Neutral Citation Number: [2014] EWHC 3123 (Comm)

Case No: 2010-898

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

The Rolls Building
Fetter Lane
London EC4A 1NL

27 June 2014

BEFORE:

MR JUSTICE EDER

BETWEEN:

NED NWOKO SOLICITORS

Claimant

- and -

(1) THE OYO STATE GOVERNMENT OF NIGERIA
(2) EXECUTIVE GOVERNOR OF OYO STATE

Defendant

MR PHILIP NEWMAN appeared on behalf of the Claimant

MR ADEDAMOLA ADEREMI appeared on behalf of the Defendants

Approved Judgment

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MR JUSTICE EDER:

1. This case concerns disputes arising under an agreement dated 11 April 2007 ("the "Agreement") between, on the one hand, Ned Nwoko Solicitors and, on the other hand, the Oyo State Government of Nigeria and the Executive Governor of Oyo State. The disputes arising under that agreement appear to have been bedevilled by delay and procedural points.

2. The Agreement on its face appears to provide for certain fees or commissions to be paid by the defendants to the claimants, Ned Nwoko Solicitors, in certain circumstances. The details of that do not matter for present purposes. The documents suggest there may be various underlying disputes, not only as to whether particular sums are due or not, but also as to allegations of fraud and illegality as well as immunity of suit. Mr Adaremi who appears on behalf of the Defendants today however accepts that those matters do not concern me directly today.

3. The Agreement contains the following arbitration clause:

> "*Dispute Resolution*
> *In the event of any disputes arising from this agreement, the agreed party shall be at liberty to elect to refer the matter for arbitration in UK or Nigeria in the first instance, and if not resolved, institute proceedings either in London or Abuja.*"

4. Ned Nwoko Solicitors say that various monies became due and payable under the Agreement. Demands were made by Ned Nwoko Solicitors for sums due from time to time, but these demands for payment were refused by the new government. Having regard to the documents before me, it would seem that the disputes which arise involve political considerations which may or may not have to be considered further.

5. In any event, it would appear that at a meeting held with officials of the defendants on 4 June 2008, Ned Nwoko Solicitors were informed that the defendants had terminated the Agreement in May 2007. The Governor at the time confirmed that the State Government would not pay anybody as no work had been done and no commission had thus been earned.

6. On 30 January 2009 a letter was sent by English solicitors on behalf of Ned Nwoko Solicitors to the United Kingdom Chartered Institute of Arbitrators seeking the appointment of an arbitrator under the Agreement. An arbitrator was duly appointed by the Institute shortly thereafter, on or about 2 April 2009. The appointed arbitrator made preliminary directions and sought to convene preliminary meetings in May and June 2009. However, due to an allegation of bias the arbitrator apparently resigned on 17 November 2009. Thereafter, the Institute was request to appoint an alternative arbitrator, but in the event the Institute refused to do so.

7. After further correspondence, Ned Nwoko Solicitors on 28 May 2010 were advised by the Institute that a fresh request for the appointment of an arbitrator was required. On 1 June 2010 a request was then submitted to the Institute for the appointment of a new arbitrator. The request was made in a form which stated that the Claimant/First Party was "Ned Nwoko".

8. On the same date a letter was sent by the claimant's solicitors to the defendants stating that the claimant was "Ned Nwoko" and further stating as follows:

> "*In accordance with the arbitration clause under dispute resolution at page 2 of the Letter of Appointment dated 11 April 2007 issued by the First Respondent, the Claimant hereby notifies the Respondents of the following:*
> *Pursuant to page 2 of the Letter of Appointment, demand is hereby made that the dispute between Ned Nwoko and Oyo State Government of Nigeria be referred to arbitration in London.*
>
> *A request for arbitration in London has been made on 1 June 2010 to the Chartered Institute of Arbitrators. We attach copy of their rules.*
>
> *Please note that under the rules you are required to acknowledge receipt and file a defence or answer to the Notice within 14 days of your receipt of the said Notice.*"

9. The letter continued with details of both parties' representatives. It then referred to and indeed quoted the arbitration clause in the Agreement (which I have already referred to above) and continued by stating:

> "*Pursuant to arbitration clause Ned Nwoko sets forth a statement in the dispute and the amount involved, if any, as follows ...*"

Thereafter, the letter set out the monetary claims and the relief or remedy sought.

