



A Foreign Jurisdiction Clause in a Contract is not an Ouster Clause

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

Sqimnga Nigeria Limited v. Systems Applications Nigeria Limited

► Disputes Resolution Practice Group

ÆLEX is pleased to have represented the successful Respondent, Systems Applications Products Nigeria Ltd ("SAP"), in an appeal commenced by the Appellant in Appeal No. CA/LAG/CV/854/2022 – Sqimnga Nigeria Limited v. Systems Applications Nigeria Limited.

The Appellant, as claimant, had commenced action at the High Court of Lagos State alleging breach of the Master Services Agreement (MSA) against the Respondent. ÆLEX filed a Notice of Preliminary Objection ("the preliminary objection") on the basis that parties in the MSA agreed to refer disputes arising from the contract to the South African courts. The High Court upheld ÆLEX's preliminary objection and referred parties to their chosen dispute forum. 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, ÆLEX, on behalf of the 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. ÆLEX, 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 a unanimous judgment delivered on 26 March 2024, held that parties are bound by their agreement which are neither contrary to the law nor fraudulently entered. The Court of Appeal further held that a foreign jurisdiction clause is not an ouster clause, and dismissed the appeal of the Appellant with costs in favour of SAP.

This decision is significant because it reiterates the settled principle of law in Nigeria that contracting parties' are entitled to choose the forum and law to govern their contracts.

Mr. Adedapo Tunde-Olowu, SAN and Linda Ezenyimulu represented the Respondent. For more information, please contact: drp@aelex.com

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