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RESOLUTION OF INVESTMENT DISPUTES THROUGH ARBITRATION IN NIGERIA

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ABSTRACT: *States go into treatises in order to permit the nationals of one state to invest in another for mutual economic benefit and advancement. These treaties notwithstanding, disputes do come up as a result of the human tendencies and complexity of commerce. In Nigeria, certain statute such as law governing recognition and enforcement of arbitral agreement, law governing arbitration agreement, law governing substantive issues, law governing recognition and enforcement of award and the Arbitration and Conciliation Act, 1988 (ACA) and arbitration under Nigerian Investment Promotion Commission (NIPC) makes provision for arbitration in the amicable settlement of investment disputes. This study therefore reveals that for the aim of having a uniform framework for the settlement of investment disputes, the International Centre for Settlement of Investment Dispute (ICSID) was created. The study also reveals that some of the statute prescribe mandatory arbitration and as such negates agreement and party autonomy. The article recommends that the statutes be reformed to be in line with jurisprudence of arbitration.*

KEYWORDS: Resolution, investment disputes, arbitration, Nigeria

INTRODUCTION

Arbitration is now an all-important tool in resolving disputes globally. Commercial businesses for all forms lead to disputes among the parties involved. In trying to resolve this any time it occurs, parties involved now incorporate arbitration clause in their contract to the resolution of the conflicts rather than litigation. Relating arbitration to Nigerian society, it was described as a mode of dispute resolution which is probably as old as the history of human society, dating back to early ages in stateless societies when disputes were put before elders of a clan or tribe. Up to the present generation, various members of the well placed in the society adopt this mode of settling disputes between her subjects. Most indigenous systems of customary law in Africa paid regard to traditional arbitration by resorting to this mode of dispute resolution which is still in use in many Nigerian communities. Our courts recognized and enforced the result of customary arbitration.[1] The same historical evidence is true of the early English legal system, particularly, during the unsettled period by reference to some indifferent persons of whose superior wisdom and equity they have formed favourable opinion.[2]

In Nigeria, the commonest means of alternative dispute resolution is commercial arbitration followed by construction, investment, and maritime arbitration. Learned authors recognized and observed that "the resolution of commercial disputes is obviously a very crucial aspect of the

[1] *Nwoke v. Okeke* (1994) 5 NWLR (Pt. 342) p. 159 at p 172.
[2] See the British Legal Chronicle, Kyde in; *A Treatise on the Law of Award* (Crowther, 1791).

operation of the national economy and of the judicial system."[3] The legal framework in Nigeria for modern commercial arbitration is the Arbitration and Conciliation Act[4]. The Act chiefly comprises the provisions of UNICITRAL Model Law.

In Nigeria today, arbitral decisions are made by an arbitral tribunal composed of one or more arbitrators chosen by or on behalf of the parties. With the task of the tribunal to consider the parties' evidences and agreements and then render a decision in the form of award which is final, binding and enforceable by any judicial process, the main concern of arbitration is in the commercial nature which includes any international trade transactions. Coming to modern international commercial arbitration, there are three major features of arbitration which are:

(1) The foundation stone of the arbitral process is a consent by the parties to submit the disputes to arbitration. The agreement may be by way of an arbitration clause or drawn up by the parties to deal with the dispute concerned which had already arisen generally, known as a submission agreement or compromise. The main significance of the compromise is that it evidences the consent between the parties for valid arbitration.
(2) The second main feature is that the arbitral tribunal must reach a decision on the disputes submitted rather than suggesting a way in which compromise can be reached. The major resolve is the power conferred on the tribunal to make a binding decision that distinguishes arbitration from other procedures of dispute resolution.
(3) The decision or the award of arbitral tribunal arises out of a private agreement that has public legal consequences that may be recognized and enforced by legal proceedings in the national courts of the place of enforcement even by international forum.[5]

To put in proper perspective the nature and dimension of arbitration may require a definitive approach. A classic definition is provided by Halsbury Law of Nigeria, it simply states' arbitration is the process by which a dispute or difference between two or more persons as in their mutual rights and liabilities is referred to and determined judicially with binding effect by the application of law by an arbitral tribunal instead of the court of law.[6] The modern definition of arbitration is that it consists in the reference of a private dispute between two parties to some third party of their choosing from that third's final and binding decision.