10. On 9 June 2010 the Institute informed those acting for the claimant that it was only willing and able to make the appointment of an arbitrator should the court consider that appropriate. Absent a positive response from the defendants, an arbitration claim form was issued before this court on 28 July 2010. This named the claimant as "Ned Nwoko" and claimed the following relief:

> "*1. An order pursuant to section 18(3)(b) of the Arbitration Act 1996 appointing suitable person as arbitrator under the arbitration agreement contained at page 2 of the Letter of Appointment 11 April 2007; alternatively*
>
> *2. An order that an arbitrator be appointed by the Chartered Institute of Arbitrators; alternatively*
>
> *3. Directions pursuant to section 18(3)(a) of the Arbitration Act 1996 for the appointment of an arbitrator*."

The claim form continued with the grounds of the application.

11. The court granted an order for service out of the jurisdiction of the claim form on 17 August 2010 by way of courier service through DHL. It appears that there were then some difficulties in effecting service of the claim form out of the jurisdiction on the defendants. The actual date when service was effected is unclear from the documents, but it would appear that service was certainly effected latest by 1 July 2011. The first defendant says that it only received the documents some time later that is on 1 August

2011. However, as I understand it, Mr Aderemi, on behalf of the defendants, accepted that for present purposes at least that service is to be treated as having been effected on 1 July 2011, although that dispute in fact does not make any substantive difference to the issues that I have to resolve today. For present purposes I proceed on the basis that service was effected on 1 July 2011. On that basis Mr Aderemi accepted that the relevant time limit for serving and filing an acknowledgement of service was some two months and 21 days thereafter, that is on or about 23 September 2011.

12. Given the fact that the claim form was issued, as I have said, on 28 July 2010 Mr Newman, on behalf of the claimant, accepts that it was in fact served out of time. In particular, he accepts that under the rules, the claim form had to be served within six months of the date of issuance. He accepts, therefore, that the claim form was not served within the time specified in the rules, nor was any application made at any stage to extend the time for service. It will be necessary to consider the effect of that in the context of the present proceedings.

13. Thereafter, various proceedings were instituted by the first defendant against the claimant in Nigeria seeking, amongst other things, that there is no valid contract between the parties; alternatively that the claimant failed to execute the terms of the contract, that the parties did not enter into any arbitration agreement or, alternatively that the arbitration agreement is ineffective. I mention those matters, but in fact nothing turns today on those matters before me.

14. Thereafter, an acknowledgement of service was filed on behalf of the Defendants on 29 March 2012. The acknowledgement of service was in the standard form. It was filed on behalf of both Defendants. The box in section B which states "I intend to contest this claim" was ticked. Equally, the box in section C "I intend to dispute the court's jurisdiction" was also ticked. Section D was also completed in part by ticking the box saying that "written evidence was filed with this form".

15. In passing I note that section C also states "*(Please note any application must be filed within 14 days of the date on which you file this acknowledgement of service.)*". That wording reflects the general rules as stated in CPR Part 11(4) which requires any application disputing the court's jurisdiction to be made within 14 days after filing an acknowledgement of service and to be supported by evidence. In fact, in the Commercial Court that period of time is generally extended from 14 days to 28 days. Be that as it may, no application notice has ever been made by the Defendants pursuant either to what was stated in section C of the acknowledgement of service form or under CPR 11. It will be necessary to consider in due course the effect of that failure.

16. Following filing and service of that acknowledgement of service the Claimant wrote to the defendants' solicitors on 12 April 2012 stating that they would oppose any application for extension of time to file the acknowledgement of service or leave to defend the proceedings and they invited the Defendant solicitors to provide details of counsel if they were minded to continue to defend the proceedings.

17. Given the very considerable delays that had occurred in this matter, it then appears that the court of its own motion took steps to list the matter for a directions hearing, which took place on 14 March 2014. Shortly before that hearing the Claimant, who was

originally named, as I have said, as "Ned Nwoko" made an application to change the name on the claim form from "Ned Nwoko" to "Ned Nwoko Solicitors".

18. Apart from such application and save as otherwise stated above neither the Claimant nor the Defendants have taken any steps in the proceedings until the case came before His Honour Judge Mackie following a review of the case file by the court. Since then the First Defendant has filed an application to strike out the claim or, alternatively, to extend the time for filing the acknowledgement of service. On 22 May the Claimant applied to the court for a retrospective order extending the time for service of the claim form in so far as it may be necessary and as a "protective measure".

