ARBICO NIGERIA LIMITED v. NIGERIA MACHINE TOOLS LIMITED(2002)

ARBICO NIGERIA LIMITED v. NIGERIA MACHINE TOOLS LIMITED

(2002)LCN/1121(CA)

In The Court of Appeal of Nigeria

On Monday, the 8th day of April, 2002

CA/L/409/97

RATIO

HOW TO MEASURE OR DETERMINE BIAS WHERE AN ARBITRATOR IS ALLEGED TO BE BIASED

"Regarding the issue of bias the question is whether there was a showing of act of impartiality by the arbitrator – See: Akinte v. The State (1988) 3 NWLR (Pt. 85) 729 Per Eso, J.S.C. The courts also are concerned with the likelihood of bias. Was there therefore bias or likelihood of bias one may ask? I agree with the arbitrator that the allegation was left to hang in the air for want of substantiating evidence. What is bias or likelihood of bias is not measured by the subjective impression of the appellant as the aggrieved party but from objective stand point of a reasonable man. This objection has been raised in many cases, has succeeded in a few. There is no iota of evidence of bias or likelihood of bias as a misconduct against the arbitrator none has been made out." Per **CHUKWUMA-ENEH, J.C.A.**

PRINCIPLE GUIDING COURT WITH RESPECT TO APPEALS FROM MATTERS IN ARBITRATION

"In principle, in grappling with appeals from matters in arbitration, the court, in spite of its wide powers has to bear in mind that the parties before it have provided in their agreement to have their dispute or difference referred to arbitration as against the regular courts of competent jurisdiction and so it (the court) has to show reluctance to interfere with the arbitrator's jurisdiction as the sole Judge of law and fact unless it is compelled to so. See Prodexport etc Co. v. Man (1973) 1 AER 355. The stridency of this proposition is also cognisable from the letter and spirit of the Arbitration and Conciliation Act, Cap. 19 of the Laws of the Federation of Nigeria, 1990 (See section 34) and the Arbitration Law, Cap. 10, Laws of Lagos State, 1973 applicable to this matter." Per **CHUKWUMA-ENEH, J.C.A.**

THE SITUATIONS THAT WILL JUSTIFIY COURT'S INTERFERENCE WITH

AN ARBITRAL AWARD ON THE GROUND OF ERROR OF LAW ON THE FACE OF THE AWARD

"In the event it is pertinent to observe that for purposes of the court interfering on the ground of error of law on the face of the award two types of situations have to be distinguished namely as: (i) where specific question of law is submitted to the arbitrator, and (ii) where matter or matters on which a question of law becomes material are submitted. On the authorities the court cannot interfere in the former but in the latter it can and win interfere if an error of law appears on the face of the award. See F. R. Absolam Ltd. v. Great Western (London) Society Ltd. (1933) A. C. p. 592." Per **CHUKWUMA-ENEH, J.C.A.**

WHAT CONSTITUTES MISCONDUCT THAT CAN JUSTIFY THE INTERFERENCE OF COURT IN SETTING ASIDE ARBITRAL AWARD

"what constitutes misconduct as used in both enactments has not been defined. One thing however, that is certain is that misconduct in the context of a long line of authorities does not mean wilful misconduct but conduct in the sense of mistaken conduct. There being no moral turpitude there can be no doubt that it is of wide import. And so, an exhaustive definition of what amounts to misconduct becomes impossible. Suffice it to say that it is a question of fact and degree in all cases. See Baster v. London and Country Printing Works (1899) 1 Q.B. 901. The Supreme Court in Taylor Woodrow (Nig.) Ltd. v. Suddeutsehe Etna – Werk GMBH (1993) 4 NWLR (Pt. 286) 127 attempted to set out what amounts to misconduct as a ground for setting aside an arbitrator's award. It is not necessary here to set them out in extenso but for emphasis the following are included: "(i) where the arbitrator fails to comply with the terms, express or implied, of the arbitration agreement; (ii) where, even if the arbitrator complies with the terms of the arbitration agreement, the arbitrator makes an award which on grounds of public policy ought not to be enforced; (iii) where the arbitrator has been bribed or corrupted; (iv) technical misconduct, such as where the arbitrator makes a mistake as to the scope of the authority conferred by the agreement of reference. This, however, does not mean that every irregularity of procedure amounts to misconduct; (v) where the arbitrator or umpire fails to decide all the matters which were referred to him; (vi) where, by his award, the arbitrator or umpire purports to decide matters which have not in fact been included in the agreement or reference, for example:- (a) where the award contains unauthorized directions to the parties; or (b) where the arbitrator has power to direct what shall be done but his directions affect the interests of 3rd parties; or (c) where the arbitrator decided as to the parties' rights, not under the contract upon which the arbitration had proceeded, but under another contract. (vii) if the award is inconsistent, or is ambiguous or there is some mistake of fact which mistake must be either admitted or at least clear beyond any reasonable doubt; (viii) where the arbitrator or umpire takes a bribe from either party. (ix) where the arbitrator or umpire has breached the rules of natural justice."? One clear implication for resorting to common law position

for what amounts to misconduct is that the earlier decisions on misconduct still remain good and relevant case law for its construction and consideration today." Per **CHUKWUMA-ENEH, J.C.A.**

THE DUTY OF THE APPELLATE COURT WITH RESPECT TO THE APPEAL BEFORE IT

"If I may restate that in considering an appeal before it an appellate court as this court is more concerned with whether the decision is right and not the reasons of the trial court. See Agbaje v. Ajibola (2002) 2 NWLR (Pt. 750) 127 at 145." Per **CHUKWUMA-ENEH, J.C.A.**

WHAT CONSTITUTES AN ERROR OF LAW ON THE FACE OF THE AWARD

"...An error of law on the face of the award means.... that one can find in the award or in a document actually incorporated thereto, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which one can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing, first, what that contention is, and then going to the contract on which the parties' right depend to see if that contention is sound." Per **CHUKWUMA-ENEH, J.C.A**.