The disputing parties previously contracted to abide by that decision, the decision being given as an award.[7] From the Black Law Dictionary, arbitration is defined "as a process of dispute resolution in which a neutral third party (arbitrator) renders a decision after hearing at which both

[3]Orojo and Ajomo, *Law and Practice and Arbitration and Conciliation in Nigeria*, page iv of the book.
[4] Cap A18 Laws of the Federal of Nigeria (2004) – (ACA 2004).
[5] This is provided for a national law or international commercial Convention for instance, the New York Convention which sets out a widely used frame work for recognition and enforcement of arbitral awards.
[6] Halsbury's Law of Nigeria.
[7] Composed by one or more arbitrators choose Comish, A.F, ' Arbitration at Common Law Before the First (English) Arbitration Act, 1698),' 1990 *Arbitration Journa*l, British Institute of Arbitrators, p.194.

parties have an opportunity to be heard."[8] At the same period, a United States judicial authority defined arbitration as an arrangement for taking and abiding by the judgment of a selected persons in some disputed matter, instead of conveying it to the established tribunals of justice and is intended to avoid the formalities, the delay, the expenses the dimension and relation of ordinary litigation.[9]In a recent judicial decision in the case of *NNPC v. Lutin Investment Limited*,[10]arbitration is defined not less than two parties for determination after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. The process involves the parties involved submitting the dispute the arbitrator who is not an umpire for determination. The arbitration proceedings including any award, however become null and void if the arbitrator acts outside of his authority to decide something else. The definitions imply that arbitration is like a judicial process which involves settlement of disputes between contending parties. The House of Lords pointed out the differences between arbitration and judicial process in the case of Waterside *Workers Federation of Australia v. Alexander*[11]where he stated thus:

"the essential difference is that judicial power is concerned with the ascertainment, declaration and enforcement of the rights as they exist or are deemed to exist at the moment the proceedings are instituted whereas, the function of arbitral power is to ascertain and declare but not to enforce what in the opinion of the arbitrator ought to be the respective rights and liabilities of the parties in relation to each other".

Taking arbitration in its rudimentary sense, it is more than submitting disputes to national arbitrator whose only qualification is that of being employed by the parties to the disputes. It includes commercial arbitration of commercial nature of any trade transactions whether local and international. The process of arbitration involves three characteristics. Firstly, the disputing parties obtain quick settlement. Secondly, the parties choose their own arbitrator and would thereafter not turn to the court. It was observed that the modern process in most jurisdictions has lost its simplicity and now legalistic and institutional. In the circumstance, the role of the courts is important.

All the definitions given above for commercial proceedings do not mean a total absence of judicial oversight. The courts does exercise their normal jurisdiction to in formal proceedings whenever necessary even as practiced in England, Australia, South Africa and Ghana to just mention a few [12]. In this regard, the 1988 Act gave the conditions upon which a court may declare an arbitral award null and void.[13]The courts are limited to certain circumstances and may set aside arbitral tribunal appointment where there is a disagreement with public policy, incompatibility with the

[8] Black's Law Dictionary (St. Paul Minni West Publishing Co. (1990) 6th ed 175; see also Art 2, of the UNCITRAL Model Law.

