EMTS LTD v. AFDIN VENTURES LTD & ORS

CITATION: (2026) LPELR-83327(SC)

In the Supreme Court of Nigeria

ON FRIDAY, 6TH MARCH, 2026

Suit No: SC.CV/1096/2024

Before Their Lordships:

MOHAMMED LAWAL GARBA	Justice of the Supreme Court
TIJJANI ABUBAKAR	Justice of the Supreme Court
HARUNA SIMON TSAMMANI	Justice of the Supreme Court
HABEEB ADEWALE OLUMUYIWA ABIRU	Justice of the Supreme Court
JAMILU YAMMAMA TUKUR	Justice of the Supreme Court

Between

EMERGING MARKETS TELECOMMUNICATIONS SERVICES LIMITED (Doing Business as 9 Mobile) - Appellant(s)

And

1. AFDIN VENTURES LIMITED
2. DIRBIA NIGERIA LIMITED
3. FIRST BANK OF NIGERIA PLC
4. FIRST NOMINEES NIGERIA LIMITED
5. KARINGTON TELECOMMUNICATIONS LIMITED
6. PREMIUM TELECOMMUNICATIONS HOLDINGS N.V
7. EMTS HOLDING B.V

- Respondent(s)

RATIO DECIDENDI

1. **ACTION - CONDITION PRECEDENT:** Effect of non-compliance with condition precedent
"This Court has repeatedly held in seemingly endless decisions that where a condition precedent to the activation or continuation of a legal process is not fulfilled, the process is liable to be declared incompetent. See NALSA & TEAM ASSOCIATES V. NNPC [1991] 8 NWLR (Pt. 212) 652."Per ABUBAKAR, J.S.C. (P. 10, Paras. C-E) - read in context

2. **APPEAL - APPEAL TO THE SUPREME COURT:** Duty of the Appellant to comply with the provisions of Order 6 Rule 3(5) of the Supreme Court Rules 2024; effect of non-compliance

"In addition to the endless decisions of this Court, Order 6 Rule 3(5) of the Supreme Court Rules, 2024 is couched in mandatory language. The Rule provides that within twenty-one days of filing of a Notice of Appeal, the Appellant shall file evidence that all sums ordered by way of costs have been paid into an escrow account in the name of the Chief Registrar, failing which the appeal shall be deemed to be non-compliant with the condition of appeal and therefore liable to dismissal. The jurisprudence of this Court leaves no room for equivocation as to the meaning of the word "shall" encapsulated in the wordings of the Rule. In CHUKWUOGOR V. CHUKWUOGOR [2021] 15 NWLR (Pt. 1799) 357 at 373, this Court reiterated that "shall" is mandatory and denotes obligation, it does not make room for discretion. Where the word "shall" is used in a legislation, the door is shut against any litigant contemplating choice or discretion to comply. The order must be obeyed.

Furthermore, where a certificate of non-compliance is issued pursuant to the Rules, the consequence is ordinarily fatal. In CHAIRMAN, CHIEF EXECUTIVE, NDLEA V. UMEH [2018] 7 NWLR (Pt. 1617) 350, this Court held that once a certificate of non-compliance has been issued, the appeal is liable to be dismissed. Procedural discipline is not an ornamental accessory to justice; it is the architecture that sustains it."Per ABUBAKAR, J.S.C. (Pp. 10-11, Paras. E-F) - read in context

3. **APPEAL - INTERFERENCE WITH CONCURRENT FINDING(S) OF FACT(S):** Attitude of the Supreme Court to interference with concurrent finding(s) of fact(s) of Lower Courts

"This Court is slow to disturb concurrent findings unless shown to be perverse or the finding occasions substantial miscarriage of justice."Per ABUBAKAR, J.S.C. (P. 50, Paras. B-C) - read in context

4. **APPEAL - APPEAL TO THE SUPREME COURT:** Attitude of the Supreme Court to frivolous/ vexatious/ridiculous/incompetent appeals

"The Supreme Court in its position as not only the final Court in the land but also as a policy Court has a responsibility of ensuring that vexatious and incompetent appeals that have the tendency of ridiculing the country in the eyes of the international community are discouraged."Per TUKUR, J.S.C. (P. 58, Paras. B-C) - read in context

5. **APPEAL - APPEAL TO THE SUPREME COURT:** The approach of the Supreme Court to terminating an appeal on the recognition and enforcement of arbitral awards where the appellant fails to comply with Order 6 Rule 3(5) of the Supreme Court Rules 2024

"Ordinarily, therefore, the combined effect of the Appellant's failure to comply with the order to make deposit of the Judgment sum and the mandatory requirements of Order 6 Rule 3(5) of the Supreme Court Rules, 2024, would compel this Court to sustain this preliminary objection and terminate the appeal. Respect for positive orders of Court by litigants remains necessary and a party in contempt of an order of Court is not entitled to audience this is already settled in several judicial decisions.

However, in my humble understanding, this is not the end of the matter. The appeal before this Court arises from proceedings concerning the recognition and enforcement of arbitral award under the Arbitration and Mediation Act, 2023. Proceedings of this nature are not ordinary civil contests or matters occurring from day to day in our Courts, they command commercial importance and impact on the perception of our jurisdiction by the International Commercial Community. They are sui generis; they implicate the sanctity of arbitral awards, commercial finality, and Nigeria's standing within the international arbitration regime. Arbitration rests upon the pillars of party autonomy, expedition, minimal judicial interference, and finality. These principles are codified in modern arbitration statutes and reinforced by global best practices. See the decision of this Court in METROLINE NIGERIA LTD V. DIKKO [2021] 16 NWLR (Pt. 1761) 422 (SC) at 45, paras. A - F, where my law Lord and brother, Rhodes-Vivour, JSC (as he then was) said and I quote:

"... It is time litigants fully understand, respect and appreciate the nature of arbitration agreements they freely enter into. It is the duty of counsel to explain the nature of these agreements and not encourage their clients to disregard them when they get unfavourable awards. Arbitration agreement ought to be respected, and the resultant awards complied with. We should always bear in mind the importance of respecting arbitration agreements, more so those that have international connotations. Building up and sustaining a globally respected dispute resolution system are major steps for the growth of our Nation into a preferred investment destination.

The Nigerian Legal System, following international standards, has legislated on the nature of arbitration awards to be final and binding and only to be interfered with by the Courts in the exceptional circumstances enunciated in the relevant arbitration statutes. Arbitration is widely acknowledged as an alternative to litigation which enables expeditious dispute resolution. Commendably, the legal framework provides for Court interference in specified circumstances only. However, the unfortunate trend in which litigants with the assistance of counsel who fail to appreciate their duties as officers of the Court, all in a bid to win their clients' case by all means, bring unsubstantiated and spurious challenges against otherwise good arbitration awards and the arbitration Tribunal, ought to be frowned upon and discouraged. The Courts should not allow itself to be used as a tool to set aside otherwise good awards or frustrate legitimate arbitration awards."

Therefore, while procedural compliance is fundamental, not every procedural defect is jurisdictional in the strict sense. A distinction must be drawn between defects that go to the constitutional competence of the Court and those that, though serious, remain procedural and amenable to the inherent control of the Court in the interest of substantial justice. Jurisdiction, as we have held in a plethora of decisions, is determined by the competence of the Court, the subject matter, and the due initiation of proceedings. The present defects, grave as they appear to be, do not deprive this Court of its constitutional jurisdiction under Section 233 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to delve into the merits of the appeal and determine some fundamental issues of commercial importance to our jurisdiction, and allay the fears of investors who always think that arbitration in Nigeria marks the beginning of long and endless journey to the Apex Court. Journey full of impediments, hick-ups, hurdles and uncertainties.

This Court is not merely a Court of technical rules; it is, above all, a Court of justice. Section 22 of the Supreme Court Act confers upon this Court expansive powers to "make any order necessary for determining the real question in controversy" and to exercise full jurisdiction over the whole proceedings as if instituted in this Court at first instance. That provision is not idle verbiage. It embodies the principle that appellate adjudication must not be subdued and shackled where the real issues are ripe for determination.

The record in this appeal is complete. The parties have fully ventilated their disputes in comprehensive briefs. The issues raised are of considerable jurisprudential importance and bear upon the interpretation and application of Nigeria's arbitration regime. To strike out this appeal at this stage would not terminate the controversy; it would likely spawn further proceedings, deepen delay, and undermine the very policy of expeditious determination that undergirds arbitration law. It is a common precept that it is in the interest of the State that there be an end to litigation.

This Court must not encourage procedural indiscipline. The Appellant's defaults are neither trivial nor excusable, they are deprecated in the strongest terms. Justice is not served by sacrificing determination of the substantive matter to the altar of technical rigidity, especially where the jurisdiction of the Court remains intact and the real issues in controversy between the contending parties call for authoritative resolution.

In the peculiar circumstance of this case and having regard to the nature of the proceedings, the wider commercial and systemic implications, the fully crystallised state of the record, and the constitutional mandate of this Court to settle the law, I am satisfied that this is a proper case for the exercise by this Court of its inherent and statutory powers under Section 22 of the Supreme Court Act to proceed to determine the substantive appeal. All along the line, the Courts persistently scratched the matter on the surface. This Court must not scratch the appeal on the surface once again by halting and dropping its pen at the determination of the preliminary objection, I must delve into the substance of the appeal on the merit to set the records straight.

To do otherwise would elevate procedural compliance above substantive justice in a matter where commercial certainty and finality are paramount. The law does not command such inflexibility. Accordingly, while the preliminary objection is meritorious and the Court expresses its firm disapproval of the Appellant's glaring and deliberate non-compliance with subsisting positive orders of Court and the mandatory Rules, the peculiar character of these proceedings and the imperative of finality in arbitration jurisprudence justify a departure from the ordinary consequence. I am convinced that as a policy Court, this Court may, in exceptional circumstances especially involving the economy of the nation, confidence of investors and public interest, proceed to consider an issue beyond the preliminary objection even where the objection is found to be meritorious just to strengthen arbitration jurisprudence, and reset the arbitration governance framework in Nigeria.

The preliminary objection is therefore noted and its merit acknowledged. However, in the interest of substantial justice, in furtherance of the policy of finality underpinning arbitration law, and pursuant to the powers of this Court under Section 22 of the Supreme Court Act, this Court will proceed to determine the merits of this appeal."Per ABUBAKAR, J.S.C. (Pp. 11-18, Paras. F-D) - read in context

6. **ARBITRATION AND CONCILIATION - ARBITRATION:** The Consensual nature of arbitration; whether a non-signatory to a contract can be bound by the arbitral decisions stemming from the contract

"Arbitration is a consensual process. An Arbitral Tribunal derives its authority from the arbitration agreement and is circumscribed by the scope of the submission. Yet, it is equally well settled that arbitration law, both domestically and internationally, has evolved beyond a rigid formalism that binds only the inked signatory. Put simply, consent in arbitration is not confined to the narrow ritual of signature. It is the intention to submit disputes to arbitration that is decisive. Modern commercial jurisprudence recognises that complex transactions frequently involve multiple actors, layered corporate structures, and composite arrangements in which strict privity, if applied mechanistically, would defeat commercial reality and enable injustice. The law, ever responsive to the needs of commerce, has evolved accordingly, and it is deserving that it recognises circumstances under which a non-signatory may be bound by an arbitration agreement where justice and commercial reality demand.

