IN THE COURT OF APPEAL OF NIGERIA
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY THE 30TH DAY OF OCTOBER 2026

BEFORE THEIR LORDSHIPS:

MOHAMMED DANJUMA..... JUSTICE COURT OF APPEAL

IBRAHIM W. JAURO ..... JUSTICE, COURT OF APPEAL

NTONG FESTUS NTONG..... JUSTICE, COURT OF APPEAL

APPEAL NO: CA/ABJ/CV/39/2026

SUIT NO: FHC/ABJ/CS/188/2022

BETWEEN:

KADUNA ELECTRICITY DISTRIBUTION COMPANY PLC .... APPELLANT

AND

TRANSMISSION COMPANY OF NIGERIA PLC ...RESPONDENT

JUDGMENT

(DELIVERED BY IBRAHIM W. JAURO JCA)

This appeal is against the judgment delivered on 14/10/2025 by the Federal High Court, Abuja Judicial Division, (hereafter referred to as "the lower Court") wherein the court dismissed the Appellant's Originating Motion to set aside the Arbitral Award of 22nd November 2021 and granted leave to the Respondent to

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enforce the Arbitral Award. See pages 589 – 619 of the Record of Appeal.

Dissatisfied with the decision of the lower Court, the Appellant lodged an appeal at the Registry of the lower Court on 15/10/2025. The Notice and grounds of Appeal can be found at pages 670 – 675 of the Record of Appeal. The Record of Appeal was transmitted to this court on 16th January 2026.

ISSUES FOR DETERMINATION

The appeal was entertained on 3/9/26 whereat the hearing, Counsel for the Appellant Abu Arome Esq. adopted and relied on the Appellant's Brief of Argument filed on 27/2/26 and the Appellant's Reply Brief filed on 28/8/26. In the same vein Counsel for the Respondent Nkemakolam S.C. Okoro adopted the Respondent's Brief of Argument filed on 7/4/26 but deemed on 20/8/26.

Counsel for the Appellant formulated two issues for determination as follows:

1. Whether the learned trial Judge was right in law in refusing to set aside the Final Award dated 21 November 2021, despite the Appellant's contention that the underlying agreement was illegal and unenforceable, and therefore not arbitrable. (Distilled from ground One)

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2. Whether the learned trial Judge was right in law in dismissing the Appellant's preliminary objection challenging the competence of the Respondent's counter-claim for enforcement of the award for failure to comply with Order 2 Rule 1 of the Rules in the Third Schedule to the Arbitration and Mediation Act 2023. (Distilled from Ground Two and three).

Counsel for the Respondent adopted the 1st issue formulated by Counsel for the Appellant and reframed the 2nd issue as follows:

Whether, given the savings provisions of section 89 of the Arbitration and Mediation Act 2023, the trial court was right in dismissing the notice of preliminary objection of the Appellant, pertaining to compliance with Order 2 Rule 1 of the Third Schedule to the Arbitration and Mediation Act, 2023 and in granting the Respondent leave to enforce the arbitral award. (Distilled from grounds 2 and 3 of the grounds of appeal).

SUBMISSION OF BOTH COUNSEL ON THE ISSUES

ISSUE ONE

Whether the learned trial Judge was right in law in refusing to set aside the Final Award dated 21 November 2021, despite the Appellant's contention that the underlying

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agreement was illegal and unenforceable, and therefore not arbitrable.

On issue 1, Counsel for the Appellant argued that there is a presumption in favour of the validity of contracts, though not absolute, and Courts are wary of interfering with agreements between parties. That where it is shown that the consideration or the performance of a contract is illegal, the court is under a duty to declare such contract void and unenforceable. Counsel contended that where the foundation of a dispute is an illegal contract, the dispute is non-arbitrable and any arbitration emanating therefrom cannot be enforced and referred to Section 35(a) of the Arbitration and Conciliation Act and Sections 55 and 65(a) of the Arbitration and Mediation Act 2023. Counsel further submitted that for an arbitral award to be valid, there must be no legal principle, statute or case law that prohibits the arbitration of the dispute involved and referred to Section 55(3)(b)(i-ii) of the Arbitration and Mediation Act 2023. Counsel referred to the case of DIAMOND BANK LTD. V. UGOCHUKWU (2008) 1 NWLR (PT. 1067) on the meaning of an illegal contract.

