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# Appraisal of Challenges Confronting Recognition and Enforcement of Arbitral Awards in Nigeria.

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## ABSTRACT

Arbitration is an alternative dispute resolution method often commenced by express agreement of parties in a dispute. Arbitration has become an increasingly preferred method of settling commercial disputes and thought to have advantages over the traditional litigation. However, a problem could emerge where one party to the arbitration is unwilling to comply with the terms of the award. In this case a successful party is left with no option than to use the enforcement machinery of the courts. This paper adopts the doctrinal approach in discussing the issues with the procedure provided for in the various rules of courts for recognition and enforcement of arbitral awards. It also identifies the challenges inherent in the recognition and enforcement of arbitral awards. The paper identifies other enforcement machineries outside the courts and concludes that arbitration, if not properly managed may ultimately cause delay in enforcement and become a time wasting method therefore defeating the very essence of opting for arbitration instead of litigation.

Keywords: Challenges, Recognition, Enforcement, Arbitral Award

## INTRODUCTION

The *Black's Law Dictionary*<sup>[1]</sup> defines arbitration as a process of disputes resolution in which neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. It is a form of an Alternative Dispute Resolution (ADR) process whereby instead of parties submitting their disputes to the regular courts for adjudication; parties by mutual agreement excludes the court's jurisdiction from litigating the dispute. Instead parties present their disputes to a neutral arbiter chosen by the parties to deliver a binding judgment. The judgment handed down by arbitration is called an "award". An award is binding between the parties and as such parties are under an obligation to abide and carry out the tribunal's terms of award, <sup>[2]</sup>. A situation may arise where a party to arbitration is unwilling to voluntarily comply with an award. When this occurs the issue of enforcement of the award by the successful party becomes important. Arbitration unlike regular courts does not have the machinery to enforce her judgments. It has to revert to the machinery of regular courts to carry out the enforcement in the absence of a voluntary compliance with the orders of the award. The enabling Act governing arbitration in Nigeria is the Arbitration and Conciliation Act (ACA) <sup>[3]</sup>. The Act makes provision urging courts to recognize and enforce arbitral awards in Nigeria <sup>[4]</sup>. Section 31 (1) of ACA provides:

*'An Arbitral award shall be recognized as binding and subject to S. 32 of this Act, shall, upon application in writing to the court, be enforced by the court'.*

The above section operates in respect of awards from a domestic arbitration. However, sometimes the award to be enforced is issued outside the territory of Nigeria, nevertheless, the ACA<sup>[5]</sup> has a similar provision urging courts to recognize and enforce international arbitral awards upon application to the court, and irrespective of the country that issues the award. In practice, as always the case, the unsuccessful party often challenges the award in court. The

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<sup>1</sup>Garner Bryan, Black H.C (1990) *Black's Law Dictionary* 6th Edition St. Paul, MN Thomson Reuters.

<sup>2</sup> Obi Obembe v. Wemabod Estate Ltd. (1977) All NLR 130 at 139

<sup>3</sup> Cap A18, LFN 2004

<sup>4</sup> S. 31 (1)

<sup>5</sup> Section 51 of ACA Cap A18, LFN 2004.

unsuccessful party may have grounds upon which he prays the court to set aside the award and thus avoid compliance. In both cases, parties will revert to courts which they have earlier avoided to litigate the dispute. The focus of this paper is therefore on the challenges the successful party will be confronted with beginning from the appropriate procedure if he chooses to approach the court to seek assistance for the recognition and enforcement of the award. This paper shall appraise the enforcement of arbitral awards in Nigeria from a domestic and international arbitral award perspective. Courts have rules which are meant to be followed for anyone who approaches it, therefore this paper shall as well examine the provisions of relevant rules of courts, as they deal with arbitration and the procedure for seeking recognition and enforcement.

### NIGERIA'S COURT SYSTEM

Nigeria operates a Federal system of government structure, [6] what this means is that power is devolved between a two tier structures which in this case is the Central government which is called the federal government and the components states. The two tiers exercise autonomous powers in their sphere of jurisdiction. This was reemphasized by the court in the case of *A.G. Lagos v A.G. Federation*, [7] where the court held that the state was not subject to the Federal government and the Federal government does not supervise the States. The Constitution is the main instrument that allocates this power. Power to legislate is allocated between the central government in matters provided for in the exclusive list [8] which the Federal government has exclusivity in legislation [9] and the concurrent list [10] for which both the states and the central government can legislate on [11]. The same constitution establishes judicial powers and vests them in the courts. [12], it recognizes the powers of the federal government and the states to establish courts in line with the courts recognized by the constitution in section 6(5). Importantly, the High Court is separately owned by both the federal and states government. Yet the States High Courts and the Federal High Courts are of the same status. The ACA recognizes the High Courts as the court seized with the jurisdiction to recognize and enforce Arbitral awards. The High Court is defined to include the federal, state and the federal capital territory courts. [13] Each of these High Courts has the power to make rules regarding her own practice and procedure. [14], Part of these Rules will be examined as they provide for the procedure for the recognition and enforcement of Awards.