[9]*Waruugen Mills v. Textile Works Union of America,* APL, C.I.O, 21 Com. Sup 134, 146 A 2nd.
[10] (2006) 25 NSCOR 77 at p. 111-112.
[11] J.W (Ltd) 25 CLR 434.
[12] As Justice Oguntade reinstated, the courts are the natural destination points for the enforcements of arbitral decisions. See *Okpuwuru v. Okpokam,* (1998) 4 NWLR (PT .90 at 554 per Oguntade JCA.
[13] See Section 48 (a) (i)-(vii) and section 48 (b) (i) and (ii) in the Arbitration and Conciliation Act, 1988

laws of Nigeria and or improper notification for the initiation of arbitral proceedings.[14] Fundamentally, the real basis on which a court could intervene is when it has established with evidence that the interest of justice was not served in the arbitral award.

From the features of today arbitration, it is essentially a process which begins as a private agreement between two or more parties and conducted by way of private proceedings before the parties appointed as judges. In all jurisdictions, the award may give rise to lasting solution of the disputes and lasting consequences as a litigation of the courts. As a result, the private process has a public effect which may be implemented with the support of the public authorities of each state through its national law, the enforcement or the awards, thus given rise to a complex inter-relationship between international and national arbitration through international treaties and Conventions. These Conventions will be discussed later in the thesis within the context of Nigeria.[15] The necessary poser at this stage is the choice to arbitrate when there are other methods of resolving disputes of commercial investment nature. It is worthy of note that there are other methods which is simpler and quicker to bring a dispute settlement such as negotiations between the parties. This is where the role of solicitors or barristers or accountants or other professionals trained come in as experts in the field of arbitration who equally know the strengths and weaknesses of respective case and could work out a settlement for the disputes. For instance, negotiation or other methods requires a kind of detachment, willingness and objectivity to reach a compromise of the disputes.

Commonly, arbitration presents itself where there are other methods of resolving the disputes. Quite frequently, if arbitration fails, there could still be recourse to a third party by a conciliator or mediator or further; other alternatives may be examined by an "honest broker." In today's world, the main modes of resolving disputes are through litigation and arbitration. Lagos State has given a lead in this regard with the ascendancy of state power provided in the Constitution.[16]

Without equivocation, the classical model of legal process is the courts that have the power to impose a decision binding on the parties and this can be enforced whether or not the parties agreed or not. The courts in this instance do not go into reconciling the parties in litigation. Comparatively, resorting to courts consists of three important characteristics. In this classical model, the judgment, as noted,[17]takes the form of "either black or white" affairs instead of giving something to both sides to produce a compromise. The judgment declares a plaintiff as the winner and condemns the losers to statutory sanctions or punishments. In the reverse order, it may reject the plaintiff's claim and absolved the defendant. Secondly, the form of decision –making requires a more strict

[14] Similar sentiments were expressed in the provisions of section 59 (1) of the Lagos State Arbitration Law, 2009 provides a court shall not intervene in any matter.

[15] See the Arbitration Act.
[16] See the various forum imposed by the law
[17]T.A.T. Yagba ,"Arbitration of Foreign Investment Disputes in Nigeria: Alternative Considered," *In Law, Justice and the Nigeria Society*, p265.

application of the specific rules in an informal method of settlement This indicate the common law legal process that is precisely defined in the law. The rules require the exact scope and limit the rules applicable as laid down in the law. Thirdly, the court model or classical method insists on the issues raised between the parties. This takes cognizance of the parties, their status in the community and their previous relationships are not regarded as relevant factors. So, judgment is solely based on the strict application of the rules to the facts and to the legal issues which separate the parties and in most cases incurred enmity.

In a summary form, the classical method of legal process contemplates the law be pronounced in line with known rules applicable to the set of facts that would produce the decisions based mainly on the application of rules relevant to the facts in issue and totally free from trivial issues. Thus, the characteristics of traditional court inject an attribute of finality and enforceability which makes it superior to informal methods of arbitration, mediation and conciliation. The adversarial system, the demands for natural justice both impose on the parties as commonly cited as a discouragement to resort to commercial disputes. As a result, commercial community now leaned towards arbitration especially in the context of international trade transactions.