Counsel submitted that Sections 5 and 6 of the Moneylenders Act forbid the formation and performance of the contract entered into by the parties and further referred to the case of NWANKWO V. NZERIBE (2004) 13 NWLR (PT. 890) 422 (P. 434, paras. C-D).

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Counsel referred to the cases of KASUMU V. BABA-EGBE (1956) AC 539, NNADI V AKANNI (1962) 2 ALL NLR 171 AT P.174, to argue that where a lender fails to adhere strictly to the mandatory provisions of the Act, the resulting agreement cannot be sustained in law. Counsel further referred to the case of UNITED WORLD LTD. INC. V. M.T.S. LTD. (1998) 10 NWLR PT 1659 AT PG 110 to argue that a Court will not enforce illegal contracts and further submitted that where illegality is apparent on the face of pleadings, the Court has a duty to decline jurisdiction, citing IBRAHIM V. OSIM (1998) 3 NWLR (PT. 82) PG 260. Counsel submitted that the loan advanced under the Deferred Payment Agreement was at an interest, but no statutory license was pleaded or tendered. The Deferred Payment Agreement was therefore illegal. Counsel referred to the finding of the lower Court on pages 601, 602, 603 on the position that the loan advanced to the Appellant by the Respondent was at an interest although the Respondent was not a money lender. Counsel contended that the finding of the lower Court at page 604 of the Record that the Appellant failed to prove that the Respondent is in the business of money lending exempts it from obtaining licence before loaning money to anyone in Nigeria is perverse and occasioned a miscarriage of justice. That the lower court ignored the interest contemplated under Section 4 of the Moneylenders Act. Counsel further argued that once

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interest is charged, the transaction falls within the regulatory ambit of the Act and a valid Moneylender's license becomes a statutory precondition. That failure to obtain the requisite license renders the transaction illegal and unenforceable. Counsel referred to the cases of UZOUKWU V. IDIKA (2022) 3 NWLR (PT. 1818) 413, KANO STATE GOVERNMENT & ANOR V. A.S.J. GLOBAL LINK LTD (2017) LPELR-46215 and EKEREMOR L.G.C. V. OMIE (2022) 4 NWLR (PT. 1819) 141-142 to argue the lower Court erred in enforcing a transaction prohibited by statute. Counsel referred to paragraphs 2.1 to 2.6 of the statement of fact at pages 3-4 of the Record and Article 5.1 and Schedule 1 of the Deferred Payment Agreement to argue that the Respondent conducted itself as a moneylender without being licensed to do so. Counsel argued that term Deferred Payment Agreement does not take away the agreement's character as a Moneylending Agreement and referred to the case of SULEIMAN V. JIMBASH NIG. LTD & ANOR (2014) LPELR-24615. Counsel further referred to the cases of UMANAH (JNR.) V. N.D.I.C (2016) 14 NWLR (PT. 1533) 458 and ORHUE V. N.E.P.A (1998) 7 NWLR (PT. 557) 187 to argue that Courts are duty-bound to decide cases strictly on legal principles and credible evidence and not on emotional considerations.

Arguing issue one, **Counsel for the Respondent** submitted that Sections 29 and 30 of the Arbitration and Conciliation Act