ATTITUDE OF COURT TO THE QUESTION OF ERROR ON THE FACE OF THE AWARD

"To assail the award, I have to emphasise, the error must be material. On the authorities, courts have viewed the question of error on the face of the award from the ground that when parties have referred a question to a judge of their choice, instead of an ordinary court of Law they must be bound by his decision whether the conclusion be right or wrong i.e. for better, for worse unless it appears on the face of the award clearly that the arbitrator has decided contrary to the law i.e. in violation of some principles of law." Per **CHUKWUMA-ENEH, J.C.A.**

THE POWER OF COURT TO SET ASIDE AN ARBITRAL AWARD

"the appellant has raised the question of the arbitrator's misconduct of himself and the proceedings and has applied to set the award aside. The power for so applying is clearly envisaged in section 30 of the Arbitration and Conciliation Act 1990 and section 12(2) of the Arbitration Law of Lagos State 1973. Section 30(1) (supra) has stipulated the power of the court to interfere to set aside an award in case of misconduct by the arbitrator or arbitral proceedings or where the award has been improperly procured." Per **CHUKWUMA-ENEH, J.C.A.**

CONDITION FOR SETTING ASIDE AN AWARD MADE BY AN ARBITRATOR

"...an award by an arbitrator can only be set aside when an erroneous proposition of law is stated in the award and it forms the basis of the award." Per **CHUKWUMA-ENEH, J.C.A.**

JUSTICES

SULEIMAN GALADIMA Justice of The Court of Appeal of Nigeria

PIUS OLAYIWOLA ADEREMI Justice of The Court of Appeal of Nigeria

CHRISTOPHER MITCHELL CHUKWUMA-ENEH Justice of The Court of Appeal of Nigeria

Between

ARBICO NIGERIA LIMITED Appellant(s)

AND

NIGERIA MACHINE TOOLS LIMITED Respondent(s)

CHUKWUMA-ENEH, J.C.A. (Delivering the Leading Judgment): This appeal is against the ruling of the High Court of Lagos (Coram Olugbani, J.) delivered on 15/9/93 upon which the appellant's application to set aside the arbitration award dated 26/9/90 was dismissed and the respondent's application to enforce the award was granted.
By a contract dated 2/3/87 made between the respondent as the employer and the appellant as the contractor, both entered into a contract for the construction of a Heavy Parts Assembly Shop at its factory at Osogbo at the contract price of N7,100,000 out of which N3,000,000.00 was earmarked for the steel contractor. The appellant was to construct the foundation base of the building. During the execution of the contract a dispute arose and the respondent by notice dated 21/7/88 terminated the contract. The parties agreed to refer any matter to arbitration as was provided by clause 25 of the contract and appointed Hon. Dr. T. A. Aguda as the arbitrator. A summary of the respondent's claim against the appellant is as follows:
1. N600,000 as advance payment received by the respondent (i.e. appellant) in respect of the execution of the contract in respect of which no corresponding work has been done.
2. N284,667.89: payments made on two certificates of work negligently executed with various defects and had to be condemned.
3. N4,252,980.89: being the difference between the old contract price and the new contract price on the re-award of the contract to another contractor.
4. N1,000,000 general damages.
The appellant after admitting the sums in (1) and (2) of the claim, counter-claimed in the sum of N3,306,619.31 later by order reduced to N2,916,033.82 on the appellant's application. And it is this sum the appellant claimed in its counter claim.
The issue submitted by the parties to the arbitrator for determination is as follows:
"1. Whether either party is bound by the terms of the contract.

2. Whether either party committed a breach.
3. If either party is found to be in breach of anyone or more of the contract conditions, whether the other party is entitled to damages and if so in what amount."?
The Arbitrator at the conclusion of his exercise upheld the claim of the (respondent herein), made the following awards at page 60 of the record:
"A (1) Both parties are bound by the terms of the contract dated March 2, 1987.
(2) The respondent committed breaches of some of the conditions laid down in clause 25 of the said contract.
(3) For such breaches the appellant (sic) is entitled to an award of damages, the quantum of which I have fixed at N1,134,667.89.
B. It is further adjudged and awarded as follows:
1. The respondent shall bear the full cost of the arbitrator fixed at N55,000.
2. The respondent shall pay reduced costs to the claims fixed at N2,000 but inclusive of the costs
of adjournment on June 14, 1990, then made costs in the course."?
As I said earlier on the respondent applied to the High Court to enforce the award and the appellant by notice of motion sought leave to set the award aside. In the said ruling of 15/9/93 the High Court dismissed the application to set aside the award with costs of N1,500.00. However, it upheld the arbitrator's award in favour of the claimant (i.e. the respondent in this appeal).
Aggrieved by the decision (the ruling of 15/9/93) dismissing the appellant's application to set aside the award, the appellant has filed this appeal and has raised eight grounds of appeal. I think it is important to set forth the appellant's grounds for seeking to set aside the award before this court. They are as contained at page 577 of the record and they are as follows without their particulars.
"1. The learned trial Judge erred in law by affirming the decision of the Honourable Arbitrator to the effect that the firm of Messrs OGC-Encosult had no duty to grant the respondent a fair hearing before sending their report to the claimant.
2. The learned trial Judge erred in law and on the facts by upholding and affirming the decision of the Honourable Arbitrator which failed to consider and determine the breaches of the contract conditions by the claimant. As alleged by the respondent and thereby deprived the respondent of its constitutional right to fair hearing.
3. The learned trial Judge erred in law in affirming the decision of the Honourable Arbitrator that the claimant were not estopped from complaining about the defects.
4. The learned trial Judge erred in law and on the facts when he affirmed the decision of the Honourable Arbitrator which rejected the oral and written evidence, (exhibit C25) of the consulting architect, Mr. Segun Savage.
5. The learned trial Judge erred in law by affirming the decision of the Honourable Arbitrator to the effect that the claimant properly terminated the respondents contract.
6. The learned trial Judge erred in law and on the facts when he affirmed the decision of the Honourable Arbitrator to the effect that the respondent failed to proceed regularly and diligently with the works.
8. The learned trial Judge erred in law and on the facts when he affirmed the decision of the Honourable Arbitrator to the effect that the respondent refused or persistently