19. Against that background, Mr Aderemi identified three main issues which he submitted arose for determination. First: Should the court exercise its discretion to grant the Claimant extension of time to serve its claim form out of time? Second: Should the court exercise its discretion to grant the defendant leave to serve the acknowledgement of service out of time? Third: Can the claimant change the name on the claim form from his personal name to the name of a firm in respect of which he is not a partner? So far as relevant, I deal with these issues below.

20. So far as the claim form itself is concerned, there is as I have said no dispute that pursuant to the rules, in particular CPR 7.5(2), there was a requirement that it be served within a period of six months from the date of issue of the claim form. As I have said, therefore, there is no doubt that this claim form was not served in that time period as Mr Newman frankly accepts. The question then arises: what is the effect of that failure? In the ordinary course I agree that permission to extend the time for such service would be necessary and certainly if the clock had been stopped say at the end of September 2011 (that is before the defendants filed an acknowledgement of service), I agree that the position would be that the time period for service of the claim form had lapsed and that on the face of it the court would have no jurisdiction in relation to that. To that extent I accept the submissions of Mr Aderemi and, indeed, I did not understand Mr Newman to suggest otherwise. However, the clock did not stop at that stage, but continued. It is right that there was then delay in relation to that (and I will come back to that in a moment), but it seems to me that I can then jump (if that is the right word) to the end of March 2012 when the defendants did file an acknowledgement of service as I said.

21. What is the effect of the filing of such acknowledgement of service? Mr Newman submitted that the position is relatively straightforward because it is dealt with in CPR 11(4) and (5) which provide in material respects as follows:

> "*11(4) An application under this rule must (a) be made within 14 days after filing an acknowledgement of service; and (b) be supported by evidence.*
>
> *(5) If the defendant (a) files an acknowledgement of service; and (b) does not make such an application within the period specified in paragraph 4(4), he is to be treated as having accepted that the court has jurisdiction to try the claim.*"

22. Thus, Mr Newman submitted that here there can be no doubt that the defendants did indeed file an acknowledgement of service within the meaning of CPR 11(5)(a) and did

not thereafter make a relevant application to dispute the court's jurisdiction within the period specified in paragraph (4). Whether that was 14 days as stated in the form itself or 28 days as generally referred to in this court does not matter for present purposes and for Mr Newman's argument.

23. Mr Aderemi in response submitted that that was wrong. In particular, he submitted that in truth there had been no acknowledgement of service filed on behalf of the defendants in this case. He accepted, of course, that a document purporting to be an acknowledgement of service had indeed been filed (as I have already stated above). However, in essence his submission was, as I understood it, that that was not a valid acknowledgement of service and it could not be a valid acknowledgement of service because by that time (that is the end of March 2012) the claim form had not properly been served during a period when it was still valid and at a time when he said it had ceased to be a valid claim form, at least for service purposes. Thus, he said, that there had been no valid service of the claim form and therefore there could not be a valid filing of an acknowledgement of service within the meaning of CPR (5)(a). I do not accept that submission. I agree, as I have already stated, that the claim form had not been served within the period of time specified by the rules, but that does not mean that the claim form was in any sense a nullity.

24. In support of his submissions, Mr Aderemi referred me to the decision of the Court of Appeal Hoddinott & Ors v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203. In particular, Mr Aderemi referred me to paragraphs 21 to 30. I do not propose to read out those passages here, but in my view it is plain from those passages that the mere fact that a claim form is served late does not mean that it is void or a nullity and that in circumstances where it is served late CPR 11 is engaged. So much appears in particular from paragraphs 27 and 29 of the judgment of the Dyson LJ giving the judgment in the Court of Appeal.

25. That being the case it seems to me that although Mr Aderemi is right that at the time when the acknowledgement of service was filed the claim form had not been served within the specified time, nevertheless the defendants took the step of filing an acknowledgement of service (as I have said) and that filing was not void or invalid and for that reason the CPR 11(5) was, as I have said, engaged. That being the case the question then arises simply whether the Defendants made an application within the period of time specified in CPR 11(4). Mr Aderemi accepted that no such application had been made. In my judgment, it therefore follows in accordance with the express wording of CPR 11(5) that the defendants are "to be treated as having accepted that the court has jurisdiction to try the claim". On the face of it, it seems to me therefore that, as I have said, the defendants have accepted this court's jurisdiction to deal with this claim.