Section 57 of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (applicable to the dispute at the material time), now re-enacted as Section 91 of the Arbitration and Mediation Act 2023, defines a "party" to include "any person claiming through or under a party." This statutory language is deliberate and expansive. It not only signals legislative recognition that the reach of an arbitration agreement may extend beyond the literal signatory to encompass those whose rights and obligations are derivative, assumed, or functionally inseparable from the contractual matrix. In addition, it reflects the modern understanding that arbitration agreements may bind persons who, though not signatories in the narrow sense, derive benefit under, assume obligations arising from, or are otherwise intimately connected with the contract containing the arbitration clause.

Comparative arbitral jurisprudence further reveals that Courts in various jurisdictions have, over time, invoked several legal doctrines to address the problem of third parties in arbitration. These include assignment, agency, equitable estoppel, alter ego or veil piercing, and the so-called "group of companies" doctrine rooted in implied consent. These doctrines are not departures from principle; rather, they are manifestations of orthodox contractual and equitable reasoning applied to the realities of modern commerce.

Consequently, where contractual rights and obligations are assigned, the arbitration clause, being ancillary, yet inseparable from the substantive contract, ordinarily travels with the assignment. An assignee who assumes the benefits and burdens of the main contract cannot disclaim the arbitral covenant embedded therein. Likewise, in agency relationships, a principal on whose behalf a contract is executed is bound by the arbitration clause, notwithstanding that the signature on the document is that of the agent. See CMA CGM SA V HYUNDAI M.I.P.O. DOCKYARD CO LTD [2008] EWHC 2791 (Comm); [2008] 2 CLC 687, 32-3.

In some jurisdictions, particularly the United States, Courts have invoked equitable estoppel to prevent a non-signatory from embracing the substantive advantages of a contract while repudiating its arbitration clause. Though sparingly applied outside that jurisdiction, the equitable logic is universal: it is generally accepted that a party may not approbate and reprobate. See TEPPER REALTY CO. V. MOSAIC TILE CO., 259 F. SUPP. 688, 692 (S.D.N.Y. 1966).

Similarly, the doctrine of alter ego or piercing the corporate veil permits, in exceptional circumstances, the disregard of corporate separateness where it is used as an engine of fraud or injustice. Courts approach this doctrine with caution, mindful of the sanctity of corporate personality; yet, where the corporate form is abused as a shield against legitimate liability, equity intervenes. The Courts will not allow a party to plead corporate separateness where it appears obvious that so doing is designed to hoodwink the other party. See ALOE VERA OF AMERICA, INC V. ASIANIC FOODS) PTE LTD & ANOR (2006) 3 SLR (R) 174. Equity will not allow stealing a match against an innocent party.

The "group of companies" doctrine rests upon the examination of the common intention of the parties and the active participation of affiliated entities in the negotiation, performance, or termination of the contract. Where a non-signatory company within a corporate group plays a decisive role in the contractual relationship and conducted itself as though it were a party, Arbitral Tribunals and Courts have, in appropriate cases, held it bound by the arbitration agreement. In DOW CHEMICAL FRANCE V. ISOVER-SAINT-GOBAIN, ICC Award No. 4131, YCA 1984, at 131 et seq. (also published in: Clunet 1983, at 899 et seq.), the Paris Court of Appeal confirmed an ICC arbitral award that was, for the first time, principally based on that doctrine. See further on this subject, J.D.M. Lew, L.A. Mistelis, et al., "Chapter 16 Multiparty and Multicontract Arbitration", in J. D.M. Lew, L. A. Mistelis, et al., Comparative International Commercial Arbitration, Kluwer Law International 2003, pp. 377-409, para. 16-3; G. Born, "Chapter 5: International Arbitration Agreements: Non-Signatory Issues", in Gary B. Born, International Arbitration: Law and Practice (3rd ed.), Kluwer Law International 2021, pp. 113-121; and S. Brekoulakis, "Chapter 8: Parties in International Arbitration: Consent v. Commercial Reality", in S. Brekoulakis, J. D.M. Lew, et al. (ed.), The Evolution and Future of International Arbitration, Kluwer Law International 2016, pp. 119-160, p. 120, para. 8.22.

It becomes clear that the unifying thread across these doctrines is not the erosion of consent, but the recognition that consent may be express, implied, or inferred from conduct. Here in our country, Nigeria, in METROLINE (NIG.) LTD & ORS V. DIKKO (supra), the Court of Appeal, per my law Lord Stephen Jonah Adah, JCA (now JSC) recognised that a non-signatory may properly be bound where its role in the transaction forms the nucleus of the dispute. In that case, the Court held that even though the 5th Appellant therein was not a party to the Joint Venture Agreement containing the arbitration clause/agreement, but "is a child of that agreement and... a beneficiary... it is akin to that of a privy to the contract... (and) cannot be denied as an interested party in (the) case..." The further appeal to this Court in that case was struck out by this Court in METROLINE NIGERIA LTD V. DIKKO [2021] 16 NWLR (Pt. 1761) 422 (SC). The reasoning in the decision of the Court of Appeal in that case accords with commercial sense, realities of our situation, common sense, justice and international best practice to the effect that arbitration cannot be rendered impotent by fragmenting corporate participation while retaining unified economic benefit. I still maintain that a party that is deeply involved in a commercial contract will not be allowed to approbate and reprobate. Parties must be bound by their agreement.

The jurisprudential foundation of binding non-signatories lies in three interrelated pillars: First is the intention of the parties. It is elementary law that the duty of Courts is to give effect to the presumed intention of the parties engaged in a commercial relationship. As held in FIONA TRUST & HOLDING CORPORATION V. PRIVALOV [2007] UKHL40, per Lord Hope of Craighead at PAR. 26:

"The proposition that any jurisdiction or arbitration clause in an international commercial contract should be liberally construed promotes legal certainty It serves to underline the golden rule that if the parties wish to have issues as to the validity of their contract decided by one tribunal and issues as to its meaning or performance decided by another, they must say so expressly. Otherwise, they will be taken to have agreed on a single tribunal for the resolution of all such disputes."

By this token therefore, where the conduct of a non-signatory demonstrates assumption of obligations under the contract, or participation in its performance, intention may be inferred. Consent may be manifested by conduct as much as by ink.

Second is benefit and burden accruing or accruable to a party under the agreement. The law does not permit a party to approbate and reprobate.

A person who knowingly receives substantial benefit flowing directly from a contract cannot, in equity and good conscience, deny the mechanism by which disputes under that contract are to be resolved; so doing is utterly repugnant, obnoxious and utterly reprehensible. This is aptly captured by the Latin maxims, Qui sentit commodum sentiredebet et onus, meaning he who enjoys the benefit must also bear the burden. The Sole Arbitrator found, upon concrete and cogent evidence, that the Appellant received significant sums derived from the investment transaction governed by the arbitration clause. That finding, affirmed by two Courts, grounds a powerful estoppel.

Third is the principle of fairness and avoidance of injustice. This portends that arbitration would be rendered vulnerable to manipulation if parties could insulate themselves from arbitral jurisdiction by operating through interconnected entities while reaping transactional advantage. The doctrine of alter ego and veil piercing, long recognised in corporate law, prevents the abuse of corporate personality to defeat justice. See OBOH V. N.F.L. LTD. [2022] 5 NWLR (Pt. 1823) 283.

The Appellant's insistence on formal signature as the sole gateway to arbitral jurisdiction reflects a nineteenth-century rigidity inconsistent with contemporary commerce. The doctrine of privity was developed to protect parties from being burdened by obligations they never undertook. It was never intended as a shield for those who actively participated in and benefited from a contractual arrangement while seeking to evade its dispute resolution mechanism.

The principle of privity of contract, though foundational, is not impregnable. It yields where the facts reveal a composite transaction, agency, alter ego, assumption of obligations, or conduct giving rise to estoppel. As earlier stated, in the instant case, the Sole Arbitrator found, upon concrete and cogent evidence, that the Appellant was "inextricably intertwined" with the investment transaction; that it received substantial sums derived from the very Offer Terms and Custodial Agreements containing the arbitration clause; and that its role was central to the dispute. Those findings were affirmed by the trial Court and the lower Court. It is trite that arbitral awards are final on matters of fact within the scope of the submissions, and Courts will not sit as appellate tribunals over findings of fact unless a recognised statutory ground to justify so doing is established. See TAYLOR WOODROW (NIG.) LTD V. SUDDEUTSCHE ETNA-WERK GMBH (supra)."Per ABUBAKAR, J.S.C. (Pp. 36-46, Paras. E-A) - read in context

7. **ARBITRATION AND CONCILIATION - ARBITRATION:** Whether parties to a dispute who voluntarily submit an issue in controversy between them to an arbitration will be prohibited or estopped from resiling from the decision made by the Arbitral panel or tribunal
"Over the years, our Nigerian parties and their counsel involved in commercial transactions, both locally and internationally, in which time is of the essence, have made arbitration proceedings that are primarily meant to avoid the usual unnecessary expenses and tortious delays associated with litigations in the ordinary Courts, a pre-litigation procedure such that every award made by the Arbitral Tribunal is casually challenged by the party against whom it goes or was made on the ground that the Tribunal exceeded its jurisdiction for spurious reasons that are, in most cases, only intended to frustrate the final and binding nature of such an award.Parties who freely and voluntarily choose their Arbitrator/s to determine specific issues of dispute between them and agree that such determination be final and binding should not and must not be allowed or even encouraged to misuse the judicial processes of a Court of law to avoid meeting their obligations and to frustrate the awards made by the Arbitrator/s or Tribunal.
This position has been stated and restated by this Court in the cases of Metroline Nig. Ltd. v. Dikko (2021) 16 NWLR (pt. 1761) 422 and NNPC v. Fung Tai Engr. Co. Ltd. (2023) 15 NWLR (pt. 1906) 117 at 209 (both cited in the lead judgment). Very recently, Ogunwumiju, JSC, in the case of B. P.E. v. Messrs U. Maduka Ent. Nig. Ltd. (2025) 16 NWLR (pt. 2011) 205 at 235 exhorted that:
"Parties must learn to abide by the decisions in arbitral awards where they have subjected themselves to the jurisdiction of the arbitrator and not look for spurious excuses to avoid or evade obeying the award, where it does not favour them."Per GARBA, J.S.C. (Pp. 53-55, Paras. F-B) - read in context

8. **ARBITRATION AND CONCILIATION - ARBITRAL PROCEEDINGS:** Binding nature of arbitral proceedings
"Arbitration is chosen precisely to avoid protracted judicial re-litigation. As this Court has repeatedly emphasised, parties who voluntarily elect to submit to arbitration are bound by the award for better or worse, unless the award is vitiated on recognised statutory grounds. The doctrine of Pacta sunt servanda which portends that agreements must be kept is the hallmark of arbitration."Per ABUBAKAR, J.S.C. (P. 46, Paras. C-E) - read in context

9. **ARBITRATION AND CONCILIATION - ARBITRATION:** Whether it is every allegation of fraud that will render a dispute non-arbitrable where the claims and reliefs sought are civil in nature
"On the allegation of fraud and non-arbitrability, the law must be approached with doctrinal clarity. Not every allegation of fraud transmutes a civil dispute into a criminal cause outside arbitral competence. As the learned Counsel for the 1st and 2nd Respondents as well as the 3rd and 4th Respondents rightly submitted, jurisdiction is determined by the claimant's pleadings. See NDAKENE V. ADAMU [2023] 9 NWLR (PT. 1889) 389; PTE V. FIDELITY BANK PLC [2022] 9 NWLR (Pt. 1836) 475. The claims sought and the reliefs granted by the Arbitral Tribunal, which include restitution and breach of fiduciary duty, were civil in nature not criminal sanctions."Per ABUBAKAR, J.S.C. (Pp. 46-47, Paras. E-B) - read in context

