# The Nigerian Court of Appeal Upholds South African Choice of Court and Choice of Law Agreement

**Case Citation:**

**Sqimnga (Nig.) Ltd v. Systems Applications Products (Nig.) Ltd [2025] 2 NWLR 423 (Court of Appeal, Lagos Division, Nigeria)**

The dispute in this case arose between two Nigerian companies, Sqimnga Nigeria Ltd (the appellant) and Systems Applications Products Nigeria Ltd (the respondent). Both parties had entered into a Master Service Agreement in Nigeria, relating specifically to software solutions. A critical provision of this agreement stipulated that the laws of South Africa would govern any disputes, and further, that South African courts would possess exclusive jurisdiction to hear any matters arising from the agreement.

When a disagreement emerged between the parties, Sqimnga Nigeria Ltd initiated legal proceedings at the Lagos State High Court. The respondent immediately contested the jurisdiction of the Nigerian court, relying on the contractual clause mandating the use of South African law and courts.

At the High Court level, the court declined jurisdiction over the matter. This decision hinged on the court's determination that Sqimnga Nigeria Ltd had not provided sufficient evidence or compelling reasons why the Nigerian courts should assume jurisdiction contrary to the clearly stipulated jurisdiction clause in the Master Service Agreement.

Dissatisfied with the High Court's ruling, Sqimnga Nigeria Ltd appealed to the Court of Appeal. The appellant argued that the trial judge had misapplied the relevant legal principles by overlooking uncontroverted pleadings and witness statements. Additionally, the appellant contended that litigating the case in South Africa would impose unnecessary expenses and inconvenience upon the parties.

However, the Court of Appeal unanimously upheld the decision of the trial court, dismissing the appeal. In reaching this conclusion, the Court emphasized several key considerations. First, it reinforced the fundamental principle of contractual agreements through the maxims pacta sunt servanda (agreements must be kept) and consensu facit legem (consent makes law), asserting that freely made agreements, absent fraud or duress, must be upheld.

Secondly, the Court emphasized that the explicit foreign jurisdiction clause agreed upon by the parties could only be set aside if a compelling justification were provided. To evaluate whether such justification existed, the Court applied the Brandon tests derived from the English case of The Eleftheria (1969) 1 Lloyd's L. R. 237. These tests require the party challenging the jurisdictional clause to present clear evidence demonstrating "strong cause" for a local court to assume jurisdiction in deviation from the contractual agreement. The Court concluded that Sqimnga Nigeria Ltd failed to meet this evidentiary standard, as its arguments relied primarily on pleadings, unadopted witness statements, and legal submissions from counsel, none of which constituted adequate evidence to satisfy the Brandon tests.

The Court acknowledged the appellant's concern regarding the inconvenience and additional costs associated with litigating abroad but held that such factors alone, without further compelling justification, were insufficient to disregard the jurisdiction clause explicitly agreed upon by both parties.

Consequently, the appeal was dismissed, thereby reaffirming the position that Nigerian courts will generally respect and enforce foreign jurisdiction clauses and choice of law provisions in contracts unless the challenging party can conclusively demonstrate compelling reasons otherwise. Additionally, the appellant was ordered to pay the associated costs.

It is worth noting that South African courts may also be inaccessible where the parties cannot establish a sufficient connection to that forum. For example, in *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd* (1987) (4) SA 883 (A) at 894 A–B, Viljoen JA held that in a dispute between two foreign parties (*peregrini*), the mere submission of the defendant (a *peregrinus*) is not, by itself, sufficient to confer jurisdiction on the South African court.

In such a case, to which court should the party seeking to enforce its rights turn? Had counsel and the Nigerian courts benefited from comparative research on South African law, the outcome might have been different, potentially on grounds of public policy. The Nigerian Supreme Court's decision in *Sonnar (Nig.) Ltd v. Nordwind* (1987) 4 NWLR (Pt. 66) 520, 535, affirms that where a foreign court is inaccessible, a Nigerian court may decline to enforce a foreign jurisdiction clause on public policy grounds.

In conclusion, a private international law lawyer best serves their client by being well-versed in the comparative dimensions of the subject.