ephraim Akpata JSC, "THE NIGERIAN Arbitration law"

### **LEAD JUDGMENT BY MOHAMMED JSC**

This is an appeal from the decision of the Court of Appeal, Lagos Division. The plaintiff, who is respondent in this appeal, claims damages for the loss it suffered as chartered of the defendant's ship "LUPEX" under a charter-party dated 11th April, 1991. The loss was in consequence of the defendant's breaches of the said charter-party. The defendant is the appellant in this appeal. In an action which the respondent filed against the appellant in the Federal High Court, Lagos, the company claimed for the following reliefs:

- "1. Balance due to the plaintiff on final hire statement .....US \$138,480.64
2. Loss of 13 days hire due to wilful delays by the defendant.....US \$62,400. D
3. Loss of hire paid when defendant wrongfully withdrew the vessel from charter in Brazil without justification for 47 days and bunkers consumed during the said period..... US \$324,770 E
4. Fees paid to the defendant's Nigerian agents at the defendant's request on the 22nd June, 1991 .....US\$56,700
5. Fees paid to the defendant's Brazilian Agents, Messrs. Buarque et Cia, on the 5th July, 1991 ..... US \$50,034.05 F
6. Interest for year at 35% per annum .....US \$221,200

.....US\$853,585.29  
 Total Claim US Dollars 853.585.20 together with interest at G  
 the rate of 35% per annum until the date of judgment and costs."

After filing the suit, the respondent applied through a motion ex parte for the arrest of the vessel (M.V. LUPEX) which at that time had berthed at the Port of Warri. The trial High Court granted the order as prayed. On being aware of the order given by the court directing the arrest of the ship the appellant went to court and filed a Motion on Notice and applied for the following orders:-

- "1. Setting aside the order of this Honourable Court dated 13th October, 1992, for the arrest of the vessel M.V. LUPEX, alterna-

tively;

2. *For the release of the vessel M.V. LUPEX from the arrest of this Honourable Court unconditionally or upon such terms as this Honourable Court may direct.*

3. *Stay of the proceedings in this suit sine die.*”

- B The learned trial Judge, in his ruling, considered the submission of learned counsel for the appellant, Mr. Candide- Johnson, that the court should have declined jurisdiction in view of the provisions of the Arbitration and Conciliation Act, Cap. 19, Laws of the Federation of Nigeria, 1990. The learned Judge was also referred to  
C the Charter-party Agreement and the cases of K.S.U.D.B v. Fanz Construction Limited (1990) 4 NWLR (Pt. 142) page 1 at 33 and Sonnar Nigeria Ltd. v. Parternreeder M.S. Nordwind (Owners of the Ship M.V. Nordwind) and Another (1987) 3 NWLR (Pt. 66) 520.  
D Referring to his application for setting aside the order of arrest of the vessel M.V. LUPEX, the learned counsel for the appellant submitted that when the order was given through an ex-parte application not all the relevant facts were known to the court. The court was not aware of the existence of arbitral tribunal in London. Learned counsel  
E sel then urged the trial court to set aside the order of arrest of the ship. The motion was opposed strongly by learned counsel for the respondent, Mr. Mbanefo, SAN.

The learned trial Judge considered all the submissions made before him and held that he had jurisdiction to entertain the action  
F filed by the respondent, and declined to stay proceedings. On the order of arrest of the ship, the court gave a condition that the appellant should supply, a Bank Guarantee to the tune of \$735,000.00 US Dollars or its equivalent in Naira before the ship could be re-  
G leased.

Dissatisfied with this ruling, the appellant appealed to the Court of Appeal. The Court of Appeal considered all the issues canvassed before it and dismissed the appeal. The appellant has now come before this court, armed with three grounds of appeal, challenging  
H the decision of the court below. Learned counsel for the appellant identified the following three issues as relevant for the determination of the appeal:

“1. *Whether or not the Court of Appeal is bound to stay proceedings where parties prior to the action had voluntarily submitted*

*to arbitration in compliance with their contract or whether the evidence of the plaintiff in this case is sufficient in law to justify the exercise of the court's discretion to refuse to order a stay of proceedings under Section 5, Arbitration and Conciliation Act.*

2. *Whether the court, when faced with an application for stay of proceedings in favour of International Commercial Arbitration as agreed to by parties, must exercise its discretion in line with the Convention for the Recognition and Enforcement of Foreign Arbitral Awards (second schedule to the Arbitration and Conciliation Act), particularly Article II Rule 3 thereof.*