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do not cover the ground upon which the Appellant seeks to set aside the arbitral award. Counsel submitted that the Appellant wrongly interpreted Section 35 of the Arbitration and Conciliation Act, and that by the saving provisions in Section 89 of the Arbitration and Mediation Act 2023, the Court cannot rely on the provisions of the Arbitration and Mediation Act 2023 to determine any issue arising from the arbitration agreement between the parties which was entered into in 2018. Counsel further submitted that the arguments of the Appellant's Counsel at paragraph 4.2 of its brief are that for an arbitral award to retain its validity, there must be no legal principle that prohibits the arbitration of the dispute involved. Counsel argued that where the words used in a statute are unambiguous, they must be given their natural and ordinary meaning unless to do so would lead to absurdity or inconsistency with the rest of the statute, citing the cases of IBRAHIM VS BARDE (1996) 9 NWLR (PT.474) 513 @ 517 B-C and OJOKOLOBO VS. ALAMU (1987) 3 NWLR (PT.61) 377 @ 402 F- H. Counsel argued that the burden is on the Appellant who alleges that the Deferred Payment Agreement is illegal to establish such allegation and that the primary business of the Respondent herein is money lending. And cited the cases of UZOUKWU V IDIKA (2022) 3 NWLR (PT. 1818) 403 SC and NWANKWO V NZERIBE(2004) 13 NWLR (PT. 890) 422. Counsel submitted that the Appellant did not adduce any

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evidence to show that the Respondent held itself out as carrying on the business of money lending. Counsel referred to paragraph ii, page 12 of Exhibit TCN 2 annexed to the counter affidavit of the Respondent at page 145 of the Record of Appeal. That Exhibit TCN 3 annexed to the counter affidavit of the Respondent, at pages 194-204 of the Record, shows that the Respondent's business is that of transmission of electricity in Nigeria, and not lending, citing UZOUKWU V IDIKA (Supra). Counsel referred to Section 2 of the Moneylenders Act and further submitted that the transaction between the Respondent and the Appellant falls within the exception provided in Section 2(c) of the Moneylenders Act; as such, the transaction cannot be declared illegal as to nullify the final arbitral award between the parties herein. Counsel referred to the case of EBONI FINANCE SEC V WOLE OJO TECH SERV (1996) 7 NWLR (PT. 461) 464 (P.474, Paras. E-F) on persons who can be referred to as money lenders. Counsel submitted that the cases of KASUMU V BABA EGBE (supra), NNADI V AKANNI (supra), PASSCO INTL LTD V UNITY BANK PLC (supra), UNITED WORLD LTD INC V MTS LTD (supra), IBRAHIM V OSIM supra relied upon by the Appellant, do not apply to the facts and circumstances of this matter and relied on the cases of SUNTRUST BANK (NIG.) LTD. V. EATON ACQUISITIONS LTD. (2024) 15 NWLR (PT. 1962) 589 and PDP v. INEC (2023) 13 NWLR (Pt. 1900) 89. Counsel referred to the

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judgment of the lower Court at pages 603 and 604 of the Record of Appeal in response to paragraphs 4.16 and 4.17 of the Appellant's brief of argument and the finding of the lower Court that, having denied it is in the business of money lending, the burden was on the Applicant to show that money lending is the principal business of the Respondent. Counsel further argued that the findings of the lower Court at page 604 of the record cannot be made the subject of the Brief of the Appellant, as the said finding remains valid and subsisting, same having not been appealed against, contrary to the arguments of the Appellant at paragraph 4.20 of its brief of argument. Counsel referred to the cases of LEVENTIS TECHNICAL V. PETROJESSICA (1999) 6 NWLR (PT. 605) 45, (1999) 4 SCNJ 121 AT 127; ISERU V. CATHOLIC BISHOP (1997) 3 NWLR (PT. 495) 517, (1997) 4 SCNJ 10 AT 115 in support of his position.

Counsel further submitted that, considering the provision of Section 2(c) of the Money Lenders Act, the arguments of the Appellant relating to the presumption that a person who lends money at interest is presumed to be a money lender become otiose and cited the case of UZOUKWU V IDIKA supra (PP. 453-454, PARAS. H-B; 445-446, PARAS. H-C). Counsel submitted that the finding of the lower Court at pages 603 and 604 of the record of appeal are unchallenged and is evidence that lower Court duly interrogated the legality of the transaction, given the interest

