



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A4/2019/2601(A)



PROCESS AND INDUSTRIAL DEVELOPMENTS LIMITED –v– FEDERAL REPUBLIC OF NIGERIA

ORDER made by the Rt. Hon. Lord Justice FLAUX

On consideration of the application for (i) permission to rely on a new ground of appeal under CPR52.17; (iii) permission to adduce fresh evidence and (iii) a direction that the new ground of appeal be remitted for determination by the Commercial Court pursuant to CPR52.20(2)(b)

And on consideration of the papers and without an oral hearing

Decision:	
Application refused	

<p>Reasons</p> <ol style="list-style-type: none"> The application to rely upon a new ground of appeal is misconceived. The appellant now wishes to contend that the Awards were procured by fraud and/or that the underlying contract was a sham or procured by fraud (“the fraud challenge”). The appropriate method by which the fraud challenge should be raised is by an application to the Commercial Court to set aside the Awards under sections 67 and 68 of the Arbitration Act 1996 and an application for an extension of time to bring such an application under section 80(5) of the Act together with an application for relief against sanctions so as to add the fraud challenge as an additional ground of defence to the respondent’s application under section 66 of the Act to enforce the Final Award as a judgment. Such applications have in fact been issued in the Commercial Court and there is due to be a case management hearing before Butcher J on 24 January 2020 at which, as I understand it, the judge will be invited to determine whether the appellant should be entitled to an extension of time in view of the length of time since the 28 day period for a section 67/68 challenge expired. Since the application to rely upon the new ground of appeal is misconceived, so is the application to rely on fresh evidence in this Court in support of it. For the reasons given at 1 above, a direction under CPR52.20(2)(b) is not the correct method of determining the fraud challenge. The appellant must proceed by way of its applications to the Commercial Court. I will defer a decision on whether to order that a hearing date for the current appeal before Easter 2020 should be fixed in accordance with my earlier Order of 26 November 2019 or whether to stay the current appeal pending determination of the fraud challenge in the Commercial Court until after the hearing before Butcher J when I know what order that judge has made. The parties are to provide a copy of this order to Butcher J at the hearing on 24 January 2020 and are to provide me with a copy of his order at that hearing and a transcript or agreed note of any judgment by 12 noon on 29 January 2020 at the latest. I will then make the decision referred to at 4 above on paper.

Notes:

- Where an application (other than an application for permission to appeal) has been refused on the papers, the applicant may request that the decision be reconsidered.
- An application for reconsideration must be filed within 7 days after the party is served with notice of the decision.
- The reconsideration will be determined by the same or another judge on paper without an oral hearing; except that the judge determining the reconsideration on paper may direct that the reconsideration be determined at an oral hearing, and must so direct if the judge is of the opinion that the reconsideration cannot be fairly determined on paper without an oral hearing: see CPR 52.24.

By the Court

Date: 20 January 2020

DATED 20TH JANUARY 2020
IN THE COURT OF APPEAL

ORDER

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