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## AN EXAMINATION OF ARBITRAL AWARDS AND THEIR ENFORCEMENT UNDER THE ARBITRATION AND MEDIATION ACT 2023

The chequered history of Arbitration practice in Nigeria as one of the principal modes of Alternative dispute resolution mechanisms has been an interesting one. Before colonialism, there existed, and still does exist, customary systems of Arbitration in Nigerian local communities, the local Chiefs, Obas, Igwes, etc of different Nigerian communities served as the arbiter in disputes arising between members of the community in their respective endeavors. Arbitration is a private dispute resolution method that usually results in an arbitral award. An award, once made, is binding on the parties to the arbitral proceedings. Thus, the Supreme Court in *Ras Pal Gazi Construction Co. Ltd v F.C.D.A*<sup>1</sup> held that “it is very clear and without any iota of doubt, that an arbitral award made by an Arbitrator to whom a voluntary submission was made by the parties to the arbitration, is binding between the parties<sup>2</sup>

The Arbitration and Conciliation Act<sup>3</sup> (Now Repealed) which was enacted in 1988 happens to be the first law that hitherto regulated Arbitration in Nigeria though with its shortcoming as it held sway for over 35 years before the enactment of the current Arbitration and Mediation Act 2023 (the “Act”), which is the extant law regulating both International and Domestic Arbitration practice in Nigeria. The Act was signed into law on the 26<sup>th</sup> of May 2023 by the immediate past President of the Federal Republic of Nigeria, Gen. Muhammadu Buhari GCFR after several attempts by the successive administration in Nigeria to enact same. The Act provides for a unified legal framework for the fair and efficient settlement of commercial disputes by Arbitration and Mediation, as well as the applicability of the convention on the recognition and enforcement of foreign arbitral awards to any award made in Nigeria or in any contracting state arising out of International commercial arbitration.

A commercial contract or agreement can only be subjected to Arbitration if the dispute resolution clause of the document clearly provides in any event of

<sup>1</sup> 2001) LPELR-SC.45/96

<sup>2</sup> <https://trustedadvisorslaw.com/enforcement-of-arbitral-awards-in-nigeria/> Accessed 21<sup>st</sup> July 2023

<sup>3</sup> Cap A18 Laws of the Federation of Nigeria 2004

dispute, such dispute will be resolved according to the Act and the arbitral award (the 'Award') will be awarded to the party or parties at the conclusion of the Arbitral proceedings.

This article examines arbitral awards, their enforcement, the role of Courts in setting aside arbitral awards, and the extent of the applicability of the New York Convention under the Arbitration and Mediation Act 2023.

**KEYWORDS:** Arbitration, Mediation, Commercial Dispute Resolution, Arbitral Awards.

### ARBITRAL AWARD

An arbitral award is the end result of an arbitral proceeding, just as final judgment is to litigation. The definition of Arbitration points to an arbitral award as the end goal thus "*it is a method of alternative dispute resolution where parties agree to submit their disputes to an impartial third party or panel for a binding decision*" The binding decision here refers to an Arbitral Award (AA). Arbitral awards in Nigeria play a critical role in the resolution of disputes outside of traditional court proceedings, the enforcement of arbitral awards in Nigeria is governed by the Act, which provides a legal framework for recognizing and enforcing these awards. This ensures that parties involved in arbitration can have confidence in the finality and enforceability of the awards they receive. The enforcement process in Nigeria involves applying to the court for recognition and enforcement, and once granted, the award carries the same weight as a valid and final court judgment. This promotes both domestic and international confidence in Nigeria's arbitration system, fostering a favorable environment for commercial and investment activities.

### ARBITRAL AWARD AND ITS ENFORCEMENT

The term "Award" refers to the decision or resolution reached by the arbitrators or an arbitral tribunal based on the adjudication of the issues as contained in the agreement between the parties. Thus, an arbitral award is a final and binding decision or judgment delivered by an arbitral tribunal or arbitrator to resolve a dispute between parties through arbitration. An arbitral award is typically issued after the parties have presented their arguments, evidence, and defenses during the arbitration proceedings. It provides a resolution to the dispute and carries the same weight as a court judgment, allowing for its enforcement in accordance with applicable laws and conventions.

An arbitral Award, like a court judgment, must not only be in writing, but it must also be signed with the date and place where it was made clearly recorded. It must carry the signature of all arbitrators if there is more than one arbitrator. The signature of a majority of the arbitrators will, however, suffice if the reason for the absence of any signature is stated on the award.