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element, in view of the provisions of section 2(c) of the Money Lenders Act. That the case of EKEREMOR L.G.C. V. OMIE supra relied upon by the Appellant are on all fours with the instant case. That in this case, there was an arbitral award, which the Appellant seeks to set aside on the basis of an alleged illegality, contrary to the case of EKEREMOR L.G.C. V. OMIE supra. Counsel referred to Sections 29 and 30 of the Arbitration and Conciliation Act on the instances under which an arbitral award can be set aside and cited the cases of K.S.U.D.B. VS FANZ CONST. CO. LTD. (1990) 4 NWLR (PT. 142) 1, A. SAVOIA LTD. VS SONUBI (2000) LPELR - 7(SC) @ 9 D- F, ARAKA V EJEAGWU (2000) 15 NWLR (PT. 692) 684 and others. That the grounds relied on by the Appellant to seek to set aside the arbitral award do not fall within the limited provisions of Sections 29(2) and 30 of the Arbitration and Conciliation Act.

Counsel argued that the Appellant, who fully participated in the arbitration proceedings, without any objection, is deemed to have waived his rights to complain and referred to Section 33 of the Arbitration and Conciliation Act, and the cases of MEKWUNYE V IMOUKHUEDE (2019) LPELR-48996(SC). That the Appellant's challenge to the legality of the Deferred Payment Agreement between the parties was raised too late.

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Counsel further submitted that it will be unjust and inequitable for the Appellant, after benefiting from the loan agreement, to rely on the provisions of the Moneylenders Act to evade the performance of its obligations under the agreement and cited the case of UZOUKWU V IDIKA (supra), CHIDOKA V FCFC LTD (2013) 5 NWLR (PT. 1346) 144 and CHIWERE V OKOSUN (2003) 11 NWLR (PT. 832) 463 among others.

ISSUE 2

Whether the learned trial Judge was right in law in dismissing the Appellant's preliminary objection challenging the competence of the Respondent's counter-claim for enforcement of the award for failure to comply with Order 2 Rule 1 of the Rules in the Third Schedule to the Arbitration and Mediation Act 2023.

On issue 2, Counsel for the Appellant submitted that the Respondent's counterclaim seeking to enforce the arbitral award is incompetent as under Order 2 Rule 1 of the Third Schedule of the Arbitration and Mediation Act, all Arbitration claims must be commenced by way of Originating Motion. That despite the findings of the lower Court at page 614 of the record that the Respondent's was erroneous, the lower Court dismissed the Appellant's preliminary objection challenging the process. Counsel referred to the case of VEEPEE IND. LTD. V. O.F. (NIG.)

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LTD. (2023) 9 NWLR (PT. 1889) 279 on the meaning of jurisdiction and further submitted that where a statute prescribes a specific mode for performing an act, that mode and no other must be followed, citing ABUBAKAR v. NASAMU (2012) 17 NWLR (1330) 523. The Court was urged to hold that the improper use of an originating process is not a mere irregularity but a fundamental vice that robs the court of jurisdiction. That the word "shall" used in Rule 2(1) leaves the Court with no discretion to waive compliance and referred to the case of IBAKU V. EHINI (2010) 17 NWLR (PT. 1222) 286 on the meaning of the word shall. Counsel contended that the Respondent's failure to issue an Originating Motion as required by Order 2 Rule 1 rendered the counterclaim a nullity and robbed the Court of jurisdiction to determine the claim.

The stance of **Counsel for the Respondent** on issue 2 is that Order 2 Rule 1 of the Third Schedule to the Arbitration and Mediation Act, 2023, is not applicable to this matter by virtue of the provisions of section 89 of the Arbitration and Mediation Act, 2023 as the agreement of parties was entered into on 16/3/2018. Counsel referred to the finding of the lower Court at page 613 of the record discountenancing the Appellant's reliance on the provisions of the Arbitration and Mediation Act to object to the motion for leave to enforce the arbitral award. Counsel further referred to the finding of the lower Court at page 615 of

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the record treating the Respondent's counterclaim as an enforcement of the arbitral award under section 31 of the ACA.

