



The Court of Appeal Affirms that a Foreign Jurisdiction Clause is not an Ouster Clause but a Valid and Enforceable Clause in a Contract

Appeal No: CA/LAG/CV/854/2022

Sqimnga Nigeria Limited v. Systems Applications Nigeria Limited

► Disputes Resolution Practice Group

ÁLEX is pleased that, in a unanimous judgment of the Court of Appeal in Appeal No. CA/LAG/CV/854/2022 – Sqimnga Nigeria Limited v. Systems Applications Nigeria Limited delivered on 26 March 2024, the Court of Appeal upheld ÁLEX's contention and affirmed the decision of the High Court of Lagos State in Suit No. LD/ADR/3116/2020 – Sqimnga Nigeria Limited v. Systems Applications Nigeria Limited, which held that a foreign jurisdiction clause is a valid and enforceable clause in a contract. Importantly, the Court of Appeal further held that a foreign jurisdiction clause is not an ouster clause.

The background giving rise to the appeal is that, on 13 May 2022, the High Court of Lagos State, upheld ÁLEX's Notice of Preliminary Objection ("the preliminary objection") which challenged the Claimant's action on the basis that the parties agreed to a foreign jurisdiction clause to refer their disputes to South Africa in their Master Services Agreement ("the MSA").¹ Aggrieved by the decision of the High Court, the Claimant ("the Appellant") appealed to the Court of Appeal. The Appellant contended, amongst others, that the High Court was wrong to have declined jurisdiction and referred the parties to South Africa because the parties to the action were Nigerian entities, and the contract was performed in Nigeria.

In response, ÁLEX, on behalf of SAP (as Respondent), contended that the parties to the action willingly entered into the MSA and were aware that the Nigerian courts had jurisdiction at the time of entering the contract but chose to have their disputes resolved in South Africa.

ÁLEX, therefore urged the Court to hold the parties bound to their contract. After a thorough consideration of the issues and contentions of the parties, the Court of Appeal, in its judgment delivered on 26 March 2024, held that parties are bound by their agreement and that agreements which are neither contrary to the law nor fraudulently entered into should be adhered to in every manner and every detail. Finally, the Court of Appeal, in its concurring judgment, held that a foreign jurisdiction clause is not an ouster clause.

The Court of Appeal, therefore affirmed the decision of the High Court of Lagos State referring the parties to South Africa for the resolution of their disputes and dismissed the appeal with costs in favour of SAP.

The ÁLEX team that represented the Respondent were Mr. Adedapo Tunde-Olowu, SAN and Linda Ezenyimulu.

1. For a fuller background, see Issue 1 of ÁLEX's litigation note available at <https://www.aelix.com/%C7%BDlex-successfully-canvassed-the-position-of-law-on-the-sanctity-of-a-foreign-jurisdiction-clause-in-the-contract-of-parties/>

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