### ENFORCEMENT OF DOMESTIC ARBITRAL AWARDS

The Arbitration and Conciliation Act does not define what a domestic arbitration is, it only defines the elements that constitute international commercial arbitration. We can thus safely say that domestic commercial arbitration is arbitration that is not international as defined by the provision of Section 57 of the ACA. This will therefore mean that domestic arbitration is first and foremost that which is conducted within the territorial domain of Nigeria and secondly that which parties do not expressly state and classify that it is 'international arbitration'. The recognition and enforcement for this kind of domestic award is provided for in section 31 of ACA. The ACA recognises as binding such an arbitral award if upon an application to court in writing it is accompanied by the original or certified true copies of the award and the arbitration agreement which gave rise to the arbitration. Such an award may be enforced as a court judgement with the leave of the court. For purposes of amplification, Section 31 [15] provides:

*(1) An arbitral award shall be recognised as binding and subject to this section 32 of this Act, shall, upon application in writing to the court, be enforced by the court.*

*(2) The party relying on an award or applying for its enforcement shall supply-*

*(a) the duly authenticated original award or duly certified copy thereof;*

*(b) the original arbitration agreement or a duly certified copy thereof.*

*(3) An award may, by leave of the court or a judge, be enforced in the same manner as a judgement or order to the same effect.*

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<sup>6</sup>S. 2 (2) 1999 Nigerian Constitution as amended.

<sup>7</sup> (2003)12 NWLR p 1

<sup>8</sup> Part 1 of the second schedule to the 1999 Constitution

<sup>9</sup> S. 4(2) of the 1999 Constitution

<sup>10</sup> Part 11 to the second schedule of the 1999 Constitution

<sup>11</sup> The states legislation must however give way where it conflicts with the federal legislation.

<sup>12</sup> Section 6(1) and (2).

<sup>13</sup> S. 57 ACA which is the interpretation section defines a court to " mean the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court;

<sup>14</sup> Section 254, 259, and 274 of the 1999 Constitution of the Feral republic of Nigeria as amended all give the heads of the Federal High Court, National Industrial Court and the State High Courts powers to make rules to regulate the procedure and practice in the courts.

<sup>15</sup> "Ibid"

By this provision, the requirement for enforcement by the court is to apply in writing to the court seeking leave of the court for the enforcement of the award. Besides the mandatory exhibits which the application must attach; which are the award and the original arbitration agreement, the ACA does not specify the mode of this application. So the question that comes to mind is, how will the application be made to the court? To this; Dike [16] posits that *‘there being no equivalent local rules by court on the subject, the application for enforcement may be made by originating summons under order 73 rule 10 of the Rules of Supreme Court of England which is applicable by virtue of S 12 of the High Court Laws of Lagos State’ and the equivalent laws in other states.* Orojo et al [17] are also of the opinion that an application for enforcement in each case shall be made *ex-parte* or by originating summons. This paper will appraise what some of the rules of courts have provided for in respect of the procedure. An appraisal of the Lagos State High Court Rules of 2004 and that of the 2012 [18] however provide that *“Every motion on notice to set aside, remit or enforce an arbitral award shall state in general terms the grounds of the application and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion”*. It will thus appear that the procedure for enforcing an arbitral award in Lagos is by motion on notice accompanied with the duly authenticated original award or a duly certified copy and the original arbitration agreement or a duly certified copy thereof. The question that comes to mind is; is the Lagos High Court authorizing motion on notice as a means of commencing the action that seeks recognition and enforcement of the award? Aina has argued in this situation that a motion on notice is not a very regular method of commencing an action even though it represents a method of bringing up an interlocutory issue before the court in an already existing action that is pending in the court [19]. Section 31 (3) also uses the word ‘Judge’ and ‘Court’ disjunctively. Implying that recognition can be approved by the Court or a Judge. For emphasis it provides; *‘an award may, by leave of the court or a judge, be enforced in the same manner as a judgement or order to the same effect’*. Could the Legislators have intended that the Judge when not sitting as a Court can administratively recognize and enforce awards by the deliberate mention of the word court and judge separately in section 31(3)? It is a known fact in Nigeria that the Judge cannot issue orders when not sitting as a court and therefore the word judge as mentioned separately from court is improper and misleading and the legislators should have stuck with the word “Court”. In England a domestic award may be enforced in two ways, the first is by obtaining permission or leave of the court to enforce the award, in the same manner as a judgment or order of the court to the same effect.[20] The second method of enforcement in England is to bring an action on the award and to seek a judgment from the court for the same relief as is granted by the award. This is akin to re-litigating the reliefs in the award. Any party to an arbitration agreement may request the court to refuse to recognize and enforce an award.[21] If this is the case, it is only appropriate that such application to recognize and enforce the award which may necessitate the objection must be on notice to afford the other party, the opportunity to object to the recognition. The simple logic to this assumption is that, an *ex-parte* application will not provide an opportunity for the other party named in the suit to oppose or object to its recognition and enforcement. Section 32 which provides for this objection to recognition and enforcement of award does not however state the grounds for such refusal of domestic awards. A close perusal of the Act however shows that under the section for recognition and enforcement of foreign arbitral awards, [22], certain grounds upon which objection can be taken to the recognition and enforcement of foreign awards are listed there. It is my opinion that the court can use these grounds in domestic awards where they are applicable.