26. Mr Aderemi then advanced a further submission based upon his application that I have already referred to; that even if that be the case nevertheless I should as a matter of my discretion extend the time referred to in CPR 11(4) to permit the defendants to make their application late and indeed now to extend the time retrospectively so as to extend the relevant period of time. There was some confusion about this. I think the application on behalf of the defendants was in terms to extend the time for filing the acknowledgement of service. In truth, it seems to me that an acknowledgement of service has been filed, but what has not been done is the issuance of an application. Be

that as it may, I treat Mr Aderemi's application as an application to extend the time for making the application referred to in CPR 11(4).

27. Therefore, it seems to me Mr Aderemi is inviting me to exercise my discretion in his favour to extend that time. Given that the acknowledgement of service was filed with the court on 29 March 2012 and on the assumption that a period of 28 days was permissible for the making of the application pursuant to CPR 11(4), the relevant time limit expired on or about 28 April 2012. We are now 27 June 2014 and therefore Mr Aderemi is in effect asking for an extension of some two years and two months or so. As to the exercise of that discretion there was some debate before me as to whether the guidelines enunciated by the Court of Appeal in its recent decision in Mitchell apply or not. Mr Newman submitted that this was a case which fell within the Mitchell guidelines on the basis that Mr Aderemi was effectively seeking relief from sanction pursuant to CPR 3.9. Mr Aderemi submitted that that was not the case and that this was not a case which fell to be governed by the Mitchell guidelines. In the event, it is unnecessary for me to determine that dispute. I am prepared to assume in Mr Aderemi's favour that the Mitchell guidelines do not apply. Nevertheless, I have to consider all of the circumstances relating to the exercise of my discretion.

28. In this context, it seems to me there are four matters that I need to consider. The first is the actual period of delay in the defendants making an application to extend the time and the period of time during which there was a failure to issue the application. As to that, the fact is that there is no evidence whatsoever before me to explain the reasons for that delay on the part of the defendants. Even before Mitchell it seems to me that any party coming to the court seeking an extension of time would have to provide at least some evidence as to the reasons for that failure on their part. Absent any such evidence, it seems to me that the application for an extension fails *in limine* without more. But even if that is wrong, it is at least a potent factor in the exercise of my discretion.

29. Second, it is important to bear in mind that although no application was itself made within the time limit to dispute the court's jurisdiction, an affidavit was indeed served on behalf of the defendants in support of their contention disputing the jurisdiction. In particular, a witness statement of Abdur Ahman Ali was served dated 30 March 2012. The witness statement was served for the purpose of extending the time within which to acknowledge service and to stay proceedings on the basis of *forum non conveniens* and/or illegality. That is stated in paragraph 23 at the end of Mr Abdur Ahman Ali's witness statement. It is important to note that the matters there raised, that is *forum non conveniens* and illegality, are of no relevance for present purposes and Mr Aderemi did not suggest otherwise. There is nothing in that witness statement to suggest that any point was being taken by reference to the late service of the claim form or anything of that sort. I mention this because if and to the extent that it were right simply to look at the witness statement as a statement of the grounds relied upon in support of any possible application disputing the jurisdiction of the court, it was on a very limited basis indeed. And as Mr Aderemi accepted today, those grounds referred to provide no basis for disputing the jurisdiction in relation to the particular claim made in this claim form.

30. Third, Mr Aderemi says that an extension of time is necessary for the "justice of the case". In that context he submitted that there is a limitation point and unless I grant the

extension, in effect I would be permitting this claim to go forward whereas in other circumstances the Claimant would not be entitled to proceed with this claim.In other words, Mr Aderemi submits that if I were to grant the extension that would be contrary to justice because I would in effect be depriving Mr Aderemi's clients of a time bar defence. That point is addressed in paragraph 76 to 83 of Mr Aderemi's skeleton. In effect, his submission was that the original notice of arbitration was non-compliant with the requirements of the Arbitration Act and that arbitration had not in fact properly been commenced. That point turns at least in main part on the effect of section 14 of the Arbitration Act and in particular section 14(4) which provides in material respects as follows:

> "*Where the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter*."

31. Mr Aderemi submits in that context that the notice of arbitration or at least the purported notice of arbitration that I have already referred to did not in terms constitute a notice in writing requiring the defendants to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter. I see at least some force in that argument, but it is plain from the notes to the White Book at CPR 2E-126 that section 14 must be interpreted broadly and flexibly and that there is authority to the effect that section 14(4) will be complied with or at least it is sufficient that an intention to commence arbitration and invoke the arbitration agreement is clear in the notice, even though it does not as such request the appointment of an arbitrator. Looking at the original notice of arbitration that I have referred to, it seems to me on the face of it that it complies with section 14(4) in that sense. For those reasons, I do not consider that there is any relevant time bar point that I would be depriving the Defendants of by refusing any relevant extension.