Counsel argued that the Appellant's arguments on issue 2 are not covered by grounds 2 and 3 of the grounds of appeal, giving the unchallenged findings of the lower Court referred to above. Counsel cited the case of JOE GOLDAY CO. LTD. V. C.D.B. PLC (2003) 5 NWLR (PT. 814) 586 to argue that a Court is to ignore arguments in a brief which relate to an issue that does not arise from the grounds of appeal filed. Counsel further submitted that the lower Court rightly treated the counter claim as a misnomer and further submitted that by Section 31(1) of the Arbitration and Conciliation Act, an arbitral award can be enforced upon an application to the court and an application brought via a motion on notice is not incompetent without specifying the mode or manner in which an application could be brought before the Court for the enforcement of an arbitral award. Counsel cited the case of STABILINI VISINONI LIMITED v. MALLINSON & PARTNERS LIMITED (2014) LPELR-23090(CA) and submitted that the description of the Respondent as a counterclaimant, in the motion seeking to enforce the arbitral award, does not by any means, change the fact, that a motion on notice that was before the Court. That a wrong description could not have occasioned a miscarriage of justice against the Appellant. Counsel further submitted that a wrong description of

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a party is a mere misnomer, which will not affect the substance of the matter and holding otherwise would be holding technical justice over substantial justice. Counsel cited the cases of THE REGISTERED TRUSTEES OF MASTERS VESSEL MINISTRIES NIGERIA INCORPORATED v. REV. FRANCIS EMENIKE & ORS (2017) LPELR-42836(CA) and MR. JOHNNY LAR SALBIE & ANOR v. INEC & ORS (2008) LPELR-4922(CA) (P. 32, paras. A-D) in aid of his arguments. Counsel referred to the case of SHELL TRUSTEES (NIG.) LTD. V. IMANISONS LTD. (2000) 6 NWLR (PT. 662) 639 (P. 659, paras. C-D) on the propriety of determining both applications for setting aside and enforcement of an arbitral award.

In his Reply Brief, Counsel for the Appellant submitted that the Rules of the Federal High Court (Civil Procedure) Rules, 2019 and not the Arbitration and Conciliation Act or Arbitration and Mediation Act, 2023, govern the conduct of proceedings before Court. That the procedure by which an application for enforcement is brought before Courts is governed by the Rules of the Court. That the Rules of Court do not contemplate the filing of a Counter-Claim in proceedings commenced by an originating motion as the Respondent sought to do. Counsel referred to Order 13(5) of the Rules of the lower Court. That a counterclaim can only be filed under the Writ of Summons procedure, citing the case of A.-G. Imo State v. Imo Rubber

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Estates Ltd (2020) 13 NWLR (Pt. 1741) 209 and Order 52 Rule 16 of the Rules of the lower Court. Counsel further submitted that Section 48 of the Arbitration and Conciliation Act, 2004, provides additional grounds under which an arbitral award may be set aside. That the arbitral award in this case is not valid and liable to be set aside as the underlying transaction is in contravention of the provisions of Section 5 of the Moneylenders Act.

Counsel further argued that no amount of waiver, acquiescence, or consent by the parties can breathe life into an illegal contract and cited the cases of AJAOKUTA STEEL CO. LTD V. CORP. INS. LTD (2004) 16 NWLR (PT. 899) 369 and OCHEDI & ORS V. CENTRAL BANK OF NIGERIA & ORS (2018) LPELR-45316 (CA). Counsel further argued that the case of MEKWUNYE V. IMOUKHUEDE does not relate to the facts of this case.

RESOLUTION

In resolving this appeal, I adopt the two issues formulated by the Appellant viz:

1. Whether the learned trial Judge was right in law in refusing to set aside the Final Award dated 21 November 2021, despite the Appellant's contention that the underlying

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agreement was illegal and unenforceable, and therefore not arbitrable.

2. Whether the learned trial Judge was right in law in dismissing the Appellant's preliminary objection challenging the competence of the Respondent's counter-claim for enforcement of the award for failure to comply with Order 2 Rule 1 of the Rules in the Third Schedule to the Arbitration and Mediation Act 2023.