#### INTERNATIONAL ARBITRATION AWARD

Under the ACA, arbitration is said to be international if any or all of the following situations identified below are applicable to the arbitration. That is if;

- (a) *the parties to an arbitration agreement have, at the time of the conclusion of the agreement, their places of business in different countries; or*
- (b) *one of the following places is situated outside the country in which the parties have their places of business-*
  - (i) *the place of arbitration if such place is determined in, or pursuant to the arbitration agreement,*
  - (ii) *any place where a substantial part of the obligation of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or*

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<sup>16</sup> E. Dike “Arbitration Practice and Procedure in the settlement of domestic commercial disputes in Nigeria.(2004) *Negotiation And Dispute Resolution Journal* vol1.1P.41

<sup>17</sup>J.O Orojo& M.A.Ajomo *Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos: Mbeyi & Associate .1999) P. 299

<sup>18</sup> Order 39 R 4

<sup>19</sup> Kunle Aina 2014. Procedure for the enforcement of domestic arbitral awards in Nigeria. *Civil Procedure Review*, volume 5;2: 22-44 @p.31.

<sup>20</sup>Arbitration Act 1996.

<sup>21</sup> S. 32 ACA

<sup>22</sup> S. 52 (2) of ACA

(c) *the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country; or*  
(d) *the parties, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as an international arbitration.*<sup>[23]</sup>.

In summary, the determinants of a classification of arbitration as international is if any or all of the listed situations is applicable to the arbitration. Thus, when the parties have businesses in different countries, and or, if the place of arbitration by parties agreement is determined as such, or, if the parties in their arbitration agreement expressly say the arbitration is an international arbitration and if they expressly state that the subject matter of the arbitration relates to more than one country. All or any of these situations would qualify an arbitration as an international arbitration.

#### RECOGNITION AND ENFORCEMENT OF INTERNATIONAL AWARD

The ACA has provisions urging the courts in Nigeria to recognise arbitral awards that are international. The courts are to recognize such awards when an application is made to it with the original or certified copies of the award and the arbitration agreement attached and a duly certified translation of the award to English if it was not originally made in English language. The Court embolden by Section. 51(1) of the ACA can recognize an international award and give efficacy to its enforcement. Similarly, section 54 of ACA which deals with the application of the convention on the recognition and enforcement of foreign Arbitral awards to which Nigeria is a signatory provides for reciprocity of treatment for foreign awards if they are contractual and there is reciprocity of treatment between the countries<sup>[24]</sup>. The effect of the above section is that awards made in a country not a party to the convention or giving reciprocal treatment to Nigeria awards cannot be enforced in Nigeria under the convention<sup>[25]</sup>.

#### GROUND FOR REFUSAL AND RECOGNITION OF ENFORCEMENT OF AWARD

Any party to an arbitration agreement may request the court to refuse recognition or enforcement of the award upon certain grounds <sup>[26]</sup>. The Court where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement thereof is brought may irrespective of the country in which the award is made refuse to recognize or enforce any award if the party against whom it is invoked furnishes the court with the following evidence :<sup>[27]</sup>

That a party to the arbitration agreement was under some incapacity

That the arbitration agreement was not valid.

That there was absence of proper notice of appointment of arbitrators or of the proceedings.