So in arbitration, the arbitrators exercised a judicial power in judged- made capacity. Arbitrators decide disputes referred to them on the basis of the arguments of the parties and evidence submitted and act according to the rules of natural justice and the applicable substantive laws as well as rules of evidence based on standard of proof. The arbitrator must exercise judicial discretion in a proper manner.

Basic issues in International Arbitration of Investment Disputes

International arbitration take places all around the world in a self- contained manner .The International Arbitration proceeds in accordance with rules agreed by the parties in an arbitration or rules laid down by the tribunal. International Commercial Arbitration would work most effectively if it is supported by appropriate system of law and legal systems. There is the law that for contract may not only be different but could be from a different law system such as in West Africa where the Franco -phonic and Anglo-phonic countries exist side by side[18] or countries with some rules that the tribunal has to apply to matters under dispute.[19]The law governing the recognition of the award could be different from those governing arbitral proceedings. Therefore, to making Nigeria a centre for international arbitration has to be hinged on the four systems of law and must meet the minimum international standards.

Law governing acknowledgment and execution of arbitral agreement

Often, there is no reference to any law in the rendering awards since the proceedings are regulated by the law of the place of the arbitration or sometimes, other things may be taken into

[18]Nigeria is surrounded by Cameroun, Niger, Benin Republic and Togo all Franco-phonic

[19]For example, an arbitral an arbitral tribunal sitting in Nigeria, governed by Nigeria law, since the place of arbitration may will required the law of Nigeria as the proper law of the contract or the proper law of the contract may not be that of any given national system of law, it may be international law or a blend of national and international law or even an assemblage of rules of laws.

consideration. In leading text book on International Commercial Arbitration the author said "any international commercial arbitration is forensic minefield."[20] The author mentioned four sets of law that relevant to proceedings of an international commercial arbitration:

1 The law governing the arbitration agreement and the performance;
2 The law governing the existence of the proceedings- the *lex arbitri;*
3 Main law of the contract that govern the issue at hand and;
4 The law governing recognition and enforcement of the award.

Capacity to arbitrate

The law governing the capacity to arbitrate is the same common law on contract and a contract entered without the requisite capacity is invalid. The common law position is recognized in the New York Convention and the UNCITRAL Model Law. While the Arbitral Rules on capacity are not the same, the law governing capacity should be the law upon which the contract was signed. The Nigerian courts usually consider applicable law in the issue of conflict. In most cases, the law of the agreement is the law of the place where the contract is entered into and a party cannot avoid the enforcement for lack of capacity. In corporation cases, an act that is held *ultra vires* regardless of where it was signed will remain so anywhere.

Law governing arbitration agreement

In any contractual obligations, same with arbitral proceedings, agreement stand as the foundation of any arbitral process. In an arbitral agreement, a clause may be inserted in the agreement; it may also take the form of a 'submission agreement' brought in place after the has started. It must be noted that the most important thing here is how valid the arbitration agreement is. The law could also be different from the one that governs substantive matters and *lex arbitri.*

On *Lex Arbitri,* the law of the place of the arbitration is vital for regulating the aspects of the arbitral process. The known characteristics of international commercial arbitration is that arbitration does occur in a nation that the two parties to the dispute are not resident in. It thus follows that the law governing the arbitration could be different from those governing the main matter in dispute. The parties to the dispute do not also choose the place of arbitration but left to the tribunal.

Law governing substantive issues

In a judicial process the issue of procedure and jurisdiction are preliminary in an arbitration procedure. The role of the arbitral tribunal would then be the establishing of the crux of the matter in the dispute. The tribunal would examine the consent between the parties, consider other important documents and then, the hearing of evidence. The tribunal having examined the facts builds its award on the foundation of the facts. Decision is also based on applicable law and fairness. Quite often, the arbitration tribunal would not go outside the confine of the consent to determine the dispute. The arbitral agreement which is aimed to establishing legal relations is not based on nothing; they are hinged on applicable laws of contract.