10. **ARBITRATION AND CONCILIATION - ARBITRATION CLAUSE:** Status/independence/autonomy of arbitration clause
"...the doctrine of separability is firmly entrenched in our law. Section 12(2) of the Arbitration and Conciliation Act (applicable herein) provides that an arbitration clause is independent of the substantive contract, and a decision that the contract is null and void does not ipso jure invalidate the arbitration clause. This principle has been reaffirmed and settled by this Court in UBA PLC V TRIDENT CONSULTING LTD [2023] 14 NWLR (Pt. 1903) 95 at 130, PARAS B-F. The Appellant's argument that fraud vitiated the arbitration clause itself finds no support in the record before us. Even assuming allegations of misrepresentation were made, they did not impeach the arbitration agreement as a distinct covenant. The arbitration clause therefore survived. To hold otherwise would be to undermine the autonomy of arbitration agreements and destabilise commercial certainty."Per ABUBAKAR, J.S.C. (Pp. 47-48, Paras. C-A) - read in context

11. **ARBITRATION AND CONCILIATION - ARBITRATION:** Whether a party who has benefited from a contract can evade liability arising from an arbitration decision on the ground that it was not a party to the contract
"In the final analysis, therefore, the Appellant's arguments amount to a belated attempt to evade the binding consequences of a process to which it was innately connected and from which it derived substantial benefit. Arbitration, as a pillar of commercial justice, would be rendered nugatory if parties could accept benefits yet repudiate burdens. The law does not permit approbation and reprobation in the same breath, as I persistently maintained in this Judgment."Per ABUBAKAR, J.S.C. (P. 50, Paras. D-F) - read in context

12. **ARBITRATION AND CONCILIATION - ARBITRATION:** Whether a party who has benefited from a contract can evade liability arising from an arbitration decision on the ground that it was not a party to the contract
"The Appellant herein having fully benefited from the transaction leading to the dispute cannot later hide under the principles of the doctrine of privity of contract to evade liability. As beautifully rendered in the lead judgment, "arbitration cannot be rendered impotent by fragmenting corporate participation while retaining unified economic benefit."Per TUKUR, J.S.C. (P. 58, Paras. D-E) - read in context

13. **ARBITRATION AND CONCILIATION - ARBITRAL TRIBUNAL:** What confers jurisdiction/authority on an arbitral tribunal; whether such authority can be exceeded
"It is equally trite that jurisdiction of a Court cannot be conferred by consent nor waived by acquiescence. In this wise, an Arbitral Tribunal, like a Court, cannot exceed the authority conferred upon it. However, it must be said that unlike the Courts, consent remains the juridical fountainhead of arbitral authority."Per ABUBAKAR, J.S.C. (P. 36, Paras. C-E) - read in context

14. **ARBITRATION AND CONCILIATION - ARBITRAL AWARD:** Approach of the Court to an appeal against the findings/awards of an Arbitral Tribunal
"The Sole Arbitrator's award, grounded in monies had and received, cannot be dismissed merely because the Appellant was not a formal signatory. In any event, the Court is not vested with the authority to sit on appeal over the findings of fact or conclusions of law reached by arbitrators merely because it might have arrived at a different conclusion. The duty of the Court is not to examine whether the arbitrators were right or wrong in law, but to scrutinise the award itself and determine whether, on the state of the law as apprehended and articulated by the arbitrators, and on the facts as set out on the face of the award, they acted within the bounds of the law as they themselves understood it. The inquiry is therefore subjective rather than objective. The Court places itself in the position of the arbitrators, not above them, and proceeds on the hypothesis of their stated understanding of the law, to ascertain whether they faithfully applied that understanding to the issues submitted for determination. See BAKER MARINE NIG. LTD. V. CHEVRON NIG. LTD. [2000] 12 NWLR (Pt. 681) 393 at 410; and particularly NNPC v. FUNG TAI ENGINEERING CO. LTD [2023] 15 NWLR (Pt. 1906) 117 AT 209, PARAS A-H, where this Court, per my learned brother GARBA, JSC held and I quote:
"... Courts do not sit on appeal over an award made by an arbitral tribunal for the purpose of a re-hearing which an appeal before an appellate Court is. ... so they cannot embark on a review of the points of dispute already decided by the tribunal for the purpose of substituting their own views on both the facts and law... I would also state that there is no law which specifically vest or confers appellate jurisdiction on any Court in Nigeria over an award made by an arbitral Tribunal under and pursuant to the ACA. Put another way, no Court in Nigeria has the statutory jurisdiction to entertain and adjudicate over an appeal from the award made by an arbitral tribunal.
In the absence of such statutory jurisdiction, no Court can purport to sit over an appeal against an award made by an arbitration tribunal since it lacks the requisite judicial power and authority to confer or arrogate to itself, the jurisdiction it does not have at all under any statute or law...."Per ABUBAKAR, J.S.C. (Pp. 48-50, Paras. C-A) - read in context

15. **COURT - JURISDICTION:** Nature and importance of jurisdiction; effect of a court hearing a matter without jurisdiction
"It is settled beyond peradventure that jurisdiction is the lifeblood of adjudication. Where a Court or Tribunal lacks jurisdiction, the entire proceedings, no matter how well and brilliantly conducted, amount to a nullity. See MADUKOLU & ORS V. NKEMDILIM (supra)."Per ABUBAKAR, J.S.C. (P. 36, Paras. B-C) - read in context

16. **EQUITY - DOCTRINE OF EQUITY:** Applicability of the equitable doctrine of restitution in compelling repayment of monies retained unconscionably despite privity of contract
"...the equitable doctrine of restitution further fortifies the Respondents' case. Where a party has received monies in circumstances that render retention unconscionable, the law imposes an obligation to repay, independent of strict privity. See FBN PLC VC OZOKWERE (2013) LPELR-21897 (SC)."Per ABUBAKAR, J.S.C. (P. 48, Paras. A-B) - read in context

17. **JUDGMENT AND ORDER - ORDER OF COURT:** Whether an order of court must be obeyed
"There is no gainsaying the fact that compliance with orders of Court and with the Rules governing appellate practice is not a matter of choice or discretion. It is elementary law that a subsisting order of Court, whether rightly or wrongly made, must be obeyed until that order is set aside. See MANAGEMENT ENTERPRISES LTD. V. OTUSANYA [1987] 2 NWLR (Pt. 55) 179; BALOGUN V. ADEJOBI [1995] 2 NWLR (Pt. 376) 131. ODIASE V. AGHO & ORS. (1972) 1 AU NLR (Pt. 1) 170 at 176; MELIFONWU V. EGBUJI (1982) 9 SC. 145 at 165; JOHNSON V. WILLIAMS 2 WACA 248 at 254."Per ABUBAKAR, J.S.C. (Pp. 9-10, Paras. E-B) - read in context

18. **PRACTICE AND PROCEDURE - PRELIMINARY OBJECTION:** Whether a preliminary objection should be considered and determined first before dealing with the merits of an appeal
"The law is well settled that whenever a preliminary objection is filed challenging the competence of an action or appeal, the preliminary objection must first be taken and determined before the substantive suit or appeal."Per ABUBAKAR, J.S.C. (P. 6, Paras. C-D) - read in context

19. **PRACTICE AND PROCEDURE - ACADEMIC OR HYPOTHETICAL QUESTION(S)/ISSUES/SUIT/EXERCISE:** Attitude of Courts to academic/hypothetical issues or questions

"The law is settled that Courts do not engage in the determination of academic or hypothetical questions. Judicial power is invoked for the resolution of live disputes with practical consequences for the rights of parties, not for abstract pronouncements. See YEGEDE V. OTHMAN [2025] 18 NWLR (Pt. 2017) 369; A.P.C. V. ELEBEKE [2022] 10 NWLR (Pt. 1837) 1. Once a pivotal issue has been resolved in a manner that effectively determines the rights of the parties, any further issue which cannot alter that outcome becomes otiose, futile and ineffective, delving into the issue is a worthless venture, and must not take a jot of the scarce precious judicial time of this Court.

In the present case, the resolution of the first issue has conclusively disposed of the substratum of the appeal. The second issue, even if determined in favour of the Appellant, would not affect the ultimate result. It is therefore academic. This Court has consistently declined invitations to expend its scarce judicial time on matters that no longer have live relevance to the dispute before it. Courts exist to determine real controversies, not to deliver advisory opinions."Per ABUBAKAR, J.S.C. (Pp. 51-52, Paras. C-B) - read in context

TIJJANI ABUBAKAR, J.S.C. (Delivering the Lead Judgment): The dispute subject of this appeal tinges its origin to Suit No. FHC/ABJ/CS/28872018 commenced before the Federal High Court, Abuja Division, by the 1st and 2nd Respondents, wherein they sought, inter alia, the refund of the sums of USD 13,300,910 and USD 30,030,040 respectively from the Defendants, including the Appellant in this appeal.

Upon the application of the Defendants and pursuant to an arbitration clause contained in the governing agreements between the parties, the Federal High Court, per Nyako, J., with the concurrence of the parties, on the 11th day of December, 2019 referred the matter to arbitration. Consequently, a Sole Arbitrator was appointed, and arbitral proceedings were duly conducted, partly virtually and partly physically.

On the 2nd day of September 2021, the Arbitral Tribunal delivered a partial award on jurisdiction. Subsequently, on the 26th day of September 2022, the Tribunal rendered its Final Award. Certain typographical corrections were thereafter issued on the 18th day of October 2022 and 31st day of October, 2022. By the Final Award,

the Appellant, alongside the 5th and 6th Respondents, were ordered, jointly and severally, to refund to the 1st and 2nd Respondents the sums earlier set out in this judgment.

Following the publication of the Final Award, two parallel procedural steps were taken. On the 31st day of October, 2022, the Appellant instituted proceedings at the Lagos Division of the Federal High Court seeking to set aside the arbitral award. Thereafter, on the 18th day of January, 2023, the 1st and 2nd Respondents filed before the Federal High Court, Abuja Division, before Nyako, J., the learned trial Judge who referred the matter to arbitration, a motion seeking recognition and enforcement of the Final Award pursuant to the applicable provisions of the Arbitration and Conciliation Act and the Federal High Court (Civil Procedure) Rules, 2019.

The Appellant filed a counter-affidavit in opposition to the application for recognition and enforcement of the final award. The application came up for hearing on the 26th day of April 2023. On that date, learned Counsel representing the Appellant sought for an adjournment on the grounds of unavailability of the lead Counsel. The

learned trial Judge refused the application for adjournment and invited counsel to adopt the processes already filed. Learned Counsel declined to adopt the Appellant's processes. The trial Court consequently struck out the Appellant's counter-affidavit and written address and proceeded to grant the application for recognition and enforcement of the arbitral award. Aggrieved by that ruling, the Appellant appealed to the lower Court. The lower Court, after considering the arguments of the parties, dismissed the appeal in its entirety and affirmed the decision of the trial Court in its judgment delivered on the 22nd day of November, 2024. It is against that judgment that the present appeal is brought before this Court.

The instant appeal was therefore initiated by the Appellant via a notice of appeal dated the 22nd day of November, 2024. Subsequently, and in compliance with the Rules of this Court, the Appellant, 1st and 2nd Respondents as well as the 3rd and 4th Respondents filed and exchanged their respective briefs of argument.