3. *Whether the ratio decidendi of the Supreme Court in Sonnar (Nigeria) Limited & Anor. v. Nordwind & Anor. (1987) 3 NWLR (Pt. 66) 520 (hereinafter referred to as the Nordwind) can be applied to the facts of this case."*

Learned counsel for the Respondent on his part submitted in the Respondents' Brief, that the only issue arising for the determination of the appeal is whether in the circumstances of the case the Court of Appeal rightly affirmed the decision of the learned trial Judge in exercising his discretion to refuse the appellant's application for stay of the proceedings in the suit in consequence of arbitral proceedings pending in London between the parties. In other words, only one issue has been identified by the respondent for the determination of this appeal. I think the respondents' counsel is right in formulating the single issue for the determination of this appeal. It is enough to cover the points of argument between the parties. The real issue in dispute between the parties which concerns this appeal is the application filed by the appellant, requesting the trial High Court to stay proceedings of the action filed by the respondent in view of the Agreement the two parties entered in clause 7 of the Charter-party, which reads:

*"7. That the parties agreed inter alia on arbitration in London under English Law in the event of "any dispute."*

Learned counsel for the appellant, Babajide Koku, referred to a number of authorities, both Nigerian and foreign, to buttress his argument that once an arbitration clause is retained in a contract which is valid and the dispute is within the contemplation of the clause, the court should give regard to the contract by enforcing the arbitration clause. He referred to *Heyman and Another v. Darwins Limited*

(1942) AC 356. I have looked at Heyman's case and the facts, in a nutshell, show that a dispute arose between two contracting parties and an arbitration clause in the contract provided that "if any dispute shall arise between the parties hereto in respect of this agreement or any of the provisions herein contained or anything arising hereto, the same shall be referred to arbitration in accordance with the provisions of the Arbitration Act, 1889." A dispute arose between the parties and the appellants commenced an action against the respondents claiming (a) a declaration that the respondents had repudiated and or evinced an intention not to perform the contract and (b) damages. The respondents denied that they repudiated the contract and applied to have the action stayed in order that it might be dealt with under the Arbitration Clause. The trial High Court Judge, Cassels, J., refused to grant a stay. The Court of Appeal allowed an appeal holding that Cassels, J., had wrongly exercised his discretion. On appeal to the House of Lords, the decision of the Court of Appeal was affirmed. The House of Lords held that the Court of Appeal was right in overruling the discretion exercised by the learned trial Judge in declining to grant a stay.

It may be argued that Heyman's case was a decision in England which did not concern a foreign tribunal. However, in Dicey & Morris, *The Conflict of Laws*, at page 255. Rule 31, it has been provided as follows:

*"Where a contract provides that all disputes between the parties are to be referred to the exclusive jurisdiction of a foreign tribunal, English Courts will stay proceedings instituted in England in breach of such agreement, unless the Plaintiff proves that it is just and proper to allow them to continue."*

Learned counsel for the respondent argued that the trial High Court exercised its discretion in refusing to stay proceedings and it is trite that an appellate court may interfere with such a decision only when it is shown that the trial court had acted on some wrong principles of law or a misapprehension of the facts or that the exercise is patently wrong. He referred to *Sonnar (Nig.) Ltd. v. Nordwind* (1987) 4 NWLR (Pt. 66) 520 at 530. Eso, JSC., (as he then was), wrote the lead judgment in *Sonnar's* case. He referred to the tests set out by Brandon, J., in the case of *The Eleftheria*. Those tests have been reproduced in that judgment as follows:



*“1. Where plaintiffs sue in England in breach of an agreement to refer disputes to a foreign court, and the defendants apply for a stay, the English Court, assuming the claim to be otherwise within the jurisdiction, is not bound to grant a stay but has a discretion whether to do so or not.*

*2. The discretion should be exercised by granting a stay unless B strong cause for not doing so is shown.*

*3. The burden of proving such strong cause is on the plaintiffs.*

*4. In exercising its discretion, the court should take into account all the circumstances of the particular case.*

*5. In particular, but without prejudice to (4), the following C matters, where they arise, may be properly regarded:*

*(a) In what country that the evidence on the issue of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the English and D foreign courts.*