That the award dealt with disputes not contemplated by the parties

That the award is beyond the jurisdiction of the tribunal

That the composition of arbitral tribunal or procedure is contrary to agreement of the parties.

Composition of the tribunal or procedure contrary to law of the country where the arbitration took place

That the award is not binding or has been set aside or suspended.

That the subject matter of the dispute is not arbitrable

That the recognition or enforcement of the award is against public policy of Nigeria.

In *Sundersons ltd & Anor v Cruiser Shipping Pty Ltd & Anor*<sup>[28]</sup> the above statutory provisions was given judicial pronouncement when the Court of Appeal held that '*any of the parties to an arbitration agreement may request the court to refuse recognition, or enforcement of the award; if the party against whom it is invoked furnishing the court proof that the arbitration agreement is not valid under the Law 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*'

The New York Convention of 1958 in Article 5 has similar provisions with the ACA. It directs the refusal of recognition of awards if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the party to the agreement were under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it. Other conditions as listed by the New York Convention are:

(a) *The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case or*

(b) *The award deals with a difference not Contemplated by or not falling within the terms Of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that. If the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or*

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<sup>23</sup> S. 57(2) of ACA

<sup>24</sup> Foreign Judgments (Reciprocal Enforcement) Act

<sup>25</sup> J.O Orojo & M.A. Ajomo "*op cit*"

<sup>26</sup> S. 52(1) ACA

<sup>27</sup> S.52 (2) ACA

<sup>28</sup> (2014) LPELR-22561(CA)

- (c) *The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or*  
(d) *The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.*

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: the subject matter of the dispute is not capable of settlement by arbitration under the law of that country; or that the recognition or enforcement of the award would be contrary to the public policy of that country. The grounds for refusal of recognition and enforcement of an award as can be seen from the above are so many that an unwilling party will always find some grounds to challenge an award in law, especially when it is an International Award.

#### ISSUES IN ENFORCEMENT OF ARBITRAL AWARDS

Some issues have been distilled from the whole process of enforcement of arbitral awards and have been formulated into questions and discussed below.

#### WHAT IS THE PROCEDURE FOR APPLICATION FOR ENFORCEMENT OF AN ARBITRAL AWARD IN NIGERIAN COURTS?

One issue that confronts a successful party in an arbitral award who seeks to enforce same is the issue of which procedure should be adopted to approach the court. In other words, what nature of application should be used to approach the court? To effectively answer this question, there is need to consult the various provisions of the High Court Rules of some selected courts in Nigeria as well as some decided cases on this issue. The national law on arbitration i.e. The Arbitration and Conciliation Act is silent on the means of such an application. Even though it recognises that an application is to be made to court to enforce the award. The Lagos State High Court Rules 2012 [29], provides that such application shall be by motion on notice [30]. The National Industrial Court [31]. Rules 2017 [32], also provides for Arbitration. In Order 29 of the Rules, the Court may refer an action before it to an Arbitrator. An award from such a reference is recognised by the court unless set aside. The application is to be made by a party seeking the order of court by filing the award at the court and the court may make any competent order in the absence of parties. The rules did not make any detailed provision for how the filing should be made. It can also be noted that the Order [33] only pertains to awards that were referred by the Court. No other provisions in the Rules provides for how other awards that were not referred by the courts to arbitration may be recognised and enforced by the Court. Rather, order 50 of the rules provides for how appeals from arbitral awards can be made to the court. It is my considered opinion that the method already provided by the rules can be adopted for the non-referral awards also. The Federal High Court Rules 2009 [34] provides that an application to enforce an arbitral award in the same manner as a judgment or order may be made *ex-parte*, but the court hearing the application may order it to be made on notice. This means such applicants seeking recognition and enforcement of awards at the Federal High Courts must first bring their applications by motion *ex-parte*. The attachments to the motion which must necessarily have an affidavit shall include the original arbitration agreement and the award or their certified copies [35]. The question may then be asked, if the court proceeds to grant the application *ex-parte*, how will the other party have the opportunity to challenge its recognition and enforcement by raising all the conditions listed by law for the refusal of recognition? In England the Application for the court's permission is usually made without notice to the other party [36] by an arbitration claim form supported by a witness statement to which the arbitration agreement and the award (with an English translation if necessary) are exhibited [37].

In the Nigerian case of *KSO & Allied Products Ltd v. Kofa Trading Co. Ltd* [38]. The Supreme Court confirmed that an originating notice of motion can be used to enforce an award. It is my humble view that the general position stated

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<sup>29</sup> Order 39 R 4. Lagos State is one of the leading states in Judicial reforms in Nigeria. The state owns a court by virtue of the Constitutional recognition for states to own and manage High Courts.