32. Fourth, Mr Aderemi submitted that although there was (as he accepts) delay on his client's part in making the relevant application, nevertheless there was equally delay on the Claimant's side by serving the claim form late – that is after the expiry of the six month period that I have already referred to. In particular he has drawn my attention in that context to certain correspondence during that period, in particular a letter of 13 September 2011 and following. In summary, what he says is that the fact that the claimant has delayed in bringing the matter before the Court is a relevant consideration in the context of the exercise of my discretion. In principle I agree that it is necessary to look at all the circumstances in deciding whether to exercise my discretion. However, so far as this point is concerned, it seems to me important to note that it was for Mr Aderemi's clients to make whatever application they wished to make in the context of any application to dispute the jurisdiction of the court. To that extent it seems to me that that is the delay which should be the main focus of this consideration at this stage. And as I have said in this part of the judgment, there is no evidence by the Defendants to explain the reasons for that delay.

33. For those reasons, I refuse the application to extend the time for making an application to dispute the jurisdiction as contemplated by CPR 11. It follows, therefore, that consistent with my original conclusion the defendants are to be treated as having

accepted the jurisdiction of this court to try this claim within the meaning of CPR 11(5).

34. Before turning to the substance of the application, there is one other matter that I should deal with and that is the point raised in Mr Aderemi's skeleton at paragraphs 88 to 91 to the effect that there is, say the defendants, no valid arbitration clause at all. This is, submitted Mr Aderemi, because the arbitration clause relied upon by the claimant is not exclusive or binding and indeed appears to some other form of mediation or alternative dispute resolution rather than arbitration. In particular, Mr Aderemi submitted in that context that it is important to note that the arbitration agreement is that there should be arbitration "in the first instance" and if not resolved, then recourse should be made to the courts. Mr Aderemi submits that arbitration involves disputes which require finality. It must have a binding effect. Mr Aderemi says that there is only the possibility of an appeal or challenge under the Arbitration Act 1996 if the arbitration award is disputed or challenged. It is not the position that fresh proceedings can be issued in the courts in which the matter is then rehashed.

35. In broad terms do not disagree with those points advanced by Mr Aderemi by reference to the general nature of an arbitration clause. However, although the wording of the clause is very unusual, I do not consider that it is invalid. It provides expressly for disputes to be referred for arbitration in the UK or Nigeria in the first instance. It is only if that is not resolved that the clause then goes on to contemplate proceedings being instituted either in London or Abuja. That final phrase may give rise to some question of construction, but that at the moment does not seem to me to preclude the operative parts of the clause which provide expressly for arbitration in the UK or Nigeria. For example, an award may be made in the United Kingdom and it may be that that requires then enforcement of some kind. Those latter words, it seems to me, would cover that type of case. Equally, it may be that the dispute as referred to arbitration may not be resolved for whatever reason. I do not know and it may be then that the latter part of the clause then kicks in, but on the face of it it seems to me this is an entirely proper and valid arbitration clause.

36. There is then one further additional point I need to deal with and that concerns the identity of the Claimant. As I have said the name claimant is "Ned Nwoko". Mr Newman does not seek any relief on behalf of Ned Nwoko. It is common ground that "Ned Nwoko" is a nickname or a shorthand name for Chinedu Muni Nwoko. Mr Newman does not seek any relief on behalf of that particular individual; rather he submits that the application to appoint an arbitrator is made on behalf of Ned Nwoko Solicitors who were (as I have already said) one of the named parties on the face of the Agreement. It is on behalf of Ned Nwoko Solicitors that the application is in truth made.

37. The difficulty for Mr Newman is that the claim form is in the name not of Ned Nwoko Solicitors but Ned Nwoko and therefore recognising this difficulty Mr Newman has made application to this court to amend the claim form to replace the individual name Ned Nwoko to Ned Nwoko Solicitors. That application is in effect made pursuant to CPR 17.4(3):

> "*The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which could cause reasonable doubt as to the identity of the party in question*."