[20]Alan Redfern & Martin Hunter, *International Commerce Arbitration* 1st ed.

Law governing recognition and enforcement of award

The passing of the Arbitration and Conciliation Act in 1988 wherein the provisions of UNICITRAL Convention on the recognition and enforcement of foreign arbitral awards were incorporated birthed the law governing the recognition and enforcement of arbitral awards. The Nigerian counts are generally weak in addressing the provisions of arbitral award notwithstanding the good initiative intended at enhancing the knowledge of the judiciary, the ignorance of the judiciary is still hugely alarming. To cure the ignorance is the need for the continuing education of the judicial officers. Another problem is the problem of procedure being used in the court in Nigeria. Proceeding continued to be conducted by judges who record their own proceeding longhand and this made the lawyers to resort to dictations when making submissions in the court. In this regard, judges are overworked and sometimes unable to respond adequately to matters that are time bound.

The Arbitration and Conciliation Act, 1988 (ACA)

After two decades of administering the Model Law, the Act was passed into the Nigerian statute book. The passing of the Act pre-dated the different various concerns about the effectiveness of the existing legal framework. ACA is the substantive law on which domestic and international arbitration is based in all the States in Nigeria. The Act embodies most of the best features of the UNCITRAL Model Law.[21]It is important to examine some sections of the Act.

"An Act provides a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards on New York Convention to any award in Nigeria or in any contracting States arising out of international commercial arbitration"[22]

The Act comprises majorly, the UNICITRAL Model Law divided into four parts *viz* Part I- Arbitration, Part II- Conciliation, Part III-International Commercial Arbitration and Conciliation, Part IV- Miscellaneous. The Arbitration Rules is applicable and parties are liberty to agree in writing on the applicable rules. The Act provides that arbitration may arise in any of three ways, namely (a) by agreement of the parties out of court (b) by the order of court with or without consent of the parties and (c) by statutes. Of all the three methods, arbitration is created, the most and important is first by agreement of the parties.[23]This chapter is therefore devoted to consider arbitration by agreement which is the order on which foreign investment disputes is based. Practically, all references to arbitration in modern times are in writing, but nevertheless, an oral

[21] See Adedoyin Rhode Vivour in an article published in the *Journal of the Charted Institute of Arbitration* (CIARB) 2010 76 Arbitration, p. 130-135 who said the arbitration Awards was getting locked – up in the court system.

[22]The UNCITRAL Rules are contained in the First Schedule. Section 53 State "Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in the First Schedule to this Act the UNCITRAL Arbitration Rules or any other international arbitration rules acceptable to the Parties."

[23] This is similar to Article 7 of UNCITRAL Model Law on international Commercial Arbitration, 1994, governed by UNCITRAL Arbitration Rules. Also see Article 1 which provides that this Law applied to international commercial arbitration subject to any agreements in force between the State and any other State or States and Articles 1 and 2 of WIPO Arbitration Rules.

reference may be made and this will be governed by the common rules. The arbitration is not valid unless the matter is an existing dispute and the arbitrator is nominated.[24]

Arbitration under Nigerian Investment Promotion Commission (NIPC)

Before the promulgation of the Nigerian Investment Promotion Commission Decree of 1995,[25] there was no composite legislating to regulate let alone for resolution of disputes in foreign investment in Nigeria. The government and the policy maker, too to take an insular and nationalist look of the economy and then drive to ensure local investors are in control of substantial proportion in foreign enterprises. Nigeria passed various indigenization laws to give certain percentage of shareholdings in some enterprises to Nigerians. The Nigerian indigenization policy began in 1972 and imposed lots restrictions on foreign direct investment (FDI). This led to the loss of 22 businesses exclusively kept for Nigeria.[26] The Nigerian government since 1986 had strongly pursued economic policies targeted at liberalization and advancement of competition and investment in the economy. In pursuance of this economic order, the government enacted and updated the relevant laws on investment that contained incentives to encourage and promote private and foreign investors.[27]