Arbitral awards in Nigeria are governed by the Act. To enforce an arbitral award in Nigeria, the party seeking enforcement must file an application with the



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appropriate court. The court will examine the award's validity and, if satisfied, issue an order for its enforcement. Nigeria, being a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, makes it possible to enforce foreign arbitral awards under the Act. As contained in the Act, parties are jointly and severally liable to pay the arbitrator such reasonable fees and expenses as are appropriate in the circumstances. The Act further recognizes the very essence of remuneration for an arbitral tribunal or an arbitration institution like ICC, Lagos multi-door court, etc., provided that the Arbitral tribunal or arbitration institution may refuse to deliver an award upon failure of the parties to make full payment of the fees and expenses<sup>4</sup>

### RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

It is important to note that recognition and enforcement are not one and the same thing. An award may be recognized without being enforced. But an award enforced is an award recognized. An award shall be enforced, where an application is made for its enforcement and such is recognized by the court. while an application for recognition simpliciter may be made in any State (country), depending on the circumstances necessitating the application, the application for recognition and enforcement is made in the state or states in which the party that lost in the arbitral proceeding has assets to meet the award. Subject to the provision of section 57 of the Act, an arbitral award shall, irrespective of the country or state in which it is made, be recognized as binding, and on an application in writing to the Court, be enforced by the Court, subject to the provisions of this section and section 58 of this Act.

A party who intends to rely on an award or applies for its enforcement shall make provision for the following requirements;

- (a) the original award or a certified true copy of it;
- (b) the original arbitration agreement or a certified true copy of it; and
- (c) where the award or arbitration agreement is not made in the English language, a certified translation of it into the English Language<sup>5</sup>, similarly, an award may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect<sup>6</sup>.

### LIMITATION PERIOD FOR THE ENFORCEMENT OF AN ARBITRAL AWARD

Previously, parties in Nigeria relied on the judicial precedent set by the Supreme Court in the case of City Engineering Nig. Ltd V Federal Housing Authority<sup>7</sup>, to determine the limitation period for enforcing an arbitral award. According to this ruling, the limitation period commenced from the date when the cause of action occurred, and an action for the enforcement of an arbitral award had to be brought within six (6) years.

However, the recent enactment of Section 34 of the Act addresses this issue directly by removing the previous six (6) year limit. This provision ensures that

International Chamber of Commerce



<sup>4</sup> S. 54  
<sup>5</sup> S. 57(2)  
<sup>6</sup> S. 57(3)  
<sup>7</sup> (SC 204/1992) 1997

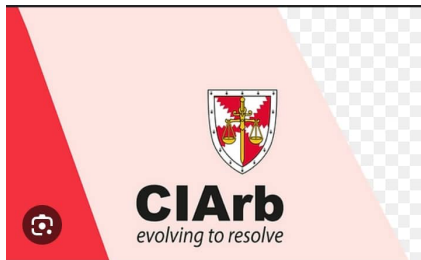
the time spent during the arbitration process is not considered in calculating the limitation period. As a result, the hardship previously experienced by parties to an arbitration dispute in Nigeria has been eliminated, providing them with a more favorable environment for enforcing their arbitral awards.

### **GROUNDINGS FOR SETTING ASIDE ARBITRAL AWARDS AND THE ROLE OF THE COURTS IN THE ANNULMENT PROCESS**

A party may request the court to refuse the recognition and enforcement of the award and the court may only refuse the award on certain two grounds as provided by the Act<sup>8</sup>

The Act states that irrespective of the country in which the Award was made, the court may only refuse the recognition or enforcement of an award if:

- (a) At the request of the party against whom it is invoked, the party furnishes the court with proof that:
  - I. a party to the arbitration agreement was under some incapacity,
  - II. The arbitration agreement is not valid under the law for instance Nigerian law, to which the parties have indicated should be applied or that the arbitration agreement is not valid under the law of the country where the award was made,
  - III. The parties against whom the award was invoked were not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or were otherwise not able to present their case
  - IV. The award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,
  - V. The award contains decisions on matters which are beyond the scope of the submission to arbitration, however, if the decisions on the matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.
  - VI. Another very pertinent point is where the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties,
  - VII. Where there is no agreement between the parties under sub-paragraph (VI) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the law of



<sup>8</sup> S.58(2)(a)(b)

the country where the arbitration took place or VIII. The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which or under the law of which, the award was made, or

(b) Where the court finds:

- I. That the subject matter of the dispute is otherwise not capable of settlement by arbitration under the law of Nigeria<sup>9</sup>
- II. That the award is against the public policy<sup>10</sup> of Nigeria.

