Obi Obembe v. Wemabod Estates Ltd (1977)

Case summary prepared by SabiLaw

Court	Supreme Court of Nigeria
Suit No.	SC.466/75
Judgment	20 May 1977
Report	(1977) 5 SC 115; [1977] NGSC 17
Lead judgment	Fatayi-Williams, JSC
Area	Arbitration: effect of an arbitration clause on the court's jurisdiction

Facts

In May 1969, Wemabod Estates appointed Obi Obembe, a consulting engineer, for the building of Unity House, 37 Marina, Lagos. The appointment was on the Association of Consulting Engineers' conditions, which provided for arbitration of any dispute or difference.

Wemabod terminated the appointment in October 1970. Obembe sued in the High Court of Lagos State for his fees and expenses. Wemabod did not apply for a stay of proceedings.

The trial judge dismissed the claim and also said that the arbitration clause would in any event have prevented judgment in Obembe's favour.

Issue

Whether the arbitration clause barred the court from deciding the claim.

Held

- The appeal was allowed in part.
- The court distinguished two kinds of arbitration clause: an ordinary clause, which leaves a party free to sue subject to the other party's right to apply for a discretionary stay; and a Scott v. Avery clause, which makes an award a condition precedent to any action.
- The clause here was of the ordinary kind. It did not oust the jurisdiction of the court, and as no stay had been asked for, the trial judge was wrong to treat the clause as a bar to judgment.
- On the evidence, the claim for structural and civil engineering fees failed for want of proof, but judgment was entered for the claim relating to resident engineers.

Lesson for drafters

An ordinary arbitration clause does not by itself stop a court action. A party who wants the dispute arbitrated must apply promptly for a stay or referral; parties who want an award first must say so expressly.

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