<sup>30</sup> Order 39 (4) (1)

<sup>31</sup> A Nigerian superior court of record with exclusive jurisdiction in civil causes and matters relating to and connected with any labour, employment, trade unions, industrial relations and matters of workplace.

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<sup>32</sup>National Industrial Court of Nigeria (Civil Procedure) Rules, 2017

<sup>33</sup> Order 29 of NIC Rules 2017

<sup>34</sup> Order 52 R 4

<sup>35</sup> *ibid*

<sup>36</sup>*Walker vs Rowe* (2000)1 *loyd's Rep.*116 at 19.

<sup>37</sup>David S.,Judith G., Mathew G.*Russel on Arbitration put the title in italic* 23<sup>rd</sup> ed. (London; Sweet & Maxwell, 2007) p.451

<sup>38</sup> (1996)3 *NWLR*244 at P.254

by Orojo *et al*[39] that an application to enforce judgement can be made by *ex-parte* application is with all due respect restricted to the Federal High Court which is the only court permissive of this kind of procedure. In *Imani & Sons Ltd v Bill Construction Co ltd* [40] the Court of Appeal held that it should be by motion on notice accompanied by the award and the agreement to arbitrate. In another Nigerian case of *City Engineering Nig. Ltd vs. Federal Housing Authority*[41] an action to enforce an arbitral award in the Lagos High Court was commenced by a motion on notice. The Court of Appeal in *Imani & Sons Ltd. v. Bill Construction Co. Ltd.* [42], interpreted Section 31(1) of the ACA and held that a careful perusal of the same, reveals that it does not require that the respondent be put on notice. However, since the procedure is such that it may culminate in the granting of an order which may affect the respondent's proprietary interest, it must therefore be construed that a party against whom the order is sought ought to be put on notice [43].

#### THE ISSUE OF LIMITATION PERIOD IN THE ENFORCEMENT OF ARBITRAL AWARDS

Another issue formulated for consideration in attempting to enforce an arbitral award is the issue of limitation period. Do arbitral awards have limitation periods for its enforcement? When does time begin to run in determining the issue of enforcement of an award? Issues of limitation period in the enforcement of awards is a matter of law and in this case a function of statutory law. The ACA does not have a provision for a limitation period for the recognition and enforcement of an award. [44]. However, it has provision for a limitation period provision for an attempt to set aside an award which the Act puts at three months. [45]. Other statutory Acts do however have provisions touching on the limitation period for enforcement of Arbitral Awards. In Nigeria as already noted the country practices a federal system that distributes powers along the component units for legislations. The power to legislate on limitation periods for actions in courts is vested in the various states, this means various versions of limitation laws exist according to the number of states. What this implies also is that the state where the relevant court for recognizing and enforcing the award is domiciled will have the operative limitation law regulate such enforcement. In this work the Lagos State Limitation Law [46], is adopted for discussion. Section 8 of the Lagos limitation Law provides;

*The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued:*

(a) actions founded on simple contract;

(b) actions founded on quasi contract;

(c) actions to enforce a recognisance;

(d) actions to enforce an arbitration award, where the arbitration agreement is not under seal or where the arbitration is under any enactment other than the Arbitration and Conciliation Act;

The clear interpretation of this section will mean that foreign awards only have a limitation period of six years if a Lagos Courts is sought in the recognition and enforcement of the award. This provision will also be applicable to awards handed down in Nigeria which were not conducted under the ACA. Customary Awards will be considered for this purpose as awards outside the purview of the ACA.

On the question of when times begins to run for the enforcement of an award, this was the subject of determination before the Supreme Court in the case of *City Engineering Ltd vs. FHA* [47]. The issue before the Supreme Court was the determination of the question; 'when does the statutory limitation period start to run for the purposes of the enforcement of an arbitration award?' The Lagos State limitation law was in focus here [48]. The facts of the case are that the parties entered into an agreement to build housing units at Festac Town, Badagry Road, Lagos. The agreement contained a provision to submit all matters in dispute in connection with the execution of the contract to arbitration. A dispute arose in the course of the execution of the contract which resulted in the contract being terminated on 12<sup>th</sup> December 1980. The matter was referred to arbitration and proceedings commenced on 11<sup>th</sup> December 1981 and ended in November 1985 when the Arbitrator made his award in the sum of N3, 772, 118.75 in favour of *City Engineering*. The *City Engineering* sought to enforce the award in the High Court sometime in 1988 and the trial judge held that by virtue of section 6 of the Limitation Law of Lagos state, the action for enforcement had