On issue one, the parties entered into the Deferred Payment Agreement in 2018, and the Final Award was made in 2021. The arbitration therefore preceded the Arbitration and Mediation Act 2023. By section 89 of that Act, the repeal of the Arbitration and Conciliation Act does not extinguish proceedings or rights arising under the former Act. It is the provisions of the former Act that govern the challenge to this award. Section 48 of the Arbitration and Conciliation Act provides for grounds upon which a Court can set aside an arbitral award. It reads thus:

The court may set aside an arbitral award-

(a) if the party making the application furnishes proof-

(i) that a party to the arbitration agreement was under some incapacity; (ii) that the arbitration agreement is not valid under the law which the parties have indicated should

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be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria; (iii) that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case; (iv) that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;or (v) that the award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or (vi) that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate; or (vii) where there is no agreement between the parties under subparagraph (vi) of this paragraph, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or

(b) if the court finds-

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(i) that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria, or (ii) that the award is against public policy of Nigeria.

This provision is supported by **STANDARD ALLIANCE INSURANCE PLC v. HAIDAR (2026) LPELR-83735(SC) (Pp 32 - 33 Paras E - C)** and **MEKWUNYE v. IMOUKHUEDE (2019) LPELR-48996(SC) (Pp 28 - 32 Paras D - A)**

Furthermore, in the case of NNPC V **FUNG TAI ENGINEERING COMPANY LIMITED [2023] 15 NWLR 117 (P. 183, PARAS. E-B),** the Supreme Court held as follows:

> **"All arbitral awards arise from agreements by parties to a contract to refer any dispute arising therefrom to arbitration for resolution rather than direct resort to litigation as an alternative dispute resolution mechanism. In that regard, the underlying origin or foundation for all arbitral awards would be traced to a dispute arising from contractual agreements on rights and obligation of the parties thereto. However, the choice and option to refer dispute arising from a contract to arbitration by the parties, though included as a clause in the main contract, is an independent agreement on the choice of the alternative dispute mechanism by the**

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parties and has nothing to do with the subject-matter of the contract between the parties. The parties knew and were fully conscious of the subject-matter of their contract when they freely agreed to refer any dispute arising therefrom to arbitration for resolution. For that reason, the Federal High Court possesses the jurisdiction to recognise and enforce an arbitral award irrespective of and no matter the subject-matter of the dispute from which the award arose and was made. The court is not to adjudicate over the subject-matter of the dispute from which the award arose and was made but to simply enforce the resolution of the dispute which the parties thereto voluntarily and freely chose to submit to the arbitral tribunal to resolve. [Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd. (2021) 7 NWLR (Pt. 1774) 1."

Furthermore, in **NITEL LTD. V. OKEKE (2019) 9 NWLR (P. 474, paras. A-B)** the Court held as follows:

"The court does not sit on appeal over an arbitral award. Thus, even where the court finds merit in an application to set aside an award, its jurisdiction is limited to setting aside the award and remitting it to

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the arbitrator for reconsideration. The court has no jurisdiction to determine the merits of the matter, which is the subject of the arbitration proceedings. In this case, a significant portion of the appellant's brief was devoted to challenging the award, which is not proper."

Having not brought their claim under the circumstances an award can be set aside, the lower Court rightly refused to set aside the award. It is not open for the Court to inquire into the validity of the award or the subject matter of the dispute leading to the award. The lower Court's intervention must rest on a ground permitted by the law.

The Appellant also challenges the award on the ground that the Deferred Payment Agreement was an illegal moneylending transaction. I do not agree. Whether the Respondent was required to hold a moneylender's licence depends on whether it falls within the definition of a moneylender under section 2 of the applicable Moneylenders Act. Contrary to the Appellant's argument, the fact that the agreement provided for interest does not, by itself, establish that the Respondent was a moneylender.

In the case of **UZOUKWU V. IDIKA (2022) 3 NWLR (PT. 1818) 403 (PP. 454-455, PARAS. F-B** the Court held that:

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"This burden can only be discharged by leading evidence at the trial to the effect that the lender was not a person who does not have for his primary object the lending of money. See the case of Nwankwo v. Nzeribe (2004) 13 NWLR (Pt. 890) 422 (P. 434, paras. E-G). The determining factor of whether a transaction amounts to money lending within the provisions of the Money Lenders Law is not only whether the loan was given on interest or in consideration of a larger sum being paid. It definitely includes a determination of whether the person giving the loan is a banker or an insurer or whether the primary object of the business of that person is money lending, so as to bring him within the definition of a money lender in the provisions of the law. Where it is not shown that the primary object of the business of the lender is money lending, such a transaction does not come within the purview of the Money Lenders Law."