neglected to comply with written instruction of the consulting architect."?
In its brief of argument filed in this matter two issues for determination were identified as follows:
"1. Whether the High Court was right in upholding the Honourable Arbitrator's award when the said arbitrator misconducted himself by failing to decide on all the issues referred and submitted to him?
2. Whether the High Court was right to uphold the award of the Honourable Arbitrator when there are errors of law appearing on the face of the award?"?
The respondent on its part in this appeal in its brief of argument also formulated two issues namely:
"1. Whether the Honourable Arbitrator (Dr. T. Akinola Aguda, OFR) committed the alleged act of misconduct i.e. failing to decide on all the issues referred and submitted to him?
2. Whether there were any errors of law on the face of the award as alleged?"?
On issue one the appellant in its brief complained that the arbitrator by tinkering with the second point referred to him for determination inadvertently excluded from his consideration the issue as to whether the contract was properly terminated i.e. as against the procedure as provided by clause 25 of exhibit A (i.e. the agreement). And so that this led to the failure to consider its counter-claim against the respondent as set out in paragraphs 14, 15 and 16 of the appellant's pleading filed in the matter not at all refuted by the respondent. As if to hype the matter further allegations of unequal treatment and opportunity to both parties in dealing with the issues were also levelled against the Arbitrator Onagoruwa v. Inspector General of Police (1991) 5 NWLR (Pt. 193) 593 at page 640 G-H and Adigun v. Attorney General of Oyo State (No. 1) (1987) 1 NWLR (Pt. 53) 678 were relied on. On the appointment of OGC-Enconsult, a firm of Architects and Consultants to examine the remedial works carried out by the appellant, the appellant roundly denounced the act as being outside the contract and as they were not the authorised consulting Architects (Messrs Ark Urban Design Practice) contemplated in the contract. Also that their report as compiled without any due advertence to the appellant amounted to a denial of fair hearing as enshrined in section 33(1) of the 1979 Constitution. The appellant therefore contended in its brief that in view of the foregoing the arbitrator committed legal or judicial misconduct and urged that the award be set aside.
On issue two, the appellant raised a number of errors of law on the face of the award to contend that it ought to be set aside. Here the appellant has urged at paragraph 4.41 of its brief that no specific question of law had been submitted to the arbitrator rather that there were matters put up before him which made some question of law inevitable. See: Kelanlan Government v. Duff Development Co. (1923) A.C. 395. As instances of errors of law on the face of the award the appellant has outlined as follows:
(i) That the arbitrator awarded double compensation in favour of the respondent and so being excessive had to be set aside or reheard. The arbitrator made award covering the difference between the new and old contract prices without proof. See: Eastclreap Dried Fruit Co. v. N. V. Gebroeder Catz Handlesvereenigning (1963) 1 Iloyd's 283 cited at page 435: Russell on arbitration, 19th Edition: James v. Mid Motors Limited (1978) 11-

12 SC 31 at 74; Sommer v. F.H.A. (1992) 1 NWLR (Pt.219) at 556F: Agunwa v. Onukwue (1962) 2 SCNLR 275; Eholor v. Idahosa (1992) 2 NWLR (Pt. 223) 323 at 334 G.
(ii) That the appointment of OGC-Enconsult was improper and extraneous and so to rely on their report to abort the contract was void ab initio. It recommended the termination terms of the contract outside the contracts terms as per clause 25 of exhibit A.
(iii) It dealt with the contention of the arbitrator's failure to give equal treatment to the appellant's points before him as given the claimant's and so his act breached section 33 of the 1979 Constitution.
(iv) The appellant dealt with the OGC Consult, on whose inadmissible evidence and report were relied upon to abrogate the contract and for failing to give the appellant an opportunity to be heard before compiling their report to the respondent. And that the right was unwaiverable. See: Enigwe v. Akaigiwe (1992) 12 NWLR (Pt. 225) 505 at 535 D-E; Ariori v. Elemo (1983) 1 SCNLR 1.
(v) It also contended that the respondent was estopped from denying that the appellant discharged its part of the contract regarding the remedial works and relied upon section 151 of the Evidence Act, 1990. See. Polak v. Everett (1876) 1QBD 669 at 673, Kudu v. Aliyu (1992) 3 NWLR (Pt. 231) 615 at 635 D-E. It then urged the court to set aside the arbitrator's awards in their entirety based on the misconduct of himself and the proceedings and on the errors of law on the face of the award.
The respondent in its reply repudiated the appellant's contention in this matter in its entirety and in traversing the charge of failure to decide on the respondent's breach of the procedure to terminate the contract as per clause 25 of the agreement upon which the appellant contended it based its counter-claim and want of fair hearing it referred to page 30 of the award to show that they were not so. And that the arbitrator did consider the counter-claim after all notwithstanding that the issue of the counter-claim was stated by him to be subsumed in the issue of the main claim as the two were considered together. And furthermore that no injustice was thereby occasioned to the appellant. See: Akeredolu v. Akinremi (No.3) (1989) 3 NWLR (Pt. 108) 164. Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386, (1992) 12 SCNJ 22 at 32-3; Ajuwon v.Akanni (1993) 9 NWLR (Pt. 316) 182; (1993) 12 SCNJ 32 at 52. Adverting to the poser whether the essential elements constituting clause 25 of exhibit A were there before its termination the facts on record were positive to that effect, said the respondent. The contract, therefore, was properly terminated. And that the counter-claim was vigorously challenged in cross-examination. Regarding OGC-Consult Consultant, the respondent justified their retention on the reason to examine the remedial works done as the contract did not prevent such act. Finally the court was urged that the alleged misconduct of the arbitration must fail as not established.
On issue two that is, error of law on the face of the award, the respondent, firstly, submitted that the arbitrator rightly granted both special and general damages in the matter and that the award wasn't a double compensation and relied on Kusfa v. U. B. C. Ltd. (1994) 4 NWLR (Pt. 336) 1; (1994) 4 SCNJ 1 at 16 and Ijebu-Ode Local Govt. v. G. v. Adedeji Balogun & Co. Ltd. (1991) 1 NWLR (Pt. 66) 136, (1991) SCNJ 1 at 17-18 for so contending. And also submitted that the award of damages was minimal and