*(b) Whether the law of the foreign court applies and if so, whether it differs from English law in any material respect.*

*(c) With what country either party is connected and how closely.*

*(d) Whether defendants genuinely desire trial in the foreign E country, or are only seeking procedural advantages.*

*(e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would;*

*(i) Be deprived of security for that claim;*

*(ii) Be unable to enforce any judgment obtained;*

*(iii) Be faced with a time-bar not applicable in England; or*

*(iv) For political, racial, religious or other reasons, be unlikely F to get a fair trial.”*

It could be seen, in that case, that Eso, JSC concluded that G where the granting of a stay would spell injustice to the plaintiff, as where the action was already time-barred in the foreign court and the grant of a stay would amount to permanently denying the plaintiffs any redress, justice is better served by refusing a stay than by granting one. As a matter of fact this court in Sonnar’s case agreed to H reverse the decisions of both the High Court and the Court of Appeal because it was established during the hearing of the appeal that if the parties were sent to Germany which was the country adopted by the parties in the Bill of Lading as the place of litigation in regard

to any dispute arising between them the action would be time-barred under the German Law.

***Sonnar's case could easily be distinguished from the case in hand. The facts which have been averred by the appellant in the appellant's affidavit, in support of the application for stay of proceedings in the High Court clearly show that the respondent had in fact submitted to the jurisdiction of the English tribunal in London. The respondent had filed a counter-claim against the appellant's affidavit stating its claim before the tribunal there.*** In the case in hand, in the affidavit filed in support of the motion for stay of proceedings before the trial High Court the appellant explained all the facts about the respondent's voluntary submission to arbitration before the tribunal in London. I will reproduce below some of the relevant paragraphs of the affidavit which explain the points I have disclosed above:

"7. That the parties agreed inter alia on arbitration in London under English law in the event of "any dispute."

46. That the said proceedings are continuing at present and conduct of the plaintiff's case in the proceedings aforesaid is entrusted to the distinguished city firm of Ince and Co.

47. That the plaintiff has submitted to the said arbitration by full participation therein particularly by the filing of a counter claim against the owners on the 14th January, 1991, in the sum of US\$147,205.96 by final submission in the arbitration on 29th September, 1992.

48. That in applying for the order of arrest herein the plaintiffs suppressed the fact of the pending proceedings and misrepresented the documents relevant to the application.

50. That the present proceedings are intended to undermine the pending proceedings in which the plaintiff has had and retains all means to present it's case.

51. That neither these proceedings nor the purported claim which is made by the plaintiff in London is brought for any genuine purpose.

***These uncontroverted facts explain clearly that by submitting to arbitration, the respondent had compromised its right to resort to litigation in court. The averments in the appellant's affidavit show that the arbitration proceedings had***

**commenced and the respondent had entered appearance before the tribunal.** The two courts below, I believe, had no difficulty in understanding the purport of clause 7 of the Charter-party Agreement which the parties signed referring their disputes to arbitration instead of going to court.

An arbitration clause is a written submission agreed by the parties to the contract and, like other written submissions, it must be construed according to its language and in the light of the circumstances in which it is made. The parties in this case agreed to refer their disputes to arbitration in London under the English law. **Unlike in Sonnar's case where, on the grounds of balance of convenience, the proceedings in Germany were time-barred, in this case, the tribunal in England had started hearing the dispute and parties had begun to present their respective cases before it.**

The court has power to stay proceedings when an application is filed before it. See Section 5 of Arbitration and Conciliation Act (supra). The power is indeed discretionary and the trial High Court exercised its discretion and refused to grant a stay of the proceedings. On appeal the Court of Appeal had affirmed that decision.

It is settled law that an appellate court does not interfere with the discretion of a trial court unless when it is shown that the trial court has acted on some wrong principles of law or a misapprehension of the facts or that the exercise is patently wrong.