In the Appellant's brief of argument filed on the 24th day of February, 2025, but deemed as properly filed

and served on the 8th day of December, 2025, learned Senior Counsel Usoro SAN leading other Counsel crafted the following two issues for determination:

(a) "Whether the lower Court was right in affirming the decision of the trial Court recognising the Arbitral Award against the Appellant when the entire Arbitral proceedings was a nullity for want of jurisdiction. (Distilled from Grounds 1,2,5 and 6 of the Amended Notice of Appeal).

(b) Whether the lower Court was right in striking out issue One which emanated from the Grounds 1 and 2 of the Appellant Amended Notice of Appeal before the Lower Court (Distilled from Grounds 3 and 4 of the Amended Notice of Appeal)"

The 1st and 2nd Respondents' brief of argument was filed on the 12th day of May, 2025 but deemed as properly filed and served on the 8th day of December, 2025. The 1st and 2nd Respondents, through learned Senior Counsel, Igwe SAN and Magaji SAN, leading other Counsel, similarly nominated two issues for determination; the issues are also set out as follows:

(a) "Whether the Appellant has demonstrated exceptional circumstances that may enable this Honourable Court

not to uphold the concurrent findings of the trial and lower Courts registering the final judgment of the Arbitrator conclusive of the rights and liabilities of the parties in this case? (Encapsulating Issue 1 as framed by the Appellant).

(b) Whether the Lower Court was right in striking out Issue One which emanated from Grounds 1 and 2 of the Appellant's Amended Notice of Appeal challenging facts, questions and issues resolved by the sole Arbitrator and unchallenged before the Arbitrator and the trial Court? (Encapsulating Issue 2 as framed by the Appellant) "

The brief of the 3rd and 4th Respondents prepared by learned Counsel Ige was filed on the 8th day of July, 2025, but deemed as properly filed and served on the 8th day of December, 2025. The learned Counsel also crafted corresponding two issues for determination; the issues are reproduced as follows:

(a) "Whether the lower Court was right when it struck out the Appellant's Issue One, which emanated from Grounds 1 and 2 of the Appellant's Amended Notice of Appeal, for not flowing directly from decision of the lower Court (derived from Issue 2 as distilled by the Appellant).

(b) Whether the lower Court was right in affirming the decision of the trial Court recognizing the Arbitral Award against the Appellant (derived from Issue 7 as distilled by the Appellant")

It is noteworthy that the 1st and 2nd Respondents filed a Notice of Preliminary Objection dated the 9th day of May 2025 but filed on the 12th day of May 2025. The arguments in connection with the Preliminary Objection have been incorporated into 1st and 2nd Respondents' Brief of Argument, particularly at pages 7-12 thereof. The law is well settled that whenever a preliminary objection is filed challenging the competence of an action or appeal, the preliminary objection must first be taken and determined before the substantive suit or appeal. I am sure this trite position of the law requires no extra industry in citing judicial authorities. Whenever a decision is taken to cite authorities, they will surely be endless. I have chosen not to cite any, just to spare myself. Let me just state that I will consider the merit of the preliminary objection, before proceeding, if so doing is found necessary to determine the merit of the substantive

appeal.

PRELIMINARY OBJECTION

The 1st and 2nd Respondents contended that the appeal before this Court is incompetent on two grounds. First, the Appellant failed to comply with a condition precedent imposed by the Federal High Court for the stay of proceedings and the appeal to the lower Court, which is the deposit of the judgment sum with the Chief Registrar. Counsel referred to the order of the trial Court made on the 2nd day of June 2023, which stayed proceedings pending the determination of the Appellant's appeal before the lower Court, the trial Court also ordered deposit of the judgment sum within one month. Learned Counsel for the 1st and 2nd Respondents submitted that the Appellant's appeal against this order was dismissed by the lower Court on the 10th day of October 2024, with no further appeal instituted. Learned Counsel said the Appellant did not appeal further to this Court on the issue of deposit of the judgment sum.

Learned Counsel then submitted that non-compliance renders the appeal incompetent, relying on **OLEKSANDR & ORS V LONESTAR DRILLING CO. LTD & ANOR (2015) LPELR-24614 (SC),**

UWAZURIKE & ANOR V NWACHUKWU & ANOR (2012) LPELR- 19659 (SC), NALSA & TEAM ASSOCIATES V NNPC (1991) LPELR- 1935 (SC), and **DREXEL ENERGY & NATURAL RESOURCES LTD & ORS V TRANS-INTERNATIONAL BANK LTD & ORS (2008) LPELR- 962 (SC**). Counsel emphasized that seeking discretionary relief in this Court while in contempt of an order of the lower Court violates the principles affirmed by this Court in **MILITARY GOVERNOR, LAGOS STATE & ORS V OJUKWU (1986) ALL NLR 233**.

On the second ground, learned Counsel submitted that the Appellant failed to comply with the provisions of Order 6 Rule 3(5) of the Supreme Court Rules, 2024. Learned Counsel argued that the filing by the Appellant of the notice of appeal on the 22nd day of November, 2024 triggered the mandatory requirement to provide evidence, within twenty-one days of payment into an escrow account. Learned Counsel submitted that the non-compliance by the Appellant, confirmed by the Court of Appeal Registrar by filing certificate of non-compliance on the 24th day of February 2025, renders the appeal null and incompetent, as supported by the decisions in **CHUKWUOGOR & 3 ORS V. CHUKWUOGOR & ANOR [2021] 15 NWLR (Pt.**

1799) 357 (SC), CHAIRMAN, CEO, NDLEA HEADQUARTERS, LAGOS & ORS V UMEH & ANOR (2018) LPELR- 44502 (SC), and **CHIEF JOHN OYEGUN V CHIEF FRANCIS ARTHUR NZERIBE [2010] 7 NWLR (Pt. 1194) 577**. Learned Counsel said any attempt to extend time would have to fall within the 63-day period under Order 4 Rule 15(1) of Supreme Court Rules, 2024, which has long expired, even with the generous extension of the period by the Honourable Chief Justice. Consequently, Counsel urged the Court to strike out the appeal on the ground of procedural incompetence. The Appellant filed no reply brief, it is therefore taken that the Appellant filed no response to the preliminary objection, I am therefore compelled to determine the objection on the argument of the 1st and 2nd respondents.

RESOLUTION OF PRELIMINARY OBJECTION

I have carefully considered the preliminary objection raised by the 1st and 2nd Respondents. There is no gainsaying the fact that compliance with orders of Court and with the Rules governing appellate practice is not a matter of choice or discretion. It is elementary law that a subsisting order of Court, whether rightly or wrongly made, must be obeyed

until that order is set aside. See **MANAGEMENT ENTERPRISES LTD. V. OTUSANYA [1987] 2 NWLR (Pt. 55) 179; BALOGUN V. ADEJOBI [1995] 2 NWLR (Pt. 376) 131. ODIASE V. AGHO & ORS. (1972) 1 AU NLR (Pt. 1) 170 at 176; MELIFONWU V. EGBUJI (1982) 9 SC. 145 at 165; JOHNSON V. WILLIAMS 2 WACA 248 at 254**.

The order of the trial Court requiring the deposit of the judgment sum as a condition for stay remains extant and binding. It has neither been set aside nor shown to have been complied with, the lower Court filed certificate of non-compliance with the order by the Appellant. This Court has repeatedly held in seemingly endless decisions that where a condition precedent to the activation or continuation of a legal process is not fulfilled, the process is liable to be declared incompetent. See **NALSA & TEAM ASSOCIATES V. NNPC [1991] 8 NWLR (Pt. 212) 652**.

In addition to the endless decisions of this Court, Order 6 Rule 3(5) of the Supreme Court Rules, 2024 is couched in mandatory language. The Rule provides that within twenty-one days of filing of a Notice of Appeal, the Appellant shall file evidence that all sums ordered by

way of costs have been paid into an escrow account in the name of the Chief Registrar, failing which the appeal shall be deemed to be non-compliant with the condition of appeal and therefore liable to dismissal. The jurisprudence of this Court leaves no room for equivocation as to the meaning of the word "shall" encapsulated in the wordings of the Rule. In **CHUKWUOGOR V. CHUKWUOGOR [2021] 15 NWLR (Pt. 1799) 357 at 373**, this Court reiterated that "shall" is mandatory and denotes obligation, it does not make room for discretion. Where the word "shall" is used in a legislation, the door is shut against any litigant contemplating choice or discretion to comply. The order must be obeyed.

Furthermore, where a certificate of non-compliance is issued pursuant to the Rules, the consequence is ordinarily fatal. In **CHAIRMAN, CHIEF EXECUTIVE, NDLEA V. UMEH [2018] 7 NWLR (Pt. 1617) 350**, this Court held that once a certificate of non-compliance has been issued, the appeal is liable to be dismissed. Procedural discipline is not an ornamental accessory to justice; it is the architecture that sustains it.

Ordinarily, therefore, the

combined effect of the Appellant's failure to comply with the order to make deposit of the Judgment sum and the mandatory requirements of Order 6 Rule 3(5) of the Supreme Court Rules, 2024, would compel this Court to sustain this preliminary objection and terminate the appeal. Respect for positive orders of Court by litigants remains necessary and a party in contempt of an order of Court is not entitled to audience this is already settled in several judicial decisions.

However, in my humble understanding, this is not the end of the matter. The appeal before this Court arises from proceedings concerning the recognition and enforcement of arbitral award under the Arbitration and Mediation Act, 2023. Proceedings of this nature are not ordinary civil contests or matters occurring from day to day in our Courts, they command commercial importance and impact on the perception of our jurisdiction by the International Commercial Community. They are sui generis; they implicate the sanctity of arbitral awards, commercial finality, and Nigeria's standing within the international arbitration regime. Arbitration rests upon the pillars of party autonomy,

expedition, minimal judicial interference, and finality. These principles are codified in modern arbitration statutes and reinforced by global best practices. See the decision of this Court in **METROLINE NIGERIA LTD V. DIKKO [2021] 16 NWLR (Pt. 1761) 422 (SC) at 45, paras. A - F**, where my law Lord and brother, Rhodes-Vivour, JSC (as he then was) said and I quote:

"... It is time litigants fully understand, respect and appreciate the nature of arbitration agreements they freely enter into. It is the duty of counsel to explain the nature of these agreements and not encourage their clients to disregard them when they get unfavourable awards. Arbitration agreement ought to be respected, and the resultant awards complied with. We should always bear in mind the importance of respecting arbitration agreements, more so those that have international connotations. Building up and sustaining a globally respected dispute resolution system are major steps for the growth of our Nation into a preferred investment destination.

The Nigerian Legal System, following international standards, has legislated on the nature of arbitration awards to be final and

binding and only to be interfered with by the Courts in the exceptional circumstances enunciated in the relevant arbitration statutes. Arbitration is widely acknowledged as an alternative to litigation which enables expeditious dispute resolution. Commendably, the legal framework provides for Court interference in specified circumstances only. However, the unfortunate trend in which litigants with the assistance of counsel who fail to appreciate their duties as officers of the Court, all in a bid to win their clients' case by all means, bring unsubstantiated and spurious challenges against otherwise good arbitration awards and the arbitration Tribunal, ought to be frowned upon and discouraged. The Courts should not allow itself to be used as a tool to set aside otherwise good awards or frustrate legitimate arbitration awards."