reasonable in the circumstances. Again, it contended that the counter-claim and the main claim were considered together notwithstanding that the arbitrator couched it as subsuming the counter-claim in the main claim. And that the counter-claim was after all to justify its distinctiveness pronounced upon separately.
It denied that the appointment of OGC Consult, a firm of architects, to examine remedial works and the termination of the contract and thus in implementing their report offended clause 25(1) of the agreement and want of fair hearing particularly in their compilation of their report and therefore those were no errors of law on the face of the award. The OGC-Consult firm of architects were not engaged to settle any disputes between the parties to the contract but were to perform the function assigned to them by the respondent and they did not need formal hearing to carry out the functions. The plea of estoppel on a number of fact – situations were repudiated including the appellant's contention alleged completion of the remedial works; the respondent further opined that the arbitrator's reasons for rejecting the plea of estoppel were solid and that no error of law was either committed in this respect nor in any other fact-situations canvassed by the appellant in this matter. Finally the respondent has argued that the appellant having failed to show that the arbitrator committed act(s) of misconduct or any errors of law on the face of the award, the appellant therefore failed to sustain any ground(s) for which the award could be set aside. It urged that the appeal be dismissed.
In principle, in grappling with appeals from matters in arbitration, the court, in spite of its wide powers has to bear in mind that the parties before it have provided in their agreement to have their dispute or difference referred to arbitration as against the regular courts of competent jurisdiction and so it (the court) has to show reluctance to interfere with the arbitrator's jurisdiction as the sole Judge of law and fact unless it is compelled to so. See Prodexport etc Co. v. Man (1973) 1AER 355. The stridency of this proposition is also cognisable from the letter and spirit of the Arbitration and Conciliation Act, Cap. 19 of the Laws of the Federation of Nigeria, 1990 (See section 34) and the Arbitration Law, Cap. 10, Laws of Lagos State, 1973 applicable to this matter.
Coming back to the instant matter, on issue one, the appellant has raised the question of the arbitrator's misconduct of himself and the proceedings and has applied to set the award aside. The power for so applying is clearly envisaged in section 30 of the Arbitration and Conciliation Act 1990 and section 12(2) of the Arbitration Law of Lagos State 1973. Section 30(1) (supra) has stipulated the power of the court to interfere to set aside an award in case of misconduct by the arbitrator or arbitral proceedings or where the award has been improperly procured. However, what constitutes misconduct as used in both enactments has not been defined. One thing however, that is certain is that misconduct in the con of a long line of authorities does not mean wilful misconduct but conduct in the sense of mistaken conduct. There being no moral turpitude there can be no doubt that it is of wide import. And so, an exhaustive definition of what amounts to misconduct becomes impossible. Suffice it to say that it is a question of fact and degree in all cases. See Baster v. London and Country Printing Works (1899) 1 Q.B. 901. The Supreme Court in Taylor Woodrow (Nig.) Ltd. v. Suddeutsehe Etna – Werk GMBH (1993) 4 NWLR (Pt. 286) 127 attempted to set out what amounts to misconduct as a ground for setting aside an arbitrator's award. It is not necessary here to set them out in

extenso but for emphasis the following are included:
"(i) where the arbitrator fails to comply with the terms, express or implied, of the arbitration agreement;
(ii) where, even if the arbitrator complies with the terms of the arbitration agreement, the arbitrator makes an award which on grounds of public policy ought not to be enforced;
(iii) where the arbitrator has been bribed or corrupted;
(iv) technical misconduct, such as where the arbitrator makes a mistake as to the scope of the authority conferred by the agreement of reference. This, however, does not mean that every irregularity of procedure amounts to misconduct;
(v) where the arbitrator or umpire fails to decide all the matters which were referred to him;
(vi) where, by his award, the arbitrator or umpire purports to decide matters which have not in fact been included in the agreement or reference, for example:-
(a) where the award contains unauthorized directions to the parties; or
(b) where the arbitrator has power to direct what shall be done but his directions affect the interests of 3rd parties; or
(c) where the arbitrator decided as to the parties' rights, not under the contract upon which the arbitration had proceeded, but under another contract.
(vii) if the award is inconsistent, or is ambiguous or there is some mistake of fact which mistake must be either admitted or at least clear beyond any reasonable doubt;
(viii) where the arbitrator or umpire takes a bribe from either party.
(ix) where the arbitrator or umpire has breached the rules of natural justice."?
One clear implication for resorting to common law position for what amounts to misconduct is that the earlier decisions on misconduct still remain good and relevant case law for its construction and consideration today. I think that the appellant's case in a nutshell in this segment of its argument in it brief is that the arbitrator failed to consider all the issues submitted to him for consideration. In that respect I now go on to examine its grounds for alleging misconduct against the arbitrator. The crucial question therefore, if one must put it bluntly, is whether the arbitrator failed to consider the appellant's counter-claim in the matter. There can be no misgiving that his failure in this respect would if at all would amount to a legal misconduct and to set aside the award. However, the arbitrator's award as contained in the record does not support that contention notwithstanding that the arbitrator in delimiting the scope of its discussion of the second issue referred to the arbitrator for determination said that he had to subsume the issue of the counterclaim within the issue of the main claim. The appellant has attacked this mode of, as it were, reformulating the issue as having thereby wrong-footed the arbitrator towards failing to consider its counterclaim as per paragraphs 14, 15 and 16 of its pleading – the import of which shows that the termination of the agreement i.e. exhibit "A" has not been in accordance with clause 25(1) (i.e. the procedure laid down on how to terminate the contract) and upon which breach of contract its counter-claim has been predicated. Surely, it cannot be right to say that the arbitrator did not consider the counter-claim otherwise how else could the arbitrator's award at p. 59 of the record on counter-claim be explained, that is to say where he

stated thus:
“Counter-Claim:
In the statement of defence and counter-claim filed on May 15, 1990, the claimant made a claim for the total sum of N3,306,619.31. It was amended by the insertion of clause 15A during the proceeding of June 7,1990. However by May 30, 1990, both parties had agreed on the issues for determination by this arbitration. A careful study of the counter-claim reveals the fact that all the claims under the counter-claim are subsumed in the main clause in the sense that a finding for the claimant on issues 2 and 3 are conclusive against the respondent in its claims. This was obviously the reason why the respondent’s counsel did not bother to address me on the quantum of damages if the claimant succeeded. It is therefore clear that I was not called upon to consider any other issue not falling within the three issues agreed by the parties. All the other issues have been subsumed in those three issues.
It is clear from all that has been said so far that all the claims under the counter-claim stand dismissed.”?
If I may restate that in considering an appeal before it an appellate court as this court is more concerned with whether the decision is right and not the reasons of the trial court. See Agbaje v. Ajibola (2002) 2 NWLR (Pt. 750) 127 at 145. In my view there is nothing illegal or irregular in what the arbitrator did, even then, in so far as bases for the claim and counter-claim have as it were been considered against clause 25(1) of the agreement. On the facts of this matter any finding of non-breach of the said clause by the claimant (i.e. the respondent) is conclusive against the respondent (i.e. the appellant). I say so because once the arbitrator found that the respondent has not been in breach of clause 25(1) of the contract, the basis for the counter-claim by the appellant has crumbled to pieces, the counter-claim having been predicated on the respondent’s default of clause 25(1).
To begin with, clause 25(1) of the agreements provides as follows:
“(a) If the contractor shall make default in any or more of the following respects that is to say:-
(b) If he fails to proceed regularly and diligently with the works, or
(c) If he refused or persistently he neglects to comply with a written notice from the architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the works affected, or
.....
.....
then the architect may give to him a notice by registered post specifying the default, and if the contractor either shall continue such defect for fourteen days after receipt of such notice or shall at any time thereafter repeat such default (whether prejudice to any other rights or remedies, may within ten days after such continuance or registered post forthwith determine the employment of the contractor under this contract, provided that such notice shall not be given unreasonably or vexatiously.”
For brevity the essential elements of the three sub-clauses of clause 25(1) on proper construction included (i) default, (ii) architects, notice and (iii) persistence or repetition of the default.