**Grounds for granting a stay of proceedings in cases where parties agree to resort to arbitration are many. Where the parties agreed that 'all disputes that may arise between them in consequence of this contract having been entered into shall be referred to arbitration' is held to be a strong ground for granting a stay of proceedings.** See *Re Hohenzollern etc. Arb* (1886) 54 LT 596 and the *Union of India v. E.B. Aabys Rederi A/S* (1974) 2 All ER 874. **In the case of the Chaparral (1968) 2 Lloyd's Rep. 158 at 164, Lord Diplock dealt with the importance attached by the courts to the affirmation of voluntary agreement of parties and said as follows:-**

**"Where parties have agreed to submit all their disputes under a contract to the exclusive jurisdiction of a foreign court, I myself should require very strong reasons to induce me to**

***permit one of them to go back on his word...***

Coming back home, I think the comments made by Ephraim Akpata, JSC., in the book “The Nigerian Arbitration Law” is apt on the issue of staying proceedings where parties have agreed to refer their dispute to arbitration in a contract. He expressed his opinion in  
B the following exposition:

*“That the power to order a stay is discretionary is not in doubt. It is a power conferred by statute. It however behoves the Court to lean towards ordering a stay for two reasons; namely:*

C *(a) The provision of Section 4(2) may make the court’s refusal to order a stay ineffective as the arbitral proceedings “may nevertheless be commenced or continued” and an award made by the arbitral tribunal may be binding on the party that has commenced an action in court.*

D *(b) The court should not be seen to encourage the breach of a valid arbitration agreement particularly if it has international flavour. Arbitration, which is a means by which contract disputes are settled by a private procedure agreed by the parties, has become a prime method of settling international commercial disputes. A party generally cannot both approbate and reprobate a contract. A party to an arbitration agreement will in a sense be reprobating the agreement if he commences proceedings in court in respect of any dispute within the purview of the agreement to submit to arbitration.”*  
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***Judges and courts exercise their discretion in accordance with rules of law and justice and not according to private opinion. An exercise of discretion is a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law. Where parties have chosen to determine for themselves that they would refer any of their disputes to arbitration instead of resorting to regular courts, a prima facie duty is cast upon the courts to act upon their agreement.*** See *Willesford v. Watson* (1873) 8 Ch. App. 473.  
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H ***Taking into consideration all what I have considered above in this judgment, it is crystal clear that the trial High Court could only have acted judicially and judiciously if it exercised its discretion by ordering a stay of proceedings in the case in hand. It is abundantly clear that the trial court had***

***acted on wrong principles of law and that it misapprehended the facts of this case when it refused to grant the appellant's application for stay of proceedings of the action filed before it by the respondent. The court below is therefore in error to affirm the decision of the trial Federal High Court in refusing to grant a stay of proceedings.*** This is a clear case which deserves the interference with trial court's discretion by the Court of Appeal. B

In the result, this appeal succeeds and it is allowed. The judgment of the Court of Appeal in which it affirmed the ruling of the Federal High Court, Lagos, refusing to stay proceedings in this case is hereby set aside. The proceedings before the trial Federal High Court are hereby stayed sine die. The appellants are entitled to the costs of this appeal which I assess at N10,000.00 and the costs of the appeal at the Court of Appeal at N1,500.00. C

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### **OGUNDARE JSC**

I agree with the judgment of my learned brother, Mohammed, JSC., just delivered and the reasonings leading thereto. For the same reasons, I too allow this appeal and abide by the consequential orders made by him, including the order for costs. E

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### **IGUH JSC**

I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Mohammed, JSC., and it is clear to me that he has adequately dealt with all the issues raised in this appeal. F

In the interest of emphasis, however, the central issue that arises for resolution in this appeal is whether the Court of Appeal rightly affirmed the decision of the trial court which refused the appellant's application for a stay of proceedings of the suit filed by the respondent against the appellant at the Federal High Court, Lagos, having regard to the arbitral proceedings pending in London between the parties in respect of the dispute arising out of their charter party agreement dated 11th April, 1991. The parties had prior to the institution of the said suit voluntarily contracted to submit their disputes to arbitration pursuant to the said agreement between them. G H

There is no doubt that the issue of arbitration is governed in this country by the Arbitration and Conciliation Act, Cap. 19, Laws of the Federal of Nigeria, 1990. The arbitration to which the parties in this case voluntarily submitted is an International Commercial Arbitration within the ambit of Section 57 (1) and (2) of the Arbitration and Conciliation Act, 1990. The parties are in agreement that Sections 4 and 5 of the Arbitration and Conciliation Act endow a court before which an action, the subject of an arbitration agreement is brought with the power to stay proceedings in the suit in favour of arbitration.