Therefore, while procedural compliance is fundamental, not every procedural defect is jurisdictional in the strict sense. A distinction must be drawn between defects that go to the constitutional competence of the Court and those that, though serious, remain procedural and amenable to the inherent control of the Court in the

interest of substantial justice. Jurisdiction, as we have held in a plethora of decisions, is determined by the competence of the Court, the subject matter, and the due initiation of proceedings. The present defects, grave as they appear to be, do not deprive this Court of its constitutional jurisdiction under Section 233 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to delve into the merits of the appeal and determine some fundamental issues of commercial importance to our jurisdiction, and allay the fears of investors who always think that arbitration in Nigeria marks the beginning of long and endless journey to the Apex Court. Journey full of impediments, hick-ups, hurdles and uncertainties.

This Court is not merely a Court of technical rules; it is, above all, a Court of justice. Section 22 of the Supreme Court Act confers upon this Court expansive powers to *"make any order necessary for determining the real question in controversy"* and to exercise full jurisdiction over the whole proceedings as if instituted in this Court at first instance. That provision is not idle verbiage. It embodies the principle that

appellate adjudication must not be subdued and shackled where the real issues are ripe for determination.

The record in this appeal is complete. The parties have fully ventilated their disputes in comprehensive briefs. The issues raised are of considerable jurisprudential importance and bear upon the interpretation and application of Nigeria's arbitration regime. To strike out this appeal at this stage would not terminate the controversy; it would likely spawn further proceedings, deepen delay, and undermine the very policy of expeditious determination that undergirds arbitration law. It is a common precept that it is in the interest of the State that there be an end to litigation.

This Court must not encourage procedural indiscipline. The Appellant's defaults are neither trivial nor excusable, they are deprecated in the strongest terms. Justice is not served by sacrificing determination of the substantive matter to the altar of technical rigidity, especially where the jurisdiction of the Court remains intact and the real issues in controversy between the contending parties call for authoritative resolution.

In the peculiar

circumstance of this case and having regard to the nature of the proceedings, the wider commercial and systemic implications, the fully crystallised state of the record, and the constitutional mandate of this Court to settle the law, I am satisfied that this is a proper case for the exercise by this Court of its inherent and statutory powers under Section 22 of the Supreme Court Act to proceed to determine the substantive appeal. All along the line, the Courts persistently scratched the matter on the surface. This Court must not scratch the appeal on the surface once again by halting and dropping its pen at the determination of the preliminary objection, I must delve into the substance of the appeal on the merit to set the records straight.

To do otherwise would elevate procedural compliance above substantive justice in a matter where commercial certainty and finality are paramount. The law does not command such inflexibility. Accordingly, while the preliminary objection is meritorious and the Court expresses its firm disapproval of the Appellant's glaring and deliberate non-compliance with subsisting positive orders of Court and the mandatory

Rules, the peculiar character of these proceedings and the imperative of finality in arbitration jurisprudence justify a departure from the ordinary consequence. I am convinced that as a policy Court, this Court may, in exceptional circumstances especially involving the economy of the nation, confidence of investors and public interest, proceed to consider an issue beyond the preliminary objection even where the objection is found to be meritorious just to strengthen arbitration jurisprudence, and reset the arbitration governance framework in Nigeria.

The preliminary objection is therefore noted and its merit acknowledged. However, in the interest of substantial justice, in furtherance of the policy of finality underpinning arbitration law, and pursuant to the powers of this Court under Section 22 of the Supreme Court Act, this Court will proceed to determine the merits of this appeal. I will now proceed to do so.

THE SUBSTANTIVE APPEAL

ISSUE ONE

Learned counsel for the Appellant contended that the Court below erred in affirming the decision of the trial Court which recognised and enforced the arbitral award against the Appellant.

Learned

Counsel contended that the entire arbitral proceedings, culminating in the award, were conducted without jurisdiction in so far as they purported to bind the Appellant, who was not a party to the arbitration agreement. Consequently, Counsel said, the award was a nullity, and the trial Court equally lacked jurisdiction to recognise and enforce what was void ab initio.

Counsel submitted that jurisdiction is the live-wire of any adjudicatory process and that proceedings conducted in the absence of jurisdiction are a nullity, no matter how well conducted. Relying on the decision in **MADUKOLU & ORS V. NKEMDILIM (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587.** Further reliance was placed by Counsel on **DAIRO V. UNION BANK OF NIGERIA PLC & ANOR [2007] 16 NWLR (Pt. 1059) 99 at 139-140** and **AWUSE V. ODILI & ORS [2003] 18 NWLR (Pt. 851) 116 at 158**, to the effect that jurisdiction is fundamental and may be raised at any stage, even for the first time on appeal, and cannot be conferred by consent of the contending parties.

Learned Counsel further argued that an arbitral tribunal, like a Court, derives its jurisdiction strictly from the arbitration

agreement, relying on **KANO STATE URBAN DEVELOPMENT BOARD V. FANZ CONSTRUCTION CO. LTD [1990] 4 NWLR (Pt.142) 1** and **NNPC V. LUTIN INVESTMENTS LTD & ANOR [2006] 2 NWLR (Pt. 965) 506**, for the proposition that where an arbitrator misconducts himself or exceeds his jurisdiction, the award is liable to be set aside by the Court.

The gravamen of the Appellant's complaint, Counsel argued, is that it was not a signatory to the Offer of Terms or the Custodial Agreement containing the arbitration clause. Counsel submitted that the Tribunal expressly found that the Appellant was not a signatory to the relevant agreements yet proceeded to assume jurisdiction on the basis that the Appellant was "inextricably intertwined" with the transaction. Counsel contended that this reasoning is legally untenable and contrary to the settled doctrine of privity of contract.

Learned Counsel for the Appellant's Counsel placed reliance on **AFRICAN INSURANCE DEVELOPMENT CORPORATION V. NIGERIA LNG LTD [2000] 4 NWLR (Pt. 653) 494; IKPEAZU V. AFRICAN CONTINENTAL BANK LTD (1965) NMLR 374** and the classical English authority of

DUNLOP PNEUMATIC TYRE CO. LTD V. SELFRIDGE & CO. LTD [1915] AC 847 (HL). Counsel argued that privity remains firmly embedded in the Nigerian Law of Contract and that a third party who is not privy to a contract cannot ordinarily be bound by its arbitration clause.

Learned counsel distinguished the decision of the lower Court which relied on **METROLINE (NIG.) LTD & ORS V. DIKKO** (supra), contending that in that case, the non-signatory was a special purpose vehicle created pursuant to the agreement and was therefore directly connected to it. By contrast, in the present case, the Private Placement Memorandum expressly excluded the Appellant from the offer and disclaimed any responsibility on its part.

On the issue of consent and referral to arbitration, learned Counsel submitted that the Lower Court erred in holding that the

Appellant, having failed to appeal against the consent ruling referring the matter to arbitration, could no longer challenge the jurisdiction of the Tribunal. Counsel argued that jurisdiction cannot be conferred by consent, nor can failure to appeal a referral order validate proceedings conducted without jurisdiction. Relying on **DAIRO V. UNION BANK**

(supra) and **AWUSE V. ODILI (supra).**

Counsel further submitted that the arbitral award was fundamentally defective because it determined allegations of fraud and criminal misrepresentation, matters which, according to counsel, are non-arbitrable and fall within the exclusive domain of the Courts. Placing reliance on **UBA PLC V. TRIEDENT CONSULTING LTD [2023] 14 NWLR (Pt. 1903) 95** and **BJ. EXPORT & CHEMICAL CO. LTD V. KADUNA PETROCHEMICAL CO. LTD [2003] 7 NWLR (Pt. 819) 489**.

Learned Counsel argued that the arbitral tribunal made findings that the transaction was tainted with fraud and that funds were obtained under false pretences. Counsel contended that such findings amounted to determination of criminal liability, which lies outside the competence of an arbitral tribunal. Counsel submitted that once fraud was alleged as vitiating the entire transaction, the matter ceased to be arbitrable and required judicial determination.

Counsel further contended that the Lower Court was wrong in holding that the Appellant had collected funds from the Respondents and could not deny them, when such findings were not issues before the appellate Court. Reliance

was placed on **NNPC V. FUNG TAI ENGINEERING CO. LTD [2023] 7 NWLR (PT. 1882) 1**, for the principle that an appellate Court must confine itself to issues properly before it and not embark on a rehearing of facts not appealed against.

Finally, learned counsel maintained that the Tribunal exceeded its jurisdiction by transferring alleged criminal liability arising from the conduct of other parties onto the Appellant, who neither executed nor benefited from the contract. Learned Counsel urged that the recognition and enforcement of such an award by the trial Court, and its affirmation by the Court below, amount to a miscarriage of justice. Counsel accordingly urged this Court to hold that the Arbitral Tribunal lacked jurisdiction over the Appellant; that the award was a nullity; and that the decisions of the two Courts below recognising and affirming the award be set aside.

On the part of the 1st and 2nd Respondents, Counsel submitted that the Appellant did not invoke the statutory procedure prescribed for setting aside an arbitral award. Counsel relied on Section 29(1) and (2) of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004

(applicable at the time the award was delivered on 26th day of September 2022), now substantially re-enacted as Section 55(1)-(3) of the Arbitration and Mediation Act, 2023. Counsel submitted that the said provisions stipulate that an aggrieved party may, within three months of receipt of the award, apply to the Court to set aside the award on limited statutory grounds, including where the award contains decisions beyond the scope of submission to arbitration. Counsel argued that the Appellant, having failed to bring a timeous application before the Federal High Court to set aside the award, cannot now seek, through the appellate process, to achieve indirectly what it failed to pursue directly. Reliance was placed on the settled principle that where a statute prescribes a mode for doing an act, that mode must be strictly followed, citing **GUSAU V. LAWAL & ORS (2023) LPELR-60152 (SC) at pp. 48-49 OKORONKWO V. INEC (2025) LPELR-80425 (SC); FOLARIN V. AGUSTO (2023) LPELR-59945 (SC); MEKWUNYE V. IMOUKHUEDE (2019) LPELR-48996 (SC); AMADI & ANOR V. INEC (2012) LPELR-7831 (SC); COMMERCE ASSURANCE LTD V. ALLI [1992] 9 NWLR (Pt. 232) 710**.

Counsel emphasised that the three-month limitation under Section 55(4) of the Arbitration and Mediation Act, 2023 is mandatory and extinguishes the right to seek to set aside an award outside the prescribed period. It was further submitted that the Appellant did not oppose the recognition and enforcement proceedings before the trial Court. Though represented by counsel, the Appellant failed to adopt its processes, which were consequently struck out by the trial Court that granted recognition and enforcement of the award. It was argued that in the absence of a counter-affidavit or proper opposition, the Appellant is deemed to have admitted the depositions of the Respondents, relying on **UGWUANYI V. NICON INSURANCE PLC (2013) LPELR- 20092 (SC); MABAMIJE V. OTTO (2016) LPELR-26058 (SC)**. On that footing, learned counsel submitted that the Appellant cannot now reopen matters it failed to contest at the trial Court.

On the substantive complaint that the Arbitral Tribunal lacked jurisdiction to make an award against the Appellant as a nonsignatory to the arbitration agreement, learned counsel argued that the contention is legally untenable. Counsel submitted

that arbitration awards are final and binding on matters of fact within the scope of submission and cannot be reopened by the Courts except on the limited statutory grounds provided. Reliance was placed on **NITEL V. OKEKE [2017] 9 NWLR (Pt. 1571) 439 (SC); TAYLOR WOODROW (NIG.) LTD V. SUDDEUTSCHE ETNA-WERK GMBH (1993) LPELR-3139 (SC); COMMERCE ASSURANCE LTD V. ALLI (supra); RAS PALGAZI CONSTRUCTION CO. LTD V. FCDA (2001) LPELR-2941 (SC)**.