<sup>39</sup> J.O Orojo & M.A. Ajomo. *op cit* p. 299

<sup>40</sup> (1999) NWLR 12 (pt 630) 253 at 263

<sup>41</sup> (1997) 9 NWLR (pt.520) 224

<sup>42</sup> [1999] 12 NWLR (Pt. 630) 254 at 263

<sup>43</sup> David Tarh-Akong Eyongndi. 2021 Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: *Mizan Law Review*, Vol. 15, No.1.P116

<sup>44</sup> Adebayo Adaralegbe 2006 Limitation Period for the Enforcement of Arbitral Awards in Nigeria. *Arbitration International*, Volume 22 : 4. P. 619

<sup>45</sup> Section 29(1) of ACA.

<sup>46</sup> Cap. L.67, Laws of Lagos State of Nigeria, 2003.

<sup>47</sup> *supra*

<sup>48</sup> S.8(1)(d) of Lagos State Limitation Law.

become statute barred, having been brought in excess of 6 (six) years after 12<sup>th</sup> December 1980 when the cause of action arose. Dissatisfied with the judgements of the High Court and Court of Appeal, *City Engineering* appealed all the way to the Supreme Court. The Supreme Court held that:

*“the limitation period for the purpose of an action subject of an arbitration agreement begins to run from the date of the accrual of the cause of action in the arbitration agreement and not from the date of the making of the arbitral award.”*[49]

The judgement quoted above needs no further adumbration. The Judgement was decided based on the limitation Law of Lagos State and specifically section 8 of the law. The section provides that... *actions shall not be brought after the expiration of six years from the date on which the cause of action accrued* ... The law in this instance already creates the limitation to commence beginning from the cause of action. Applying the law strictly as was done in this instance, the Courts were not wrong in coming to that conclusion, after all, courts are courts of law and follow the law strictly. In another different reasoning however, it could be argued that the issue before the court was for recognition and enforcement of ‘an award’ and not an arbitration agreement or a dispute. The dispute in this instance had already undergone an arbitral process and decision handed down in the form of an award, it can then be argued that the cause of action accrued from when the unsuccessful party failed to comply with the award. If this is the reasoning, then an award is effective from the date it is handed down and as such time should begin to run from that date. Enforcing an award is different from enforcing an obligation under an agreement. While it is the need to enforce an obligation under an agreement that drives a party to institute an arbitration, it is the award after the arbitration that a party seeks enforcement. If the two issues are distilled and properly understood, with all due respect to the learned Justices in the *City Engineering Ltd* case, the reasoning could have been different if this argument was put forward and considered.

However, those who focus on the justice inherent in any decision cannot cease to query the judgement. With all due respect to the learned Justices, this judgement was harsh considering the time and effort it took to arbitrate this dispute. Even though the Lagos State Limitation Law in section 63 invalidated any agreement of parties that seek to make time to cease to run from the date of accrual of the dispute, the learned Justices should have with all due respect used this opportunity to examine the provisions of that law with a view to create substantial justice out of the situation. How was the successful party to the arbitration to know that the respondent will be unwilling to comply with the terms of the arbitration award? The paramount consideration should have been whether the arbitration which is a dispute resolution process was commenced within the allowable time and if yes, that should have been capable of making time to cease for the purpose of computing the limitation period. Sadly and frustrating as the Judgement of the Supreme Court might be it remains the law. Sadly the position adopted by the Supreme Court in *City Engineering Ltd* case is the same with the position in England. In England the limitation period for an action on the award is six years [50] and time runs from the date of the breach of the arbitration agreement not from the date of the award [51].

The various High Court rules do not provide limitation period for the enforcement of awards but some have provisions for limitation periods for an aggrieved party to apply to court to set aside awards and remitting awards for re-adjudication. The Abuja High Court rules for instance gives such a party only Ninety days to seek to set aside the award. [52], A court or Judge in chambers may by order extend the time either before or after it has elapsed [53]. It is to be noted that this limitation is not applicable to recognition and enforcement but specifically dealing with setting aside of an award. To effectively determine the applicable laws on limitation of enforceability of awards, recourse should be made to the various limitation laws of the states where the application is made.

#### **ENFORCEMENT OF AWARDS UNDER THE LAGOS AND CROSS RIVER STATES MULTI DOOR COURTHOUSE LAWS**

The Lagos State Multi Door Courthouse is a court connected ADR institution that gives parties different doors to resolve their disputes [54], It is a formal integration of ADR into the court system. The doors open for dispute resolution include Negotiation, Mediation, Early Neutral Evaluation, Arbitration etc. How are resolutions and

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<sup>49</sup> *City Eng Ltd v FHA* (supra) p.226

<sup>50</sup>S. 7 of limitation Act 1980.