It is common ground that it was the alleged neglect to attend to the remedial works that precipitated the instant crisis between the parties. And this arbitrator at p. 265 of the record LL. 4 – 9 put, the issue thus:
"The main problem to be solved under this heading is whether the respondent committed any acts which constituted a breach of the above quoted clause. The enquiry should not of course end there. It should extend to answering the further question whether or not the claimant legally brought the contract to an end."?
Towards the bottom of page 265 four lines from the end the arbitrator summarised the claimant's contention on the point thus:
"…that if the remedial work is found to be satisfactory, then no breach of clause 25(1)(c) has been committed. But if found to be otherwise, then the defective work had been repeated contrary to clause 25(1)(c) of the agreement."
The appellant's case in answer as contained at p.266 LL. 6 – 19 by the arbitrator, is "It is proper on these settled but admitted facts of this case to safely argue that even if the respondent were guilty in negligence in the way and manner in which the bases were constructed and the delay which had been occasioned, the claimant at this stage are estopped from terminating the contract between it and the respondent having regard to the circumstances of this case. Can it not be said that the claimant by its omission had permitted the respondent to believe that the remedial work on the bases had been satisfactorily carried out, and that any delay which had been occasioned thereby had been waived on the understanding that the breach had been disregarded?"?
At p. 277 of the record LL.12-14 the arbitrator had to pup up the crucial question – making it clear that he was properly focused on the issue, thus: "The question now for consideration is whether either of the parties breached any of the conditions of the contract." It is against that backdrop that one has to strongly contest that the arbitrator redefined issue two and so failed to consider whether the respondent (i.e. the claimant) also breached any of the contract conditions.
Let me examine anon the facts more closely to see whether either of the parties has breached the contract conditions. On 18/5/88 the claimant by exhibit RI8A instructed the Consulting Architects to ask the respondent to stop work forthwith on the project and it was done by exhibit R18. On 21/7/88 the claimant recounted the respondent's short-comings and terminated the contract.
The arbitrator found as per p. 279 of the record second paragraph at p. 280 six lines from the bottom thus:
"It seems clear to me that on the facts the respondent failed to proceed regularly and diligently with the works. On March 8, 1988, the claimant informed the respondent exhibit R11 'that all the casting of the concrete stanchion bases be commenced immediately, but that nothing has started on site as at today. Respondent had also not supplied a qualified site engineer to supervise the project. Then again on March 14, 1988, the Consulting Architect wrote to the respondent pointing out the slow pace of work, and that it had to deploy a more competent supervisor to the site (exhibit C22). And yet again on March 29, 1988 the Architect wrote to the respondent expressing the fear that the work might not be completed in the two and a half weeks remaining, and that it should increase the labour force on the site. Again the architect urged the

respondent to deploy a more experienced and competent supervisor to the site (exhibit C23).
Finally there is the letter of April 8, 1988, (exhibit C24) in which the architect told the respondent that the remedial works have still not progressed at an expected space. It pointed out that out of 85 bases less than 20 had been completed and there was only one week left. On these undenied facts, the only reasonable conclusion is that the respondent failed to proceed regularly and diligently with the works. How the respondent came to complete the remaining 65 bases in a single week – if that were ever true – is difficult to imagine, and yet on April 18, 1988 the respondent wrote the architect telling him that 'the casting of the bases has not been completed' (exhibit RI2). However there is that letter dated April 19, 1988, of the Consulting Architect (exhibit C25), in which he referred to the remedial work as one 'now being carried out.' Even as at that date the architect was still talking of the possibility of casting new foundation bases. It is without doubt on the whole that the respondent failed to proceed regularly and diligently with the works, and hence the result fell below expectation. Whether the works were completed on schedule is irrelevant under the clause, what is relevant is whether the respondent failed to proceed regularly and diligently with the works."?
This line of reasoning upon a graphic account of the facts, and which the appellant has not dislodged, I accept it as well founded. The appellant was clearly in breach and this has knocked the bottom off its counter-claim. The process culminated in the arbitral award as set out above. Firstly, it cannot be true as contended in the application that the arbitrator misconstrued the second issue submitted to him for determination by subsuming the issue of the counter-claim within the issue of the main claim – hence he glossed over the crucial steps for terminating the contract on which the breach of the counter-claim was founded. I have followed critically the foregoing reasoning of the arbitrator in analysing the steps taken before terminating the contract and it cannot be faulted. Particularly, the respondent brought the contract to an end as provided by clause 25 of exhibit A. There were notices served on the respondent specifying the defaults, committed with regard to the remedial works. Evidence abound in the award showing that the defaults were repeated, indeed were not remedied. Then came the termination of the contract by the respondent. Ultimately, and rightly in my view, the arbitrator found the appellant in breach of the contract. For good reasons, the arbitrator disbelieved the respondent's architect. It is evident he had other motives to serve.
The arbitrator at page 262 of the record found that the respondent admitted receiving the sum in (i) and (ii) of the claim totalling N884,667.69 and has counter-claimed in the sum of N2,916,053.31. It, therefore, comes to this, that subsuming the issue of the counter-claim within to issue of the main claim has not and could not lead to mis-construing the issue for determination submitted to the arbitrator.
It climaxed the fact that the arbitrator had the distinctive nature of the two types of claims in mind when he made separate award i.e. for the claim and counter-claim. The manner of his treatment of this issue has welded the repetition of arguments and submissions that must of necessity he made if the said claim and counter-claim were examined seriatim. Beside and more importantly, the appellant has not shown that the error has occasioned a miscarriage of justice in that a different decision would