It was contended that the Appellant's arguments on privity of contract amount to an impermissible invitation to this Court to reevaluate evidence and factual findings conclusively settled by the Arbitral Tribunal. Counsel further argued that the Arbitral Tribunal correctly applied recognised exceptions to the doctrine of privity of contract, including incorporation by reference, agency, alter ego, estoppel, and the "group of companies" doctrine. It was submitted that under Section 57 of the Arbitration and Conciliation Act (now Section 91 of the Arbitration and Mediation Act, 2023), the term "party" includes "any person claiming through or under" a party to the arbitration

agreement.

In support of this position, learned Counsel relied heavily on the decision of the Court of Appeal in **METROLINE NIGERIA LTD & ORS V. DIKKO (2018) LPELR-46853 (CA)**, affirmed by this Court when the further appeal was struck out on 19 June 2020 (reported as **METROLINE NIGERIA LTD V. DIKKO (2021) 16 NWLR (Pt. 1761) 422 (SC)**). Counsel said, in that case, a non-signatory entity intimately connected to the transaction was held to be a necessary party bound by the arbitral proceedings.

Comparative jurisprudence was also cited, including **CHLORO CONTROLS (I) P. LTD V. SEVERN TRENT WATER PURIFICATION INC. & ORS (2013) 1 SCC 641 (Supreme Court of India); CHERAN PROPERTIES LTD V. KASTURI & SONS LTD (2018) 16 SCC 413 (India); GE ENERGY POWER CONVERSION FRANCE SAS V. OUTOKUMPU STAINLESS USA LLC, 590 U.S. (2020) (United States Supreme Court); MISSISSIPPI FLEET CARD, LLC V. BILSTAT, INC., 175 F. SUPP. 2D 894 (S.D. MISS. 2001); ASTRA OIL CO. V. ROVER NAVIGATION LTD, 344 F.3D 276 (2D CIR. 2003)**. Counsel submitted that modern arbitration jurisprudence accepts that non-signatories may be bound where their conduct demonstrates assumption of

obligations, receipt of benefits, or a composite transaction structure revealing a common intention. The learned Counsel for the Respondents further contended that the sums awarded were not damages but monies had and received by the Appellant under circumstances warranting restitution. The doctrine, being equitable in origin, is not dependent on privity of contract. Counsel relied on the decisions in **ODUWOBI & ORS V. BARCLAYS BANK D.C.O. (1962) LPELR-25108 (SC); FBN PLC V. OZOKWERE (2013) LPELR-21897 (SC); ADESINA V. KOLA [1993] 6 NWLR (Pt. 298) 182 (SC)**. It was submitted that equity imposes an obligation to repay monies received in circumstances of unjust enrichment, irrespective of formal contractual status.

In response to the Appellant's contention that the arbitral tribunal entertained criminal allegations, Counsel submitted that jurisdiction is determined by reference to the claimant's pleadings, relying on **TSKJ (NIG.) LTD V. OTOCHEM (NIG.) LTD (2018) LPELR- 44294 (SC); EMEKA V. OKOROAFOR (2017) LPELR-41738 (SC); INAKOJU V. ADELEKE [2007] 4 NWLR (Pt. 1025) 425**. Counsel argued that the point of claim, which

superseded the Notice of Arbitration, was not placed before this Court by the Appellant. Consequently, any assertion that criminal liability was imposed is speculative. This Court, it was submitted, does not act on speculation, citing **MARTINS V. STATE (2019) LPELR-48889 (SC); IKENTA BEST (NIG.) LTD V. AG RIVERS STATE (2008) LPELR-1476 (SC)**. Learned Counsel maintained that a review of the issues and reliefs granted reveals no imposition of criminal sanction, but purely civil remedies in restitution and breach of fiduciary duty.

In sum, counsel submitted that the first issue ought to be resolved against the Appellant and in favour of the 1st and 2nd Respondents.

For the 3rd and 4th Respondents, learned Counsel argued that the contention that the Appellant, not being a privy to the Offer Terms and Custodial Agreements containing the arbitration clause, proceeded on an unduly restrictive understanding of the doctrine of privity of contract.

While conceding that privity remains a foundational principle of law of contract, Counsel contended that it is not absolute and admits of well-established exceptions, particularly in the field of arbitration.

Reliance was placed on the reasoning of the sole arbitrator, as reflected at page 156 of Volume 1 of the Records, where it was observed that non-signatories may, in appropriate circumstances, be bound by an arbitration agreement under recognised doctrines such as incorporation by reference, assumption, agency, alter ego or veil piercing, and estoppel, especially where the claims are intimately founded in, intertwined with, or arise directly from the contract containing the arbitration clause.

Counsel further relied on the decision of the Court of Appeal in **METROLINE (NIG.) LTD & ORS V. DIKKO (2018) LPELR- 46853(CA)**, where it was recognised that a non-signatory may properly be joined to arbitral proceedings where its operations formed the nucleus of the dispute and where it possessed a close and direct connection with the transaction in issue. In that case, the Court held that strict privity is not an indispensable prerequisite where the non-party's interest and involvement in the contract are manifest. Counsel argued that the present case falls squarely within that principle, as the evidence before the arbitrator demonstrated that the Appellant

received substantial sums, including $13,300,910 from the 1st Respondent and $30,030,040 from the 2nd Respondent, derived from the very investment transaction governed by the Offer Terms and Custodial Agreements. On that footing, it was submitted that the Appellant's role was so inextricably intertwined with the transaction as to estop it from denying the binding effect of the arbitration clause.

In response to the Appellant's reliance on **KANO STATE URBAN DEVELOPMENT BOARD V. FANZ CONSTRUCTION CO. LTD (1990) LPELR-1659(SC)**, Counsel submitted that the authority was inapplicable, as that case concerned an arbitrator exceeding the scope of issues submitted for determination. In the instant appeal, there was no contention that the arbitrator travelled outside the reference. Similarly, the decision in **NNPC V. LUTIN INVESTMENT LTD & ANOR (2006) LPELR-2024(SC)**, which dealt with alleged misconduct arising from arbitral sittings held outside jurisdiction, was said to bear no relevance to the present complaint, which concerns the binding effect of the arbitration agreement on a non-signatory.

On the question of whether the award disclosed an error

of law on its face, learned counsel invoked the decision of the Court of Appeal in **ARBICO (NIG.) LTD V. N.M.T. LTD [2002] 15 NWLR (Pt. 789) 1** and submitted that the arbitrator's application of recognised exceptions to privity does not amount to an error of law merely because the Appellant disagrees with the conclusion reached.

Counsel further contended that there was no improper attempt to confer jurisdiction on the Arbitral Tribunal by consent. The referral to arbitration by the trial Court was grounded in a valid arbitration agreement, and no objection was taken at the time of referral. It was argued that if the Appellant genuinely disputed the propriety of the referral, the appropriate course would have been to challenge that order. Having participated in the proceedings without protest, the Appellant cannot now resile after an unfavourable award.

Addressing the Appellant's reliance on **AFRICAN INSURANCE DEVELOPMENT CORPORATION V. NLNG LTD (2000) LPELR-210(SC)**, learned counsel submitted that the pronouncement in that case was confined to the question whether a non-party could apply for a stay of proceedings in favour of arbitration, and

does not preclude binding of a non-signatory under recognised exceptions.

On the allegation that fraud vitiated the arbitration agreement and thereby ousted the jurisdiction of the Tribunal, learned counsel submitted that the dispute referred to arbitration was essentially contractual in nature and concerned alleged breach of obligations arising from the investment transaction. The reliance on **BJ. EXPORT & CHEMICAL CO. LTD V. KADUNA REFINING & PETROCHEMICAL CO. LTD (2002) LPELR-12175(CA)**, to the effect that criminal matters are not arbitrable, was said to be misplaced, as no criminal charge was referred to arbitration.

Learned Counsel argued that a mere allegation of fraud or misrepresentation does not render a dispute non-arbitrable unless it impeaches the arbitration clause itself. Reference was made to the persuasive decision of the Supreme Court of India in **WORLD SPORT GROUP (MAURITIUS) LTD V. MSM SATELLITE (SINGAPORE) PTE LTD (Civil Appeal No. 895 of 2014)** and the decision of the Court of Appeal in **MEKWUNYE V. LOTUS CAPITAL LTD & ORS (2018) LPELR-45546(CA)**.

Counsel anchored this submission on the doctrine of separability, as

codified in Section 12(2) of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (applicable at the material time), which provides that an arbitration clause forming part of a contract shall be treated as an agreement independent of the other terms of the contract, and that a decision that the contract is null and void shall not ipso jure invalidate the arbitration clause. It was noted that Section 14(2) of the Arbitration and Mediation Act 2023 is in pari materia. The decision of this Court in **UBA PLC V. TRIEDENT CONSULTING LTD [2023] 14 NWLR (PT. 1903) 95 AT 130, PARAS. B-F**, was cited as affirming the autonomy and survival of an arbitration clause notwithstanding allegations affecting the substantive contract. Counsel also drew attention to the reasoning of the House of Lords in **FIONA TRUST & HOLDING CORPORATION V PRIVALOV [2007] UKHL40**, where allegations of bribery were held not to displace the arbitration agreement.

Finally, counsel submitted that the issue of fraud was not properly ventilated before the Arbitral Tribunal and was only raised at the stage of challenging the award. Having failed to raise the

objection at the appropriate forum, the Appellant cannot, it was contended, be permitted to deploy it belatedly as a jurisdictional objection. In the premise therefore, learned counsel urged this Court to affirm the concurrent findings of the Courts below that the award was valid, enforceable, and binding on the Appellant, and that the challenge predicated on non-signatory status and alleged fraud is devoid of merit.

RESOLUTION

The instant issue seeks to determine whether the Court below was right in affirming the decision of the trial Court recognising and enforcing the arbitral award against the Appellant. The Appellant's challenge is two-pronged: first, that the Arbitral Tribunal lacked jurisdiction over it, being a non-signatory to the arbitration agreement; and secondly, that allegations of fraud rendered the dispute non-arbitrable and thereby vitiated the award.

The Appellant's contention is stark: that not being a signatory to the Offer of Terms and Custodial Agreement containing the arbitration clause, the Arbitral Tribunal lacked jurisdiction to bind it; that the award is therefore a nullity; and that the Courts below erred

in recognising and enforcing it. The argument, though beautifully and attractively framed in the classical language of jurisdiction, must be examined within the doctrinal architecture of modern arbitration law and the statutory framework governing arbitral awards in Nigeria.

It is settled beyond peradventure that jurisdiction is the lifeblood of adjudication. Where a Court or Tribunal lacks jurisdiction, the entire proceedings, no matter how well and brilliantly conducted, amount to a nullity. See **MADUKOLU & ORS V. NKEMDILIM (supra)**.

It is equally trite that jurisdiction of a Court cannot be conferred by consent nor waived by acquiescence. In this wise, an Arbitral Tribunal, like a Court, cannot exceed the authority conferred upon it. However, it must be said that unlike the Courts, consent remains the juridical fountainhead of arbitral authority.