In **ONABUREKHAN v. DENNI-FIBERESIMA (2021) LPELR-56487(CA) (Pp 22 - 23 Paras D - B)** the Court held as follows:

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"It is clear to me, that for a person to qualify as a money lender, it must be shown by credible evidence that, he was carrying out or engaged in the business of money lending or that he held himself out as carrying out that business, and which business must have as its primary object, the business of lending of money. The onus of proving that the primary object of the lender was money lending is on the person raising the issue. Thus, in the instant case, the burden was on the Appellant to adduce credible evidence to establish that the Respondent was engaged as his primary object, the business of lending money."

The Appellant has shown that the agreement provided for interest, but has not established that the Respondent carried on moneylending as its business or held itself out as doing so. I therefore agree with the lower Court that the Appellant failed to prove that the Respondent required a moneylender's licence. The allegation that the Deferred Payment Agreement was illegal for want of such a licence consequently fails. The Appellant has not established the alleged statutory illegality upon which its challenge on the award depends. It has therefore failed to show that the lower Court was wrong to refuse to set aside the award. Thus, having benefited from the agreement, the Appellant

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cannot rely on an unproved allegation of illegality to avoid its obligations under it. See the cases of **FASEL SERVICES LTD. V. N.P.A. (2003) 8 NWLR (PT. 821) 73 (P. 102, PARAS. C-E)** where the Court held as follows:

> **"No person shall, after reaping benefit from a transaction of which he is a party, be heard to say such a transaction is illegal or void or voidable when it comes to him to fulfil his obligation under the transaction so far the other party has done all he pledged to do under it. In other words, a party to an illegal contract, who has benefited from the contract, would not be allowed at a later stage to raise the defence of illegality to the disadvantage of the other party. In the instant case, the appellants reaped benefits of the contract between them and the respondents, they cannot rely on a perceived illegality, which was never raised before, to deprive the respondents benefiting from their investments."**

See also **MAJOR CONCEPT LTD. & ANOR v. EZE (2025) LPELR-80563(SC) (Pp 71 - 71 Paras A - B)**

Consequently and flowing from above, I resolve issue one against the Appellant.

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ISSUE TWO

On issue two Under section 31 of the former Act, an award may be enforced upon an application in writing, supported by the award and arbitration agreement. Accordingly, if the Respondent filed and served an identifiable motion on notice seeking leave to enforce, the fact that the Appellant was described as a "counterclaimant" would not necessarily defeat it. The courts are always enjoined to examine the substance of the filed process: its prayers, supporting affidavit, exhibits. To my mind, it is not a fundamentally defective act to misstate the description of the Appellant. More so the misdescription was not shown to have misled the appellant or occasioned a miscarriage of justice against him. Here too, I resolve issue two against the Appellant.

On the whole both two issues having been resolved against the Appellant, this appeal fails, and is accordingly dismissed. The judgment delivered on 14/10/2025 by the Federal High Court, Abuja Judicial Division is hereby affirmed.

A cost of N500,000:00 is awarded against the Appellant in favour of the Respondent.

IBRAHIM WAKILI JAURO
JUSTICE COURT OF APPEAL

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APPEARANCES:

Abu Arome Esq. for the Appellant with him O.A. Ajonu Esq

Nkemakolam S.C. Okoro Esq. for the Respondent



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MOHAMMED DANJUMA, JCA

I have had the privilege of reading in draft, the lead judgment of my learned brother **Ibrahim W. Jauro, JCA.** I agree with the reasoning and conclusion that this appeal lacks merit and is hereby dismissed. The cross-appeal fails and is dismissed. I abide by all the consequential orders in the lead judgment.

HON. JUSTICE MOHAMMED DANJUMA
JUSTICE, COURT OF APPEAL

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NTONG FESTUS NTONG, JCA.