Arbitration can however only be used in commercial disputes arising from an arbitration agreement. Therefore, disputes bordering on tax, criminal matters, matrimonial causes, rape, and labor-related issues amongst others are not subject to arbitration<sup>11</sup>

## APPLICATION OF THE NEW YORK CONVENTION ON FOREIGN ARBITRAL AWARDS UNDER THE ARBITRATION AND MEDIATION ACT 2023 NIGERIA

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention" or the "New York Convention", is one of the key instruments in international arbitration. The New York Convention applies to the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration<sup>12</sup>

The New York Convention is binding on state parties to the convention; this means countries who are signatories or who have ratified the convention as a potent legal instrument for resolving international arbitration disputes, and Nigeria is a state party to the New York Convention. Nigeria ratified the convention on March 17, 1970, and it came into force in Nigeria on the 15<sup>th</sup> of June, 1970<sup>13</sup>. As of January 2023, the convention has 172 state parties, which include 169 of the 193 United Nations member states plus the Cook Islands, the Holy See, and the State of Palestine. Twenty-four UN member states have not yet adopted the convention<sup>14</sup>

The Act<sup>15</sup> provides that where the recognition and enforcement of any award made in arbitration in a country other than Nigeria, the New York Convention on the Recognition and Enforcement of Foreign Awards<sup>16</sup> shall apply, provided that the-

- I. Country is a party to the New York Convention
- II. Differences arise out of a legal relationship whether contractual or not, considered commercial under the laws of Nigeria



<sup>9</sup> Criminal matters, tax issues and the likes are not subject to arbitration

<sup>10</sup> Public policy can be generally defined as a system of laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives

<sup>11</sup> <https://www.faa-law.com/arbitration-in-nigeria-overview-and-challenges/#:~:text=Arbitration%20can%20however%20only%20be,are%20not%20subject%20to%20arbitration> Accessed 25<sup>th</sup> July 2023

<sup>12</sup> <https://www.newyorkconvention.org/> Accessed 25<sup>th</sup> July 2023

<sup>13</sup> <https://trustedadvisorslaw.com/enforcement-of-arbitral-awards-in-nigeria/#:~:text=of%20June%2C%201970.-,Section,accord%20Nigerian%20honors%20similar%20recognition> Accessed 25<sup>th</sup> July 2023

<sup>14</sup> <https://www.google.com/search?q=how+many+countries+are+signatories+to+the+new+york+convention&oq=how+many+countries+are+signatories+to+the+New+York+convention&aqs=chrome.69j69l69j78sourceid=chrome&ie=UTF-8> Accessed July 25<sup>th</sup> 2023

<sup>15</sup> S. 60

<sup>16</sup> Second Schedule to the Act

### CONCLUSION:

It is not always necessary for individuals or corporate bodies to immediately turn to the court when faced with breaches of contracts or commercial transactions; instead, they should first consider alternative methods such as arbitration, mediation, and negotiation for potential resolution. It is important to note that the multi-Door Court House offers various avenues for dispute settlement and these options should be considered before instructing your lawyer to initiate legal proceedings in court. These alternative means of settlement are equally valid and can provide a satisfactory resolution, just like a court judgment. A lot of individuals and corporate bodies in Nigeria mistakenly believe that the primary or sole responsibility of lawyers is to only represent them in court for every legal matter. However, there are numerous ways in which your lawyer or lawyers can assist you without resorting to litigation. These methods not only facilitate easier and quicker settlements but also promote peace and unity amongst disputants. It is important to recognize that litigation is not always the best approach, and exploring alternative avenues through the expertise of your lawyer can yield beneficial outcomes while saving time and fostering harmonious resolutions.



The Nigerian legal system undergoes continuous evolution, leading to the enactment of legislation aimed at improving its efficiency and effectiveness, one significant recent development is the enactment of the Arbitration and Mediation Act 2023. This new law focuses on enhancing the arbitration process in Nigeria, providing a more structured and robust framework for the resolution of disputes outside of the traditional court system. The Arbitration and Mediation Act 2023 is designed to promote alternative dispute resolution mechanisms and encourage parties to opt for arbitration and mediation as a preferred method of settling commercial disputes which will lead to an arbitral Award that will be enforced.

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