Arbitration is a consensual process. An Arbitral Tribunal derives its authority from the arbitration agreement and is circumscribed by the scope of the submission. Yet, it is equally well settled that arbitration law, both domestically and internationally, has evolved beyond a rigid formalism

that binds only the inked signatory. Put simply, consent in arbitration is not confined to the narrow ritual of signature. It is the intention to submit disputes to arbitration that is decisive. Modern commercial jurisprudence recognises that complex transactions frequently involve multiple actors, layered corporate structures, and composite arrangements in which strict privity, if applied mechanistically, would defeat commercial reality and enable injustice. The law, ever responsive to the needs of commerce, has evolved accordingly, and it is deserving that it recognises circumstances under which a non-signatory may be bound by an arbitration agreement where justice and commercial reality demand.

Section 57 of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (applicable to the dispute at the material time), now re-enacted as Section 91 of the Arbitration and Mediation Act 2023, defines a "party" to include "any person claiming through or under a party." This statutory language is deliberate and expansive. It not only signals legislative recognition that the reach of an arbitration agreement may

extend beyond the literal signatory to encompass those whose rights and obligations are derivative, assumed, or functionally inseparable from the contractual matrix. In addition, it reflects the modern understanding that arbitration agreements may bind persons who, though not signatories in the narrow sense, derive benefit under, assume obligations arising from, or are otherwise intimately connected with the contract containing the arbitration clause.

Comparative arbitral jurisprudence further reveals that Courts in various jurisdictions have, over time, invoked several legal doctrines to address the problem of third parties in arbitration. These include assignment, agency, equitable estoppel, alter ego or veil piercing, and the so-called “group of companies” doctrine rooted in implied consent. These doctrines are not departures from principle; rather, they are manifestations of orthodox contractual and equitable reasoning applied to the realities of modern commerce.

Consequently, where contractual rights and obligations are assigned, the arbitration clause, being ancillary, yet inseparable from the substantive contract, ordinarily travels

with the assignment. An assignee who assumes the benefits and burdens of the main contract cannot disclaim the arbitral covenant embedded therein. Likewise, in agency relationships, a principal on whose behalf a contract is executed is bound by the arbitration clause, notwithstanding that the signature on the document is that of the agent. See **CMA CGM SA V HYUNDAI M.I.P.O. DOCKYARD CO LTD [2008] EWHC 2791 (Comm); [2008] 2 CLC 687, 32-3**.

In some jurisdictions, particularly the United States, Courts have invoked equitable estoppel to prevent a non-signatory from embracing the substantive advantages of a contract while repudiating its arbitration clause. Though sparingly applied outside that jurisdiction, the equitable logic is universal: it is generally accepted that a party may not approbate and reprobate. See **TEPPER REALTY CO. V. MOSAIC TILE CO., 259 F. SUPP. 688, 692 (S.D.N.Y. 1966)**.

Similarly, the doctrine of alter ego or piercing the corporate veil permits, in exceptional circumstances, the disregard of corporate separateness where it is used as an engine of fraud or injustice. Courts approach this doctrine with caution, mindful of the sanctity of

corporate personality; yet, where the corporate form is abused as a shield against legitimate liability, equity intervenes. The Courts will not allow a party to plead corporate separateness where it appears obvious that so doing is designed to hoodwink the other party. See **ALOE VERA OF AMERICA, INC V. ASIANIC FOOD(S) PTE LTD & ANOR (2006) 3 SLR (R) 174**. Equity will not allow stealing a match against an innocent party.

The "group of companies" doctrine rests upon the examination of the common intention of the parties and the active participation of affiliated entities in the negotiation, performance, or termination of the contract. Where a non-signatory company within a corporate group plays a decisive role in the contractual relationship and conducted itself as though it were a party, Arbitral Tribunals and Courts have, in appropriate cases, held it bound by the arbitration agreement. In ***DOW CHEMICAL FRANCE V. ISOVER-SAINT-GOBAIN, ICC Award No. 4131, YCA 1984, at 131 et seq. (also published in: Clunet 1983, at 899 et seq.)***, the Paris Court of Appeal confirmed an ICC arbitral award that was, for the first time, principally based on that

doctrine. See further on this subject, J.D.M. Lew, L.A. Mistelis, et al., "Chapter 16 Multiparty and Multicontract Arbitration", in J. D.M. Lew, L. A. Mistelis, et al., ***Comparative International Commercial Arbitration, Kluwer Law International 2003, pp. 377-409, para. 16-3; G. Born,*** *"Chapter 5: International Arbitration Agreements: Non-Signatory Issues"*, in Gary B. Born, International Arbitration: Law and Practice (3rd ed.), Kluwer Law International 2021, pp. 113-121; and S. Brekoulakis, "Chapter 8: Parties in International Arbitration: Consent v. Commercial Reality", in S. Brekoulakis, J. D.M. Lew, et al. (ed.), The Evolution and Future of International Arbitration, Kluwer Law International 2016, pp. 119-160, p. 120, para. 8.22.

It becomes clear that the unifying thread across these doctrines is not the erosion of consent, but the recognition that consent may be express, implied, or inferred from conduct. Here in our country, Nigeria, in **METROLINE (NIG.) LTD & ORS V. DIKKO (supra)**, the Court of Appeal, per my law Lord Stephen Jonah Adah, JCA (now JSC) recognised that a non-signatory may properly be bound where its

role in the transaction forms the nucleus of the dispute. In that case, the Court held that even though the 5th Appellant therein was not a party to the Joint Venture Agreement containing the arbitration clause/agreement, but ***"is a child of that agreement and... a beneficiary,... it is akin to that of a privy to the contract... (and) cannot be denied as an interested party in (the) case..."*** The further appeal to this Court in that case was struck out by this Court in **METROLINE NIGERIA LTD V. DIKKO [2021] 16 NWLR (Pt. 1761) 422 (SC)**. The reasoning in the decision of the Court of Appeal in that case accords with commercial sense, realities of our situation, common sense, justice and international best practice to the effect that arbitration cannot be rendered impotent by fragmenting corporate participation while retaining unified economic benefit. I still maintain that a party that is deeply involved in a commercial contract will not be allowed to approbate and reprobate. Parties must be bound by their agreement.

The jurisprudential foundation of binding non-signatories lies in three interrelated pillars: First is the intention of the

parties. It is elementary law that the duty of Courts is to give effect to the presumed intention of the parties engaged in a commercial relationship. As held in **FIONA TRUST & HOLDING CORPORATION V. PRIVALOV [2007] UKHL40**, per Lord Hope of Craighead at PAR. 26:

"The proposition that any jurisdiction or arbitration clause in an international commercial contract should be liberally construed promotes legal certainty It serves to underline the golden rule that if the parties wish to have issues as to the validity of their contract decided by one tribunal and issues as to its meaning or performance decided by another, they must say so expressly. Otherwise, they will be taken to have agreed on a single tribunal for the resolution of all such disputes."

By this token therefore, where the conduct of a non-signatory demonstrates assumption of obligations under the contract, or participation in its performance, intention may be inferred. Consent may be manifested by conduct as much as by ink.

Second is benefit and burden accruing or accruable to a party under the agreement. The law does not permit a party to approbate and reprobate.

A person who knowingly receives substantial benefit flowing directly from a contract cannot, in equity and good conscience, deny the mechanism by which disputes under that contract are to be resolved; so doing is utterly repugnant, obnoxious and utterly reprehensible. This is aptly captured by the Latin maxims, Qui sentit commodum sentiredebet et onus, meaning he who enjoys the benefit must also bear the burden. The Sole Arbitrator found, upon concrete and cogent evidence, that the Appellant received significant sums derived from the investment transaction governed by the arbitration clause. That finding, affirmed by two Courts, grounds a powerful estoppel.

Third is the principle of fairness and avoidance of injustice. This portends that arbitration would be rendered vulnerable to manipulation if parties could insulate themselves from arbitral jurisdiction by operating through interconnected entities while reaping transactional advantage. The doctrine of alter ego and veil piercing, long recognised in corporate law, prevents the abuse of corporate personality to defeat justice. See **OBOH V. N.F.L. LTD. [2022] 5 NWLR (Pt. 1823) 283**.

The

Appellant's insistence on formal signature as the sole gateway to arbitral jurisdiction reflects a nineteenth-century rigidity inconsistent with contemporary commerce. The doctrine of privity was developed to protect parties from being burdened by obligations they never undertook. It was never intended as a shield for those who actively participated in and benefited from a contractual arrangement while seeking to evade its dispute resolution mechanism.

The principle of privity of contract, though foundational, is not impregnable. It yields where the facts reveal a composite transaction, agency, alter ego, assumption of obligations, or conduct giving rise to estoppel. As earlier stated, in the instant case, the Sole Arbitrator found, upon concrete and cogent evidence, that the Appellant was "inextricably intertwined" with the investment transaction; that it received substantial sums derived from the very Offer Terms and Custodial Agreements containing the arbitration clause; and that its role was central to the dispute. Those findings were affirmed by the trial Court and the lower Court. It is trite that arbitral awards are final on

matters of fact within the scope of the submissions, and Courts will not sit as appellate tribunals over findings of fact unless a recognised statutory ground to justify so doing is established. See **TAYLOR WOODROW (NIG.) LTD V. SUDDEUTSCHE ETNA-WERK GMBH** (supra).

The Appellant's invitation to this Court to re-evaluate the factual matrix and substitute its view for that of the Sole Arbitrator is, with due respect, curious, bizarre and misconceived. Arbitration is chosen precisely to avoid protracted judicial re-litigation. As this Court has repeatedly emphasised, parties who voluntarily elect to submit to arbitration are bound by the award for better or worse, unless the award is vitiated on recognised statutory grounds. The doctrine of Pacta sunt servanda which portends that agreements must be kept is the hallmark of arbitration.

On the allegation of fraud and non-arbitrability, the law must be approached with doctrinal clarity. Not every allegation of fraud transmutes a civil dispute into a criminal cause outside arbitral competence. As the learned Counsel for the 1st and 2nd Respondents as well as the 3rd and 4th Respondents rightly

submitted, jurisdiction is determined by the claimant's pleadings. See **NDAKENE V. ADAMU [2023] 9 NWLR (PT. 1889) 389; PTF V. FIDELITY BANK PLC [2022] 9 NWLR (Pt. 1836) 475**. The claims sought and the reliefs granted by the Arbitral Tribunal, which include restitution and breach of fiduciary duty, were civil in nature not criminal sanctions.

Moreover, the doctrine of separability is firmly entrenched in our law. Section 12(2) of the Arbitration and Conciliation Act (applicable herein) provides that an arbitration clause is independent of the substantive contract, and a decision that the contract is null and void does not ipso jure invalidate the arbitration clause. This principle has been reaffirmed and settled by this Court in **UBA PLC V TRIDENT CONSULTING LTD [2023] 14 NWLR (Pt. 1903) 95 at 130, PARAS B-F**. The Appellant's argument that fraud vitiated the arbitration clause itself finds no support in the record before us. Even assuming allegations of misrepresentation were made, they did not impeach the arbitration agreement as a distinct covenant. The arbitration clause therefore survived. To hold otherwise would be to undermine the autonomy of

arbitration agreements and destabilise commercial certainty.

Finally, the equitable doctrine of restitution further fortifies the Respondents' case. Where a party has received monies in circumstances that render retention unconscionable, the law imposes an obligation to repay, independent of strict privity. See **FBN PLC VC OZOKWERE (2013) LPELR-21897 (SC)**.