otherwise have been reached but for the alleged error. And so, this ground has failed to sustain the contention to set the award aside for the arbitrator's misconduct. See: K.S. U.D.B. v. Fanz Construction Ltd. (1990) 4 NWLR (Part 142) 1 at 39.
The next item of act of misconduct levelled against the arbitrator has to do with the appointment of OGC-Enconsult a firm of Architects and Consultants engaged to examine the remedial works carried out by the appellant and the reception of their evidence and the report prepared by them at the arbitration. In his regard the appellant also alleged bias and want of fair hearing as it breached section 33(1) of the 1979 Constitution. The appointment of OGC-Enconsult was by the claimant (respondent) before the appointment of the arbitrator and cannot in strict sense be considered an arbitrator's misconduct. All the same their appointment did not offend any express or implied term of the contract and even moreso the appellant acquiesced in it as it took no objection. I think the charges of bias and want-of fair hearing are totally misplaced. That is to say, in so far as the charges have to be made to stick, the onus of proof was decisively on the appellant so alleging and it was not discharged. Regarding the issue of bias the question is whether there was a showing of act of impartiality by the arbitrator – See: Akinte v. The State (1988) 3 NWLR (Pt. 85) 729 Per Eso, J.S.C. The courts also are concerned with the likelihood of bias. Was there therefore bias or likelihood of bias one may ask? I agree with the arbitrator that the allegation was left to hang in the air for want of substantiating evidence. What is bias or likelihood of bias is not measured by the subjective impression of the appellant as the aggrieved party but from objective stand point of a reasonable man. This objection has been raised in many cases, has succeeded in a few. There is no iota of evidence of bias or likelihood of bias as a misconduct against the arbitrator none has been made out.
On the report, it was prepared as a result of the claimant's (respondent) letter 18/4/88 that retained OGC-Enconsult for specific function. I agree with the arbitrator that in preparing the report they were not performing any judicial or quasi-judicial function to warrant giving the appellant a hearing not to talk of fair hearing. For all this therefore the arbitrator committed no legal misconduct of himself or the proceedings to ground the charge that the award be set aside.
The first issue has therefore to be resolved against the appellant.
On issue two the appellant catalogued a number of errors of law on the face of the award to sustain its contention to have it set aside. I shall come to them anon. But firstly, the question is what constitutes error of law on the face of the award? This point was addressed in the decision of the Privy Council in Champsey Bhara and Co. v. Jivraj Balloo and Weaving Co. Ltd. (1923) AC 481 at 487-488 where Lord Dunedin stated thus:
"An error of law on the face of the award means…. that one can find in the award or in a document actually incorporated thereto, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which one can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing, first, what that contention is, and then going to the contract on which the parties' right depend to see if that contention is sound."

From the above excerpt of the cited case it follows that an award by an arbitrator can only be set aside when an erroneous proposition of law is stated in the award and it forms the basis of the award. One obvious constraint in taking the point of error on the face of the award as in this matter is that the party taking the point (as the appellant in the instant matter) is limited in his address to the court to the award itself and such other documents as are incorporated in the award. This is not the case in cases of allegation of misconduct where the party challenging the award is not so limited. The appellant must address this issue here. But in its brief in raising the instant allegations of errors on the face of the award it has failed to advert to this important aspect of its case. And I daresay that it is not the place of this court to make surmises in that regard. All the same I have proceeded nonetheless as I may be wrong to terminate any further discussion of the matter preremptorily on that ground.

To assail the award, I have to emphasise, the error must be material. On the authorities, courts have viewed the question of error on the face of the award from the ground that when parties have referred a question to a judge of their choice, instead of an ordinary court of Law they must be bound by his decision whether the conclusion be right or wrong i.e. for better, for worse unless it appears on the face of the award clearly that the arbitrator has decided contrary to the law i.e. in violation of some principles of law.

I now go to the errors as spotlighted by the appellant on the face of the award. However before then, I have at this stage to recall that in the appellant's brief paragraph 4.41 it has stated that no specific question of law had been submitted to the arbitrator rather that there were matters put up before him which made some question of law inevitable. I think the appellant with respect may not be right here.

In the event it is pertinent to observe that for purposes of the court interfering on the ground of error of law on the face of the award two types of situations have to be distinguished namely as:

(i) where specific question of law is submitted to the arbitrator, and

(ii) where matter or matters on which a question of law becomes material are submitted.

On the authorities the court cannot interfere in the former but in the latter it can and win interfere if an error of law appears on the face of the award. See F. R. Absolam Ltd. v. Great Western (London) Society Ltd. (1933) A. C. p. 592.Furthermore, it necessarily has to be determined to which type of the above situations the instant reference belongs. In this regard, it is crucial, firstly, to scrutinise the aforesaid issues submitted by the parties to the arbitrator for determination, which for ease of reference are:

(1) whether either party is bound by the terms of the contract dated March 2,1987;

(2) whether either party committed breach of anyone or more of his contract/conditions;

(3) if either party is found to be in breach of anyone of the contract conditions, whether the other party is entitled to damages; if so in what amount?

These issues are specific questions of law, or mixed law and fact. It is my view that they involve question of construction of exhibit A and that is before the arbitrator can answer the same. I know of no other way exhibit A could have been referred to the arbitrator for construction in the circumstances than in the way the referals i.e. (issues) were formulated. I have gone through the pleadings and the parties submissions to the

arbitrator and the agreement especially clause 25(1) which in my view has been incorporated in the award and altogether they leave me in no doubt that the parties intended to leave the issue of construing exhibit A to the arbitrator to conclusively decide. See Hitchins and Anor. v. British Coal Refining Processes Ltd. (1963) AER 191. In other words, specific questions of construction though a question of law apart from arising with regard to the agreement exhibit A vis-a-vis the referals i.e. issues, have been specifically referred to the arbitrator to be construed and very significant are the words used in the reference. It is trite that the fact that the court itself would in the circumstances come to a different conclusion is no reason to interfere where a question of construction is so referred. The appellant cannot renege from this finding when in paragraph 4.59 of its brief it said that the contract was submitted to be construed by the arbitrator vis-a-vis the issues for determination as the parties differed on the construction meaning and the effect of clause 25(1) in exhibit A. The arbitrator at page 287 of the record under the heading: Summary of award LL.12-21 after scrutinizing exhibit A has answered the issues as follows:

"A. It is adjudged and awarded as follows:-

1. Both parties are bound by the terms of the contract dated March 2, 1987.
2. The respondent committed breaches of some of the conditions laid down in clause 25 of the said contract.
3. For such breaches the appellant is entitled to an award of damages, the quantum of which I have fixed at N1,134,667.89"

The reference therefore was a reference as to construction. That being so, on the authorities the award cannot be questioned though it be bad. See In Re: King and Duveen (1913) 2 K. B. 32; F. R. Absolam Ltd. v. Great Western (London) Garden Vinage Society (1933) A.C. 592; and Kelanstan Govt. v. Gulf Development Co. Ltd. (1923) A.C. 395 as per Lord Cave L.C. Thus, the implication of my conclusion is that any discussion of the instances outlined above under issue two as errors on the face of the award even though the award be bad are foreclosed. See Absolam's case per Lord Trevethin. Besides, the appellant on who lay the burden has not shown that the arbitrator proceeded illegally or faulted gravely in its construction of the agreement and so that the construction should be discountenanced. This takes care of issue two and finally the appeal in this matter.

I would still have reached the same conclusions even on the ground that the questions of law arose in applying ascertained facts to the terms of the agreement as contended by the appellant. I now go on to examine in particularity the instances of errors of law on the face of the award as raised by the appellant, beginning with the issues of double compensation allegedly made in favour of the respondent. The arbitrator made the following awards in that regard:

(a) N600,000 being advance payment received by the appellant.
(b) N284,667.89: being payments received by the respondent for work defectively done and not up to standard of acceptability and therefore rejected by the respondent.
(c) N250,000 general damages.
Total: N1,134,667.89

The appellant opposed strongly the award of general damages which according to the

appellant were awarded in spite of the arbitrator's finding that the respondent failed to provide proofs for the claim of N4,052,980.85 being the difference between the old contract price and the new one. It relied upon – Agunwa v. Onukwe (supra) to make the point that where the arbitrator awarded special damages, the standard of proof in respect thereto has been evaded. The respondent countered by saying that in certain cases both special and general damages could be awarded in contract and referred to the sum of N250,000 awarded out of N1,000,000.00 as general damages. See: Kusfa v. U.B.C. Ltd. (supra) and Ijebu-Ode Local Government v. Adedeji Balogun & Co. Ltd. (supra). Furthermore, that no item of damages was duplicated. The arbitrator found at page 285 of the record last paragraph at page 286 as follows:

"Finally, the claimant claims N1,000,000.00 as general damages. There can be no doubt whatsoever that the claimant would be entitled to an award under this heading. The total period for the completion of the works was 52 weeks from March 2. 1987. The respondent caused much delay in the performance of their own part of the contract. I have made copious references to some of the delays caused by the Respondent. The claimant was not in a position to re-award the contract until September 1988 according to P.W.2. The claimant had to call for new tenders, engaged new expert consultants etc. For all these and for all the reasons set down under issue 2 above all of which flow naturally from the breach of the contract the respondent is entitled to damages. The claimant claims N1,000.000.00 but upon all the circumstances of this case, I award N250,000.00."?

The appellant has claimed that the arbitrator in this regard committed serious error of law on the face of the award. I must confess that the contention has not been borne out by the foregoing passage from the award. The basis of the arbitrator's award of general damages flows naturally from the circumstances of the case. I agree with the appellant that the case of Bolag v. Hutchinson (1905) A.C. 515 at 525 has pronounced clearly on the distinction between general and special damages nonetheless it is my view that the arbitrator appreciated the distinction; the cited case states thus:

"'General' damages are such as the law win presume to be the direct, natural and probable consequence of the act complained of. 'Special' damages, on the other hand are such as the law win infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and therefore, they must be claimed specially and proved strictly. In cases of contract special or exceptional damages cannot be claimed unless such damages are within the contemplation of the parties at the time of the contract."?

The arbitrator by awarding the sum of N250,000.00 as general damages recognised that the damages in the instant matter flowed naturally from the breach of the contract. I repeat that I have followed the arguments of the parties as well as the reasoning of the arbitrator on the issue. That general damages are awardable in contract is now settled. And in appropriate cases where claimed, have been granted. It is not the respondent's case here that the award was to cover the difference between old contract price and the new one – an item of special damages. Nothing could be further from the true position. See Ijebu-Ode Local Government v. Adedeji Balogun & Co. Ltd. (1991) 1 NWLR (Pt. 166) 136, (1991) 1 SCNJ 1 at 17-18. Lord Denning M. R. in The Tojo Mam (1969) 3 AER

1179 at 1182 even though on a claim for general damages due to a salvor set out the common law position in circumstance as in the instant matter thus:
“If this point were to be determined by the principle to which we are accustomed by English Common Law, the owners of The Tojo Maru would be so entitled. They would be liable to pay the salvage award but would be entitled to counter-claim for the whole E331,767(pounds). It would be like a contract for work and labour to be done for the agreed sum. If the work is done, but in the doing of it the contractor has been guilty of negligence, he is entitled to recover the contract sum but the employer call cross-claim for the cost of putting right the defects and recover in addition any consequential damage … or, alternatively, the employer call set it up in dimunition or extinction of the price and in addition claim extra damage: See Mondel v. Steel (1835-42) A.E.R. Rep. 511 and H. Dakin & Co. Ltd. v. Lee (1916) 1 K.B. 566.”? (Italics for emphasis).
From the cited cases referred to above it is clear that the assessment of damages in breach of contract matter is calculated on the loss incurred by the injured party which loss is either in the contemplation of the parties to the contract or is an unavoidable consequence of the breach. General damages fall into two distinct classes for purposes of proof that is to say, firstly where general damages may be inferred, as in defamation cases or presumed as in personal injury matters for pain and suffering and secondly, where general damages have to be proved as in the instant matter. However one feature of the decision in Attorney -General of Oyo State v. Fairlakes Hotel Ltd. (No.2) (1989) 5 NWLR (Pt. 121) 255 is that where the claim for special damages on an item has not been proved strictly, the court may award general damages if there is evidence that the party so claiming suffered some damages. And so that proposition of law cancels out the appellant’s contention that the arbitrator has no right to take into account the unproved claim as to the difference between the old and new contract price in assessing general damages. In so submitting the appellant has appeared to overlook the settled law that damages in breach of contract result from the loss flowing naturally from the breach and may not be readily to be categorised into special and general damages. There seems to be no doubt on the facts that the respondent here, having suffered damages, has a valid claim in general damages under the third item of the reliefs claimed.
Again, the claim for general damages has therefore to take care of the difference between the old and new contract price where the respondent had not proved them strictly. The arbitrator at page 280 stated that the claimant claimed N1,000,000.00 as general damages and awarded N250,000.00 in reviewing the basis for making the said award she included the delay in the performance, the claimant’s inability to re-award the contract until September, 1988; calling of new tenders; engaging new expert consultants. All these and more in my view come within the loss that flowed from the breach. Undisputably, no item of loss has been doubly compensated nor excessive to warrant this court’s interference.
On the other issues canvassed, some I have earlier on for example commented under issue one for example appointment of OGC-Enconsult, also the reliance on their report on the remedial works and the continued retention of the original consultants as well as the serious issue of denial of fair hearing in the course of the report. Without deciding whether or not the said report was incorporated in the award, there seems to me no