38. In essence, therefore, in order to trigger the court's discretion to allow an amendment there are two pre-conditions. The first is that the mistake in question must be "genuine"; and, secondly, the mistake must not be one which would cause reasonable doubt as to the identity of the party in question. As to the first point, that is whether or not the mistake was genuine or not, Mr Newman relies in particular upon paragraph 26 of the statement of Chinedu Muni Nwoko dated 3 April 2012 where he says as follows:

> "*I have never instructed anybody to commence action in this matter in my personal name. The agreement is between the Oyo State Government and Ned Nwoko Solicitors and as such the arbitration ought to have been commenced in the firm's name. Any such anomaly should be corrected with the lien of the court. Indeed, I understand from Femi Kehinde that the first process was commenced properly in the name of the firm.*"

39. Mr Aderemi, on behalf of the defendants, submits nonetheless that in truth this mistake was not a genuine mistake at all. In that context he has referred me to a number of contemporaneous documents, in particular a letter dated 13 March 2009; a letter dated 18 May 2009 and a further letter dated 20 May 2009. It is unnecessary to set out in detail what is set out in those letters. I accept that there are references in those letters to Ned Nwoko attending various meetings in relation to this matter. However, I do not regard any of those references as being inconsistent with the case advanced by Mr Newman to the effect that at all material times the relevant claimant was not Ned Nwoko as an individual but Ned Nwoko Solicitors. Some of those documents that I have just referred to refer to Ned Nwoko Solicitors. One, indeed, refers to the "firm of Ned Nwoko". At best it seems to be that those are equivocal as to the position.

40. However, in my view, it is absolutely plain from the relevant documents including the original notice triggering the arbitration that the intention throughout was that this claim, if it was to be pursued, was to be pursued on behalf of the named party in that letter of appointment, that is Ned Nwoko Solicitors. The reference to Ned Nwoko in the documents (and indeed in the claim form) I read as being simply a shorthand reference, infelicitous perhaps and mistakenly so. But I have no doubt on the evidence before me that the reference to Ned Nwoko rather than Ned Nwoko Solicitors was indeed a genuine mistake.

41. As to the second limb, given everything I have said there could in my view be no doubt whatsoever as to the true identity of the party in question. That is absolutely plain from, as I have said, the notice triggering arbitration but also other documents as well. Mr Aderemi submitted that this was potentially a very important point. For example, he submitted that Ned Nwoko Solicitors could not as a matter of Nigerian law have undertaken the work in question; in particular, he submitted, that on the face of it the payments due under the Agreement are in the nature of a contingency fee and that is something that would not be permissible as a matter of Nigerian law. Thus, he submitted that this was or may have been recognised by the individual Mr Ned Nwoko and for that reason that is why he deliberately decided to maintain this claim not in the name of Ned Nwoko Solicitors, but in his own individual name.

42. I do not accept that submission. For the reasons that I have already stated, it seems to me plain that this was a genuine mistake as to which no party could have any

reasonable doubt as to the identity of the Claimant. Whether or not these fees are illegal under Nigerian law and what, if any, effect that may have on the substantive claim is not a matter for me. Ultimately, that is a matter for any arbitral tribunal that may be appointed or any other court or tribunal that may have to consider that point, but in my view it has no relevance whatsoever to the application presently before me.

43. I turn finally to the application itself. For the reasons I have already given it seems to me that this court has jurisdiction to appoint an arbitrator and to give directions as may be necessary. I did not understand Mr Aderemi to have any other point by way of objection to that, other than the points that I have already mentioned and dealt with. That being the case, it seems to me that I have the jurisdiction to appoint and indeed that I should appoint. There is no other reason, as I have said, why I should not do so. I accept, of course, that I am not bound to do so and ultimately it is a matter of my discretion whether or not to accede to the application. So much is plain from section 18 of the Arbitration Act 1996, but in principle it seems to me that I can and I should make the appointment and give necessary directions to enable this claim and this arbitration to proceed in the ordinary way, even bearing in mind the delays that have occurred.

44. As to the nature of those directions, in broad terms what has happened is that Mr Newman has identified a number of particular individuals who he would suggest are suitable candidates for appointment as arbitrator. Mr Aderemi accepts that any of those named individuals would be acceptable. He accepts that they are all eminent individuals who would be entirely suitable to the task of being a sole arbitrator. Mr Newman has said that of those individuals he thinks in principle Mr Hodge Malek QC would be willing to act. He is not sure as to the others, though he would say that if Mr Malek in fact is unable to act any of those other individuals would be entirely suitable and, as I say, Mr Aderemi does not suggest otherwise. On that basis, I would give directions that Mr Hodge Malek QC be appointed forthwith provided that if for any reason that proves impossible that one of the others be appointed in the order (if I might describe it that way) of preference set out in the document that Mr Newman showed me with liberty to apply.

45. I would therefore ask the parties to agree a draft order for my approval.