Fawehinmi Construction Co Ltd v. Obafemi Awolowo University (1998)

Case summary prepared by SabiLaw

Court	Supreme Court of Nigeria
Report	(1998) 6 NWLR (Pt 553) 171
Lead judgment	Belgore, JSC
Area	Stay of proceedings for arbitration; waiver

Facts

Fawehinmi Construction sued the University for breach of a building contract and for wrongful detention of its plant and equipment on site.

Relying on the arbitration clause in the contract, the University applied for a stay of proceedings under the Arbitration Act. The application was refused.

The University then objected that the suit was incompetent because the three-month pre-action notice required by the University of Ife Edict had not been given. The trial court held that the University had waived the objection; the Court of Appeal reversed.

Issue

Whether, by applying for a stay pending arbitration and by its conduct in the proceedings, the University had waived its right to object to the suit.

Held

- The appeal was dismissed.
- Applying for a stay of proceedings in favour of arbitration is not a submission to trial on the merits.
- Waiver must be clear and unambiguous. Raising objections before filing a defence did not amount to waiver, and the University had not waived its statutory right.

Lesson for drafters

Applying for a stay in favour of arbitration does not, by itself, give up a party's other objections. Waiver must be clear, so record clearly which rights a party reserves when it takes a step in court.

This is a summary prepared by SabiLaw for learning purposes. It is not the judgment of the court and is not legal advice. Refer to the full judgment before relying on it.