The Nigeria Investment Promotion Commission Act was promulgated in 1995 to enable the inflow of investment into Nigeria.[28] The policy is aimed at reducing barriers faced by investors and ensures repatriation of capital and income to translate the potential profits into viable investments projects and also ensure general macro-economic stability and integrating markets to private enterprises. The Commission was also established to change the negative image investors have on the Nigeria investment industry and with precautionary strategy aimed at marketing and showcasing change in Nigerian investment environment to foreign investors.

International Centre for Settlement of Investment Disputes (ICSID)

ICSID Convention is described as an ingenious and a dynamic document founded on a pragmatic and realist compromises which has met the expectations of foreign investors, host and home states judging by the number of ratifications[29], the degree of its use by investors and reference to it in dispute resolution in investment laws, treaties and instruments. The membership of the Convention is increasing and is geographically widespread and encompasses states of various ideological orientations and different stages of development.[30]

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[24] See the old English case, *Dolman & Son v. Ossett Corporation* (1921) 3KB 257

[25] (Decree No. 16 of 1995)

[26] This include advertising and retailing and personal services gaming, electronics manufacturing, basic manufacturing, road transports, bus and taxi services, the media and retaining and personal services, foreign investment was permitted up to 60% ownership

[27] Ortega an Graffin (2009) investments

[28] In the Act, the body was is charge with the function of coordinating, monitoring and encouraging and providing necessary assistance and guidance for the establishment and operation of enterprises in Nigeria. The Act came into force on the 16th of January, 1995 and now amended following the repeal of Industrial Development Coordinating Committee Act. The Industrial Development Committee Act, No. 38, 1998.

[29]Amazu A Asouzo, *International Commercial Arbitration and African States; Practice, Participation and Institutional Development,* (Cambridge: Cambridge University Press), Chapter 7, p.215

[30]A.R Parra, "Provisions on the Settlement of Investment Disputes in Modern Investment Laws, Bilateral Investment Treaties and Multilateral Instruments on Investment," ICSID , Rev-FIL 12,1997, 287, as at 21st September,2000, the

The international Centre for the Settlement of Investment dispute is one of the organs of the World Bank in the settlement of investment dispute. It was established in 1965 at a Conference known as the Washington Convention. The ICSID is globally accepted by many States and the purpose for its establishment among other things is, to encourage private investments in under-developed countries. Hitherto, there were great fears and apathy by some countries and individuals to make investments in some countries for fear of expropriation. In an effort to allay these fears, the World Bank drafted the Convention on the settlement of investment disputes between states and nationals of other states[31] which gave birth to ICSID. More than half the countries of the world including Nigeria are members of the ICSID. The Convention has also been incorporated into Nigerian Laws as International Centre for Settlement of Investment Dispute (Enforcement of Award) Act.[32]

National courts and arbitration

Courts are the organs of sovereign states established for the purpose of exercising judicial power.[33] In the 1999 Nigerian Constitution, by virtue of section 6, judicial powers are vested in the courts and the irresistible conclusion to be drawn from the express vesting of judicial power in courts is that the courts cannot be divested of those powers except by constitutional amendment. The simple interpretation of this provision is that no other body can exercise judicial powers. This interpretation was supported in the Supreme Court decision in the case of *Gani Fawehinmi v. NBA*[34] where Obaseki JSC stated "if a function is exclusively judicial, then, without a specific authority in the Constitution, it cannot be conferred on any person or authority other than the court, for that will amount to a usurpation of judicial power." To determine the proper existence of arbitration as a judicial process, the proper balance must be struck. The relationship between court and arbitration has been described as partnership; that is partners in achieving the same objectives. Arbitration of disputes is now frequently employed by virtually all kinds of contract, thus making arbitration a wide ranging surrogate for civil litigation.[35]