The Sole Arbitrator's award, grounded in monies had and received, cannot be dismissed merely because the Appellant was not a formal signatory. In any event, the Court is not vested with the authority to sit on appeal over the findings of fact or conclusions of law reached by arbitrators merely because it might have arrived at a different conclusion. The duty of the Court is not to examine whether the arbitrators were right or wrong in law, but to scrutinise the award itself and determine whether, on the state of the law as apprehended and articulated by the arbitrators, and on the facts as set out on the face of the award, they acted within the bounds of the law as they themselves understood it. The inquiry is therefore subjective rather than objective. The Court places itself in the position

of the arbitrators, not above them, and proceeds on the hypothesis of their stated understanding of the law, to ascertain whether they faithfully applied that understanding to the issues submitted for determination. See **BAKER MARINE NIG. LTD. V. CHEVRON NIG. LTD. [2000] 12 NWLR (Pt. 681) 393 at 410;** and particularly **NNPC v. FUNG TAI ENGINEERING CO. LTD [2023] 15 NWLR (Pt. 1906) 117 AT 209, PARAS A-H**, where this Court, per my learned brother GARBA, JSC held and I quote:

"***... Courts do not sit on appeal over an award made by an arbitral tribunal for the purpose of a re-hearing which an appeal before an appellate Court is. ... so they cannot embark on a review of the points of dispute already decided by the tribunal for the purpose of substituting their own views on both the facts and law... I would also state that there is no law which specifically vest or confers appellate jurisdiction on any Court in Nigeria over an award made by an arbitral Tribunal under and pursuant to the ACA. Put another way, no Court in Nigeria has the statutory jurisdiction to entertain and adjudicate over an appeal from the award made by an arbitral tribunal.***

In the absence

of such statutory jurisdiction, no Court can purport to sit over an appeal against an award made by an arbitration tribunal since it lacks the requisite judicial power and authority to confer or arrogate to itself, the jurisdiction it does not have at all under any statute or law....”

The Courts below made concurrent findings affirming the validity and enforceability of the award. This Court is slow to disturb concurrent findings unless shown to be perverse or the finding occasions substantial miscarriage of justice. In the instant appeal, no such perversity has been demonstrated in the remotest form.

In the final analysis, therefore, the Appellant’s arguments amount to a belated attempt to evade the binding consequences of a process to which it was innately connected and from which it derived substantial benefit. Arbitration, as a pillar of commercial justice, would be rendered nugatory if parties could accept benefits yet repudiate burdens. The law does not permit approbation and reprobation in the same breath, as I persistently maintained in this Judgment.

Accordingly, I hold that the Arbitral Tribunal richly possessed jurisdiction

over the Appellant; that the award was validly made within the scope of submission; that no recognised statutory ground for setting aside the award has been established; and that the trial Court and the lower Court were right to recognise and order of enforcement and recognition of the award. Issue One is therefore resolved against the Appellant and in favour of the Respondents.

The law is settled that Courts do not engage in the determination of academic or hypothetical questions. Judicial power is invoked for the resolution of live disputes with practical consequences for the rights of parties, not for abstract pronouncements. See **YEGEDE V. OTHMAN [2025] 18 NWLR (Pt. 2017) 369; A.P.C. V. ELEBEKE [2022] 10 NWLR (Pt. 1837) 1**. Once a pivotal issue has been resolved in a manner that effectively determines the rights of the parties, any further issue which cannot alter that outcome becomes otiose, futile and ineffective, delving into the issue is a worthless venture, and must not take a jot of the scarce precious judicial time of this Court.

In the present case, the resolution of the first issue has conclusively disposed of the substratum of the

appeal. The second issue, even if determined in favour of the Appellant, would not affect the ultimate result. It is therefore academic. This Court has consistently declined invitations to expend its scarce judicial time on matters that no longer have live relevance to the dispute before it. Courts exist to determine real controversies, not to deliver advisory opinions. Accordingly, I decline to consider the second issue, because it is not worth doing.

In the end, therefore, the appeal, being totally devoid of merit, deserves to be and is hereby dismissed. The judgment of the lower Court, the Court of Appeal, Abuja Division, in Appeal No. CA/ABJ/660/2023 delivered on the 22nd day of November 2024 is hereby affirmed. Cost of Ten Million Naira is awarded against the Appellant in favour of the 1st and 2nd Respondents, as well as the 3rd and 4th Respondents respectively.

Appeal dismissed.

MOHAMMAD LAWAL GARBA, J.S.C.: The two (2) issues submitted by the Appellant for decision by the Court in this appeal have been comprehensively considered and very ably resolved by my learned brother, Hon. Justice Tijjani Abubakar, JSC in the lead judgment, a draft

of which I have read, in line with current judicial attitude and position in international commercial transactions. As a reminder, the two (2) issues raised in the Appellant's Brief are in the following terms:

"(a) Whether the lower Court was right in affirming the decision of the trial Court recognizing the Arbitral Award against the Appellant when the entire Arbitral proceedings was a nullity for want of jurisdiction (Distilled from
Grounds 1, 2, 5 and 6 of the Amended Notice of Appeal).
(b) Whether the lower Court was right in striking out issue One which emanated from the Grounds 1 and 2 of the Appellant Amended Notice of Appeal before the Lower Court (Distilled from Ground 3 and 4 of the Amended Notice of Appeal."

As can easily be observed, the first issue on the jurisdiction of the Arbitral Tribunal was roped in to the appeal, as if it was magic ward, forgetting that the parties voluntarily and freely chose the Tribunal and submitted the issues in dispute between them for its final and binding decision.

Over the years, our Nigerian parties and their counsel involved in commercial transactions, both locally and

internationally, in which time is of the essence, have made arbitration proceedings that are primarily meant to avoid the usual unnecessary expenses and tortious delays associated with litigations in the ordinary Courts, a pre-litigation procedure such that every award made by the Arbitral Tribunal is casually challenged by the party against whom it goes or was made on the ground that the Tribunal exceeded its jurisdiction for spurious reasons that are, in most cases, only intended to frustrate the final and binding nature of such an award. Parties who freely and voluntarily choose their Arbitrator/s to determine specific issues of dispute between them and agree that such determination be final and binding should not and must not be allowed or even encouraged to misuse the judicial processes of a Court of law to avoid meeting their obligations and to frustrate the awards made by the Arbitrator/s or Tribunal.

This position has been stated and restated by this Court in the cases of **Metroline Nig. Ltd. v. Dikko (2021) 16 NWLR (pt. 1761) 422** and **NNPC v. Fung Tai Engr. Co. Ltd. (2023) 15 NWLR (pt. 1906) 117 at 209** (both cited in the lead judgment). Very

recently, Ogunwumiju, JSC, in the case of **B. P.E. v. Messrs U. Maduka Ent. Nig. Ltd. (2025) 16 NWLR (pt. 2011) 205 at 235** exhorted that:

"Parties must learn to abide by the decisions in arbitral awards where they have subjected themselves to the jurisdiction of the arbitrator and not look for spurious excuses to avoid or evade obeying the award, where it does not favour them."

This appeal, yet again, is one which was initiated against the award by the Arbitral Tribunal simply because it was not favourable to the Appellant.

I totally agree with the lead judgment that arguments canvassed for the Appellant on the above issues merely constitute a belated attempt to evade the binding consequences of the award made by the Arbitral Tribunal. The concurrent findings by two (2) lower Courts on the bindness of the award on the Appellant which have not been shown to be perverse, contrary to the current position of the law, substantive or procedural, or to have occasioned a real miscarriage of justice in the peculiar circumstances of the case, amply demonstrate that the appeal is devoid of any iota of merit.

It deserves to be and is hereby

dismissed by me too in terms of the lead judgment.

HARUNA SIMON TSAMMANI, J.S.C.: My learned brother, Tijjani Abubakar, JSC, gave me the benefit of reading in advance the draft of the judgment prepared by him. My learned brother, in his usual erudition, comprehensively considered and correctly resolved all the material issues that came up for determination in this appeal. I adopt same as mine in holding that this appeal is not well grounded.

Particularly, the issue of jurisdiction which appears to me to be the pith of the Appellant's appeal, which has, in my view, been hanged on by the Appellant has no reasonably basis. The two Courts below assiduously considered and correctly determined that the issue of jurisdiction raised cannot avail the Appellant.

On that note, and for the reasons exhaustively stated in the lead judgement, I, too, agree that this appeal has no merit at all. It is hereby dismissed. I abide by the order on cost.

HABEEB ADEWALE OLUMUYIWA ABIRU, J.S.C.: This appeal is against the judgment of the Court of Appeal, Abuja Judicial Division, delivered on the 22nd of November, 2024 in Appeal No CA/ABJ/660/2023. The judgment of the Court

of Appeal affirmed the judgment of the Federal High Court of Lagos State delivered on the 26th of April, 2023 in Suit No FHC/ABJ/CS/288/2018 which recognized for enforcement the Arbitral Award made in favour of the first and second Respondents and dated the 26th of September, 2022.

The lead judgment in this appeal was prepared by my learned brother, Tijjani Abubakar, JSC, and I had the privilege of reading same before now. His Lordship resolved the core contentions of the parties in the appeal and found that the Court of Appeal was correct in dismissing the appeal of the Appellant against the judgment of the Federal High Court. I endorse entirely the views expressed by His Lordship and agree that this appeal is totally lacking in merit and should be dismissed. I have nothing useful to add.

I too hereby dismiss the appeal and affirm the judgment of the Court of Appeal, Abuja Judicial Division, delivered on the 22nd of November, 2024 in Appeal No CA/ABJ/660/2023. I abide the order on costs in the lead judgment.

JAMILU YAMMAMA TUKUR, J.S.C.: My noble lord, TIJJANI ABUBAKAR, JSC., afforded me the opportunity of reading before today a draft copy of the

lead judgment just delivered. I agree entirely with resolution of both the preliminary objection and the appeal itself.

The reasoning of my noble lord in the resolution of the preliminary objection and the need for this Court to proceed with the determination of the appeal to finally settle the issues in controversy between the parties is in concord with my views on the subject. The Supreme Court in its position as not only the final Court in the land but also as a policy Court has a responsibility of ensuring that vexatious and incompetent appeals that have the tendency of ridiculing the country in the eyes of the international community are discouraged.

The Appellant herein having fully benefited from the transaction leading to the dispute cannot later hide under the principles of the doctrine of privity of contract to evade liability. As beautifully rendered in the lead judgment, "*arbitration cannot be rendered impotent by fragmenting corporate participation while retaining unified economic benefit.*"

The appeal has no merit and it is hereby dismissed in terms of the lead judgment.

I fully subscribed to the order made on costs in the lead

judgment.

Appearances:

PAUL USORO, SAN with him, IKECHUKWU DURU, ESQ. MATTHEW ONOJA, ESQ. ABASIFREKE EFFIONG, ESQ. ABDULBASIT SHUAIB, ESQ. and JOY UCHECHI AMADI-AYE, ESQ. **For Appellant(s)**

J.U.K. IGWE, SAN with him, MAHMUD ABUBAKAR MAGAJI, SAN; OKECHUKWU EDOZIE, SAN E.D. GBETSERE, ESQ. AFFIS MATANMl, ESQ. BENITA ODIGIE, (MISS), ESQ. BARAU DAHIRU MANGAL, ESQ. CYRIL IRORAKPOR (JNR), ESQ and ANISA ASMAU MAGAJI, ESQ for 1st and 2nd Respondents.

BABATUNDE IGE, ESQ. with him, ADANNA UZOWURU, ESQ. and ROKIBAT YUSUF, ESQ. for 3rd and 4th Respondents.

No appearances for 5th - 7th Respondents. **For Respondent(s)**