It is a basic principle of law that where parties to a contract have under the terms thereof agreed to submit to arbitration if there is any dispute arising from the contract between them, a defendant who has not taken any steps in the proceedings commenced by the other party, may apply to the court for a stay of proceedings of the action to enable the parties go to arbitration as contracted. The power of the court to stay such proceedings is exercisable under and by virtue of Section 5 of the Arbitration and Conciliation Act and the court is bound to stay the proceedings unless it is satisfied that there is sufficient reason to justify the refusal to refer the dispute to arbitration. See *Niger Progress Ltd. v. North East Line Corporation* (1989) 4 S.C. (Pt. II) 164; (1989) 3 NWLR (Pt. 107) 68 at 91. It does also seem that the court may refuse to order a stay of proceedings where the defendant establishes that he would suffer injustice if the case is stayed or that he cannot obtain justice from the arbitration tribunal or that the agreement between the parties is null and void, inoperative or incapable of being performed.

In the present case, the respondent had voluntarily submitted to arbitration in London pursuant to the agreement between the parties. It however went on to file a suit against the appellant in respect of the dispute which is the subject matter of the arbitration at the Federal High Court, Lagos. The arbitration proceedings then going on in London had reached an advanced stage when the respondent's suit was filed in Nigeria. It seems to me that the said respondent, having voluntarily submitted to arbitration as contracted by the parties, it was an abuse of the process of the court for it to institute a fresh suit in Nigeria against the appellant in respect of the same dispute during the pendency of the arbitration proceedings unless there

was a strong, compelling and justifiable reason for such an action. This is because prima facie the general policy of the courts in such circumstances is to hold parties to the bargain into which they had entered although the point must be stressed that this is not an inflexible rule. The court, of course, undoubtedly has a discretion in the matter which, in the ordinary way and in the absence of strong reason to the contrary would be exercised in favour of holding parties to their bargain. It is only where a strong reason to the contrary is established that the court will be disposed to depart from the aforesaid general policy. Where, however, it is shown that the court's exercise of its discretion in the matter is plainly wrong or erroneous, the appellate court will be bound to interfere with the same. As Diplock, L.J., observed in *The Chaparral* (1968) 2 Lloyd's Rep. 158 at 164.

*"... Where parties have agreed to submit all their dispute under a contract to the exclusive jurisdiction of a foreign court, I myself should require very strong reasons to induce me to permit one of them to go back on his word ...."*

I think learned counsel for the appellant is right when he argued that in refusing to grant the stay of proceedings applied for, the court below granted to the respondent a right it did not possess in the contract between the parties. This is because, the respondent, under the said contract, was not reserved the right to resort to litigation in court at the same time as the arbitration proceedings between the parties were in progress. In my view, the statutory discretion of the court under Sections 4 and 5 of the Arbitration and Conciliation Act for the stay of court proceedings in favour of arbitration may not be exercised to refuse a stay with a view to favour the allegation of a party that litigation within jurisdiction is more convenient than arbitration as expressly agreed to by the parties. The law is also settled that the mere fact that a dispute is of a nature eminently suitable for trial in a court is not a sufficient ground for refusing to give effect to what the parties have, by contract, expressly agreed to. See *Re: An Application by the Phoenix Timber Company Ltd. (Appeal of V/O Sovfracht)* (1958) 1 Lloyd's Rep. 305 at 308. So long as an arbitration clause is retained in a contract that is valid and the dispute is within the contemplation of the clause, the court ought to give due regard to the voluntary contract of the parties by enforcing the arbitration clause as agreed to by them. See *Heyman and Another v.*

Darwins Ltd. (1942) Vol. 72 Lloyd's Rep. 65.

The onus in the present case is on the respondent to show that there is a strong reason why he must be permitted to be discharged from his agreement and thus to be allowed to settle their dispute by court proceedings instead of arbitration. The onus is on it to prove  
B that it would suffer injustice if the stay is granted or that it would not obtain justice at arbitration. This onus it failed to discharge. I think both courts below were in error to have refused the appellant's prayer  
C for a stay of proceedings of the court action to enable the arbitration proceedings already commenced by the parties in London to be proceeded with and concluded, especially when the said arbitration proceedings were at an advanced stage.

It is for the above and the more detailed reasons contained in the leading judgment that I, too, allow this appeal. The judgment of  
D the Court of Appeal is hereby set aside and the proceedings before the trial Federal High Court are hereby stayed pending the determination of the arbitration proceedings between the parties in London. I subscribe to the order for costs made in the leading judgment.

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