In the United States, the Federal Arbitration Act is the chief source of power for American Courts to stay litigation and compel arbitration. Thus, in *Moses H.Cone Memorial Hospital v. Mercury Construction Corp.*,[36] the court was emphatic in stating that the US Congress intent in the Federal Arbitration Act,(FAA) was to move parties to an arbitration agreement out of court and into arbitration as quickly as possible. Similarly, UK, courts readily enforce agreement to arbitrate. The general consensus in the decision of national courts is a preference for enforcement of arbitration agreement on a mandatory basis.

total number of signatories to the Convention stood at 148, 42 0out of 53 African States have signed and ratified the ICSID Convention. Seewww.worldbank.org./iwscid/constate/c.states-en.htm

[31]United Nations Treaty Series Vol. 5 p.159.

[32] Cap 189 Laws of the Federation of Nigeria 1990 (See LFN, 2004).

[33] See Umeche, "Courts and Arbitration: Striking the right balance," This Day, 11th June 2013, p. 12.

[34] (1989) 2 NWLRD (Pt. 105) 558

[35]See Tomas J. Stipanowich, "The new Litigation," *University of Illinois Law Review*, Vol. 2010, p.1.

[36] 460 US 1.22 (1983).

In the resolution of international investment disputes and furtherance of the development of international commerce, there is a close relationship between national courts and arbitral tribunals. This relationship has been described as one of partnership between the national courts and arbitral tribunals.[37] The contention has always been that the partnership is not one of equals but a system built on law and then relies on the force of law to make the agreement nationally and internationally effective.[38]In the present commercial and technology world, in my opinion national courts could hardly exist without local and international arbitral tribunals. To determine the effectiveness of the two judicial institutions, it is important that they must relate. Writing a comment on the issues, Lord Mustill likened the relationship to a relay race. He said:[39]

"Ideally, when the arbitrator takes charge, they take over the baton and return it until they have made award. At this point, having no longer a function to fulfil, the arbitrators hand back the baton so that the court can in a case of need can lend its coercive powers to the enforcement of the award".

It is generally known that the courts are an indispensable tool to the effectiveness of the arbitral award. It is thus pertinent to state the circumstances in which the court can intervene. The Act provides that the courts shall not intervene in any matter governed there under except where so provided.[40]The court can intervene in the arbitral award in the revocation of the arbitration agreement, stay of proceeding in breach of arbitration agreement, appointment of arbitrators, compelling attendance of witnesses, setting aside the arbitral awards and in recognition and enforcement of the awards.[41] It cannot be denied the fact that the courts and arbitral process are in a symbiotic relationship. The Arbitration and Conciliation Act gives the courts the powers to support and make arbitration sufficiently attractive and enable it command the respect and confidence enjoyed. A writer once observed that some participation or intervention by the courts are called for:

a. in the interest of justice or to avoid the abuse of the arbitral process and support the arbitral process in Nigeria.
b. to legitimize the arbitral process through the coercive powers of the State
c. to enforce the international arbitral obligations and to maintain the law and public policy of Nigeria.[42]

The concept of legal education is tuned to legal instruction to aid lawyers through experience in advocacy in legal practice. The mind-set of lawyers is thus geared to advocacy in litigation. With the introduction of formal arbitration, conservative legal practitioners for lack of understanding of

[37] Goldman, 'The Complimentary Role of Judges and Arbitrators,' (*ICC Publication)* No.412 P.259.
[38] Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (3rd ed.) (London: Sweet and Maxwell 1999), p.341.
[39] Lord Mustill Comments and Conclusions in the "Conservatory Provisional Measures in International Arbitration," 9th Joint Colloquium *(ICC Publication)* p 345.
[40] Section 34 of the Nigerian Arbitration and Conciliation, Act, 1990.
[41] See sections 2,7,30 (c),23,29 and 48 of ACA,1990.
[42] Amazu A. Asouzu, *Arbitration and Judicial Powers,* (Enugu: Forth Dimension Publishers, 2002), at p. 341.

the importance of arbitration create obstacles to arbitral proceedings. Gaining proper understanding of the essence and goals of arbitration particularly in commercial dispute, cases will be resolved with speed and less expensive means of resolving dispute resulting in early payment of counsel. The practice was also aided by the insertion of 'arbitral clause' in commercial agreements where eyes are opened to arbitration as opposed to litigation.