<sup>51</sup>*Agromet moto import ltd vs Maulden Engineering Co Ltd* (1985) 1 WLR 762. Italicise parties names and capitalise the initial words

<sup>52</sup> Order 20 R 5 Abuja High Court Rules 2004

<sup>53</sup> Ibid.

<sup>54</sup>*Alero Akerodulu* (2011) Court Connected Alternative Dispute Resolution in Nigeria. *University of Ibadan Law Journal*. Vol1 No.1. P.25

awards from this multi door courthouse treated? The answer lies in the law setting it up [55] specifically section 19 [56] of the law provides:

*Upon the completion of a mediation proceeding, Settlement Agreements which are duly signed by the parties shall be enforceable as a contract between the parties; and when such agreements are further endorsed by the Referral Judge (court-referred matters) or the ADR Judge (Walk-in & Direct Intervention matters) or any other Judge as directed by the Chief Judge, it shall be deemed to be enforceable under Section 11 of the Sherriff and Civil Process Act.*

For settlement agreements, all that is required for enforcement under this law is the endorsement of the agreement by an ADR Judge. An ADR judge under the law is a High Court Judge that has been appointed by the Chief Judge of Lagos State to oversee all matters that are brought before the Multi Door Courthouse. A perusal of subsection 1 of the above section will reveal that enforcement by endorsement by an ADR judge does not extend to arbitral awards. So how does the law provide for enforcement of awards made by the courthouse? The answer lies in the sub section 2 which provides:

*(2) Arbitration Awards shall be enforced as provided for in the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria 2004 or such other amended legislation.*

Thus, enforcement of awards by the courthouse is made pursuant to the ACA. The Cross River Multi-Door Court House has similar provisions with that of Lagos [57]. The only inference that is drawn therefrom is that the issues earlier discussed in this paper become operational when it is sought to enforce arbitral awards from the Multi-Door Courthouse.

### **ENFORCEMENT OF AWARDS UNDER THE INTERNATIONAL CENTER FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)**

Nigeria ratified the ICSID Convention on 23 August 1965. In pursuance of its commitment to domesticate the ICSID Convention, the convention was re-enacted as a local legislation. Enforcement of awards from the International Center for settlements of Investment Disputes in Nigeria is regulated by a Federal law. The International Center for Settlement of Investment Disputes (Enforcement of Awards) Act [58] has provisions regulating enforcement of award from this Center. If the copy of the award is duly certified by Secretary General of the of the Center and filed in the Nigerian Supreme Court by a party for enforcement, the award so filed shall have the effect as a final judgement of the Supreme Court and the award shall be enforceable accordingly. The Act provides:

*S.1(1)[59] where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Center for settlement of Investment disputes, a copy of the award duly certified by the secretary-general of the center aforesaid, if filed in the Supreme Court by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were an award contained in a final judgement of the Supreme Court, and the award shall be enforceable accordingly[60].*

*(2) The chief justice of Nigeria may make rules of court or may adapt any rule of court necessary to give effect to this section.*

The summary of this provision is to the effect that awards made by the Center and filed at the Supreme Court will have the same status of the judgement of the Supreme Court. It has been argued that enforcement of actions by this method is not caught up by the limitation law, the reason for this position is that the Supreme Court is an appellate Court and secondly that the requirement is just by merely filing the award and not by instituting an action through the means of a civil action in court [61] The Chief Justice of Nigeria is to make rules that will further give effect beyond this requirement of filing simpliciter.

### **SUING UPON THE ACTION ON THE AWARD**

The purport of the ACA is to avoid unnecessary intervention of courts in the arbitral process from beginning to end [62]. It assumes that parties to an arbitration agreement would voluntarily comply with the terms of their contracts and where there is an award, voluntarily comply with the dictates of the award.[63] However, sometimes

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<sup>55</sup>Lagos Multi-door Courthouse Law no21 of 2007

<sup>56</sup>ibid

<sup>57</sup>S. 21 of the Cross River State Multi Door Courthouse Law 2014.

<sup>58</sup>Cap 189 L.F.N 1990

<sup>59</sup>S.1(1) of cap 189 LFN 1990

<sup>60</sup>S.1 (2) of cap 189 LFN 1990.

<sup>61</sup>Adebayo Adaralegbe 2006. Limitation Period for the Enforcement of Arbitral Awards in Nigeria. *Arbitration International*, Volume 22 : 4. P. 619

<sup>62</sup>Section 34 of ACA.