doubt on an over-view of the matter that the charges have no basis as the onus on the appellant to prove the charges as patent on the face of the award has not been discharged; more particularly, how the impropriety of their appointment ("OGC Enconsult") not being the act of the arbitrator has constituted an error on the face of the award. They have been otherwise engaged by the claimant/respondent as their employer for a specific function which has not involved them in any judicial or quasi-judicial function so as to implicate them on a charge of denial of fair hearing. Noteworthy is that the contract exhibit A did not forbid cngaging1 them, and so, the fact that they performed their function rather unobtrusively should not in the circumstances provoke the appellant's challenge of it. The appellant has not shown their entitlement to be heard before and during preparation of the report. Again the terms of contract of their engagement were not before the arbitrator as they also would have enabled determine the issue of the propriety or otherwise of the question of sub-contracting their function to Etter Aro and Partners. Not having pleaded these as well as proved them the principle of delegatus non potest delegare has no basis. Therefore raising the issue of denial of fair hearing in relation to the said report as can be seen is a far cry from the true circumstances of the matter. Thus, the string of cases cited in support of the appellant's stance on the issue is totally irrelevant. Lastly, fair hearing, it must be emphasised postulates an opportunity to be heard. The appellant has not in the first place discharged the initial onus of showing that it is entitled to be heard on the peculiar facts of this point.

Next, the appellant raised the issue of estoppel. That is, that the claimant/respondent was estopped from denying that the appellant discharged its part of the contract. It is its submission that the respondent having accepted that the remedial works have been completed i.e. on 29/4/88 in a meeting of the parties has been estopped from denying that fact. The arbitrator set out the breaches by the respondent in this regard. I need not repeat them here as I think that raising the issue of estoppel in the situation is clearly based on a misconception of the import of clause 25 of exhibit A which needs no construction. Before resorting to the true import of clause 25, estoppel, as defined by Lord Denning in Charles Rickard Ltd. v Oppenheim (1950) 1 AER 420 is where "....one party, by his conduct, leads another to believe that the strict legal rights arising under contract win not be insisted on intending that the other should act on that belief and he does act on it then the first party win not afterwards be allowed to insist on the strict rights when it would be in equitable for him to do so." See: Hughes v. Metropolitan Rly Co. (1876-1877) 2 App. Cap. 439."?

The question to ask is whether the respondent by conduct gave the appellant the impression that it would not insist on its strict legal rights arising under clause 25. A proper construction of clause 25 has shown that the repetition of defaults by the contractor is recognised. It also allows the employer (i.e. respondent) the option to determine the contract after one default or as many repeated defaults. I have referred to the repeated defaults that culminated in terminating the contract and it is my conclusion therefore that the respondent could not be estopped. Therefore the principle of estoppel is inapplicable here. Issue two is resolved against the appellant.

In conclusion, I have painstakingly, indeed exhaustively addressed all the potent

questions posed in this matter. However, the appellant it must be said over indulged in much casting about that has led to taking of insubstantial points, perhaps, all in an attempt to torpedo the instant award by all means. This manner of contesting arbitral awards does not augur well for the future of this system of conflict resolution.
In the result, having resolved all the issues against the appellant, I find no merit in the appeal. It is therefore dismissed in its entirety with N7,500.00 costs to the respondent.

GALADIMA, J.C.A.: I have had the advantage of reading in draft the judgment of my learned brother Chukwuma-Eneh, JCA. I entirely agree with him that there is no merit in the appeal, I too, win dismiss it. I abide by the order as to costs awarded in the lead judgment.

ADEREMI, J.C.A.: I have read in advance, the judgment just delivered by my learned brother Chukwumah-Eneh, JCA. I entirely agree with him that the appeal is devoid of merit.
I would like to add a few words of mine own. The pith of the appeal is about setting-aside of the award. That is an invitation to the court to render the whole arbitration proceedings null and void. The grounds for setting-aside an award, applying sections 29 and 30 of the Arbitration and Conciliation Act, Cap. 19, Laws of the Federation of Nigeria, 1990, are as follows:
(1) where the award contains decisions on matters which are beyond the scope of the submission to arbitration; or
(2) where the arbitral proceedings or award has been improperly procured as for example where the arbitrator has been deceived or material evidence has been fraudulently concealed.
(3) where the arbitrator or umpire has misconducted himself or
(4) where there is an error of law on the face of the award. See (1) K. S. UD. B. v. Fanz Constructions Co. Ltd. (1990) 4 NWLR (Pt. 142) 1 (2) Amka v. Ejeagwu (2000) 15 NWLR (Pt. 692) 684 and (3) Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd. (2000) 12 NWLR (Pt. 681) 393. I hasten to add that on the principle of De Minimis Non Cumt Lex a court of law win always refuse an application to set aside an award where the matter in dispute is trivial as compared with the whole matter adjudicated upon. So also it is that an award win not be set aside if specific question of law is submitted to an arbitrator for his decision; he decided it, the fact that the decision is erroneous in law win not be sufficient to set aside the award as bad on its face.
I have read the entire proceedings. I do not see where the proceedings leading to the award or the award itself is caught by any of the above grounds.
For this little contribution but most especially for the detailed consideration of the entire appeal as reflected in lead judgment, I would also say that the appeal is unmeritorious. I would also dismiss it and I abide by the order as to cost in the lead judgment.
Appeal dismissed.

Appearances

Mogbeyi Sagay, Esq.For Appellant

AND

1. Ajibola, Esq.For Respondent