I have read the draft judgment of my learned brother **IBRAHIM W. JAURO, JCA** and I am in consonance with the reasons and conclusion reached therein that the Appellant's Appeal is devoid of merit and should be dismissed. However, I shall make few remarks hereunder.

In the extant Appeal the Appellant relied heavily on Section 35 (a) of the Arbitration and Conciliation Act and Sections 55 (3) (b) (i-ii) and 65 (a) of the Arbitration and Mediation Act 2023; and submitted that where the foundation of a dispute is predicated on illegal contract, the dispute is non-arbitrable and any arbitration emanating therefrom cannot be enforced and that for an arbitral award to be valid, there must be no legal principle, statute or case law that prohibits the arbitration of the dispute involved. Meanwhile, on the contrary, the Respondent submitted that Sections 29 and 30 of the Arbitration and Conciliation Act, 2023 do not cover the ground upon which the Appellant seeks to set aside the arbitral award and that the Appellant wrongly interpreted Section 35 of the Arbitration and Conciliation Act, 2023. Having carefully gleaned at the respective argument and submissions of parties, it is instructive to hold that by virtue of the provisions of Section 89 of the Arbitration and Mediation Act 2023, the Court cannot rely on the provisions of the Arbitration and Mediation Act 2023 to determine any issue arising from the arbitration agreement between the parties which was entered into in 2018. It should be noted that it is not in all circumstances that the former Arbitration and Mediation Act, will regulate the affairs of the parties in an agreement. For the former statute to be valid and relevant in the regulation of the party's affair, there must be a saving clause in the new statute stating otherwise just as it is in the later statute. In other words,

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a former law can still regulate an arbitration agreement entered under its tenure, but whether it does depend entirely on the transitional provisions (saving clause) of the new statute and the time of the dispute. Moreso, it is the law that the burden of proof is on the Appellant who alleges that the Deferred Payment Agreement is illegal to establish such allegation. See Section 131 of the Evidence Act, 2011 (as amended). The Appellant was unable to show that the deferred payment agreement was illegal.

In view of the forgoing, it is my candid opinion that the transaction between the Respondent and the Appellant falls within the exception provided for in Section 2 (c) of the Moneylenders Act which provide as follows:

> **"...any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money"**

There is no doubt that the Appellant falls within the exception as stated above. Little wonder the Appellant was unable to show that the primary object of the Respondent's business is moneylending. Though the Appellant had entered into the agreement and benefitted humongously. He cannot turnaround to castigate the very source he benefitted from. The Supreme Court of Nigeria in the case of **AWOJUGBAGBE LIGHT INDUSTRIES LTD. Vs. CHINUKWE (1995) 44 NWLR (PT. 390) PG 390 SC AT PAGE 426 PARAS A-C** held that:

> **"It is morally despicable and inequitable for the party, after obtaining a ban and utilizing it to turn around and allege that the agreement is null and void."**

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Again, the apex Court in the case of **DALEK NIGERIA LTD. Vs. OIL MINERAL PRODUCING AREAS DEVELOPMENT COMMISSION (OMPADEC) (2007) 7 NWLR (PT. 1033) PAGE 441 PARAS A-B;** held that:

> **"...it is not in doubt that the appellant benefitted from the said loan, the agreement is binding and it is my view that it did not violate any law."**

The Appellant has shown and demonstrated that the agreement provided for interest which he benefitted but has not established that the Respondent carried on moneylending as its business or held itself out as doing so. I therefore agree with the lower Court that the Appellant failed to prove that the Respondent required a moneylender's licence to function as a moneylender. It suffices to hold that the transaction between the Appellant and the Respondent cannot be declared illegal as to nullify the final arbitral award between the parties herein.

In view of the foregoing and for the fuller reasons held by my learned brother **IBRAHIM W. JAURO, JCA** in the lead judgment, I, also agree and hold that the Appellant's appeal is unmeritorious and should be dismissed. Accordingly, the Judgment of the trial Court delivered on 14/10/2025 is hereby affirmed. Cost of N500,000.00 is hereby awarded against the Appellant and in favour of the Respondent.

JCA

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JUSTICE, COURT OF APPEAL.

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