<sup>63</sup>Joseph Mbadugha (2017), "Section 34 of the Arbitration and Conciliation Act: Issues Arising", 8(1) The Gravitas Review of Business and Property Law 88-100; David T. Eyoungndi, Akin O. Oluwadayisi (2018), "An Appraisal of Section 34 of Arbitration and Conciliation Act and the Role of the Court in Arbitral Proceedings in



a party will not comply and as previously stated there would emerge the issue of enforcement. While some procedures for such enforcement have been indicated by the ACA, it must be clearly noted that not all arbitrations are conducted under the ACA. The Act recognises this when it provides that the ACA will not affect any arbitration which such disputes are submitted to arbitration by virtue of that law [64]. One of such kinds of varied arbitration is the customary arbitration. Where there is no voluntary compliance to a customary award, there is need for enforcement by the machinery of the courts. Suing upon the award is one option of enforcement of these kinds of award. This entails initiating an action in court, pleading the facts of the award and praying for an order of enforcement. In *Eke v Okwaranya* [65] the Supreme Court laid some conditions upon which the party adopting this procedure must plead and prove. The claimant must plead and prove the following:

- (a) *That there had been a voluntary submission of the matter in dispute to an arbitration of one or more persons.*
- (b) *That it was agreed by the parties either expressly or by implication that the decision of the arbitrators would be accepted as final and binding.*
- (c) *That the said arbitration was in accordance with the custom of the parties or of their trade or business.*
- (d) *That the arbitrators reached a decision and published their award.*
- (e) *That the decision or award was accepted at the time it was made* [66]

The Procedure for seeking enforcement for this kind of award is to sue upon the action. On what is suing upon the award, Ibe summarises the procedure as such;

*“For this reason, with regard to common law and customary law arbitration, the court embarks on full scale trial of the case, reopening issues canvassed by parties and considered by the arbitrator, who may be called upon as a witness in the court proceedings and cross-examined on facts pleaded. Indeed, it is cumbersome and somehow leads to duplication of efforts”* [67]

In *Toepfer Inc. of New York v. Edokpolor (trading as John Edokpolor & Sons)* [68] the Nigerian Supreme Court also held that a foreign arbitral award could also be enforced in Nigeria by suing upon the award, even where there is no reciprocal treatment in the country where the award was obtained. To succeed in the action, the plaintiff must prove the existence of the arbitration agreement, the proper conduct of the arbitration in accordance with the agreement, and the validity of the award. The defendant may, however, resist the enforcement of the award by challenging the award, the conduct of the arbitration or the jurisdiction of the arbitral tribunal. However, the defendant cannot rely on misconduct or impartiality on the part of the arbitral tribunal, for those points can only be taken on an application to set aside the award [69]. In England a successful party to an award can sue upon the award and then seek a judgement from the court for the relief as is granted by the award [70]. The English Act specifically provides that nothing in section 66 shall affect the recognition and enforcement of an award by “an action on the award”. This procedure can turn out to be time consuming as it connotes re-litigating on the award.

### CONCLUSION

Even though Arbitration is a more preferred means of settling commercial disputes in modern times, it can also have its delay and bottlenecks in the adjudication process and most especially at the enforcement, where it is pushed by circumstances to this stage. When an award is finally handed down and there is no voluntary compliance by the unsuccessful party: recourse is had to the court to help enforce compliance. A successful enforcement will require a deep understanding of the issues raised and discussed in this paper. With an understanding of these issues a lawyer will be able to have the assistance of Nigerian courts in enforcing both domestic and international awards in favour of his client.

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Nigeria”, 5 Rivers State University Journal of Jurisprudence and International Law, 102-118.

<sup>64</sup> Section 35 of ACA.

<sup>65</sup> (2001) 4 SCNJ 300 at 323-324

<sup>66</sup> C. A. Obiozor, *The Machinery for Enforcement of Domestic Arbitral Awards in Nigeria: Prospects for stay of execution of non-monetary award*, (2010) 1 UNIZIK J.I.L.J., 194 at 196

<sup>67</sup> Chukwuemeka E. Ibe *The Machinery for Enforcement Of Domestic Arbitral Awards in Nigeria - Prospects For Stay of Execution of Non-Monetary Awards: Another –View 2011 Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 304-310.

<sup>68</sup> [1965] All N.L.R. 307

<sup>69</sup> *Enforcement of Foreign Arbitral Awards in Nigeria*. accessed 30/3/2014 from [www.blackfriars-law.com](http://www.blackfriars-law.com)

<sup>70</sup> S.66 (4) of the Arbitration Act of England 1996.

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