The courts, one time joined the bandwagon of group of lawyers still unwilling to change from litigation to arbitration. One of the judges who were vehemently opposed was the late Justice Ephraim Akpata in the case of *Kano State Urban Development Board v. Fanz Limited*.[43] His Lordship expressed his disgust against arbitration when he said
"Foolhardy references to arbitration and rough and ready decisions by arbitrators." But after he retired as a judge in 1992 at 70 years, he got highly involved in local and foreign commercial arbitration.

In a book published in 1997, he stated,

"Although slow in coming, arbitration is beginning to receive some attention in commercial and legal circles in Nigeria. Retired judges who in the past would have been tired of adjudicating are developing interest in arbitration and are being used as arbitrators. Practicing lawyers are combining litigation with arbitration. More than anything else, the formation in Nigeria of the Nigerian Group of the Chartered Institute of Arbitrator's has brought added impetus to promoting arbitration in the country."[44]

In the last a decade, there was a tremendous interest in arbitration by lawyers and non-lawyers. This is revealed by the huge increase in the number of people who became Chartered arbitrators. The facts in *Kano State Urban Development Board v. FAAZ Ltd*,[45] is a classic example in the use of judicial proceedings to delay arbitral proceedings. The case started in 1982 at the High Court, went to the Court of Appeal and up to the Supreme Court. Judgment was delivered in 1990 making it eleven good years after the High Court.

The Recent arbitration related development

Lagos State in Nigeria recently enacted two laws on arbitration 'tagged' Lagos State Court of Arbitration Laws (LSAL).[46] The laws aimed at making Lagos as regional and eventually international arbitration centre. LSAL follows after the UNCITRAL Model Law with some modifications to correct inconsistencies and inelegant provisions of the Model Law. LSAL allows the application of limitation statutes to arbitrations, *lacunae* in the Federal Act as shown in the case of *City Engineering Nigeria Ltd v. FHA*,[47] in which the court held that the time of limitation for the execution of an award begins from the breach that resulted in the arbitration.

[43](1986) 5 NWLR (Pt. 39) 74 CA.
[44]Akpata JSC in the book, *The Nigerian Arbitration Law in Focus*, published in1997.
[45] Supra
[46] These are called Arbitration Law No.10 is the first modern state enacted arbitration Law in Nigeria and Arbitration No. 8 established the first commercial court of arbitration in the country.
[47](1997) NWLR (pt. 520), 224.

In LSAL, limitation laws apply to arbitration proceedings as well as judicial proceedings. In computing the time for the commencement of proceeding to enforce an award, the laws specifically provides that the period between the commencement of arbitration and the date of award shall be excluded. The main function of Lagos Court of Arbitration is to promote the resolution of disputes in Lagos State by arbitration and through ADR mechanisms.[48]

CONCLUSION

Notwithstanding the attendant challenges with arbitration practice in Nigeria, arbitration has been recognised as a veritable tool for alternative dispute resolution. Its merits far outweigh its demerits which are even amenable as arbitrators gain more experience as they practice. Furthermore, in Nigeria, arbitration is still an important dispute resolution mechanism for both local and foreign commercial transactions. Harnessing its advantages would surely decongest the cause lists in our courtrooms and enable early dispense of justice that will bring about greater economic growth in Nigerian through the improvement of the confidence of local and international investors.

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