

COURT CONTROL OF ARBITRAL PROCESS

BY

CHIEF ANTHONY I. IDIGBE SAN

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1. INTRODUCTION

I will not bore you with the definition of arbitration as I am aware that speakers before me must have defined arbitration exhaustively, but I must add that unlike litigation, parties agree to arbitrate.

In other words there must have been a written agreement where parties agreed to submit dispute to arbitration. It is from such an agreement that arbitration derives its force/jurisdiction.

We all know that a direct consequence of economic growth is increase in business activities. These numerous business activities often give rise to disputes that require settlements. The question is how can these disputes be settled between business partners, customers/clients within a very short time and in a manner that the disputants' relationship is not adversely affected? No doubt litigation in court is usually hostile and would not achieve the purpose of preserving long standing business relationship. The truth is that most litigants put an end to the business relationship after going to court. The problem is further complicated by our judicial system and its associated problem of which a major one is inadequate facilities to cope with the number of disputes occurring on daily basis. The courts are therefore handicap and the resultant effect is delay in resolving dispute. It is in the quest to get justice in a faster way and keep business relationships intact that gave rise to Arbitration and other Alternative Dispute Resolution. It is also in this light that we will discuss the theoretical basis for exclusion of courts from arbitral process and the control of the arbitral process by the court in turn.

One would expect that a party having chosen arbitration as a faster means of dispute resolution will be free entirely from the intervention of court, invariably eliminating delay, but that is usually not the case.

In fact, a party who agrees to refer dispute to arbitration chooses a private system of justice and this, in itself, raises issues of public policy.

The 1999 Constitution sets up the court system and vests in them the right to determine controversies between persons in Nigeria. Access to court is therefore a fundamental right of every Nigerian Citizen¹. The key word "entitled" in section 36(1) of the 1999 Constitution implies that such right can be waived. Parties can therefore waive their constitutional rights to court and choose arbitration. In other words, a party to an agreement with an arbitration clause has the option to either submit to arbitration or have the dispute decided by the court².

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1. **Section 36 of the Constitution of Nigeria 1999**
 2. **L.A.C. v.A.A.N. Ltd (2006) 2 NWLR part 963, page 49**
Ariori v. Elemo (1983) 1 SCNLR 1

It is also observed that under our Arbitration and Conciliation Act, there are sections providing for court's intervention in arbitration.

Though, Arbitration may depend upon the agreement of the parties, it is also a system built on law and which relies upon that law to make it effective both nationally and internationally. It is therefore a true statement that courts can exist without arbitration, but arbitration cannot exist without the courts.

The relationship between courts and arbitral tribunals is one of constant shifts and changes. It can be described as that of "partnership". It is one in which each has a different role to play at different times.

In essence, one would say that the real issue here is to define the point where the reliance of arbitration on national courts begins and where it ends.

2. ARBITRAL PROCESS: EXTENT OF COURT'S INTERVENTION

The steps are as follows:

- **Agreement to arbitrate or submit dispute to arbitration**
- **Arising disputes**
- **Appointment of arbitrators**
- **Arbitration proceedings**
- **Award**

In principle there should be no disputes as to where the frontier between the public world of the courts and the private world of arbitration lies.

Court's intervention in arbitration proceedings could be:

- at the beginning of the arbitration
- during arbitration process
- at the end of the arbitral process

1. Beginning of arbitration

The situations under here are:

- the enforcement of the arbitration agreement;
- the establishment of the tribunal; and
- challenge to jurisdiction.
- Preservative orders pending arbitration

The arbitration agreement

A party to an arbitration agreement may decide to institute proceedings in court, rather than explore arbitration as agreed by parties. If the other party agrees, the court action will proceed. Where the Defendant insists on his right to have the matter resolved by means of arbitration, the court's responsibility is to ensure that the parties' agreement is enforced by referring them to arbitration

The above position is reflected in section 4 (1) (2) of the Arbitration and Conciliation Act CAP 18 LFN 2004 as follows:

- (1) A court before which an action, which is the subject of an arbitration agreement is brought shall, if any party so requests not later than when submitting his first statement on the substance of the dispute, order a stay of proceedings and refer the parties to arbitration.***

- (2) Where an action referred to in subsection (1) of this section has been brought before a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court.***

There are lots of Nigerian cases where the arbitration clause was given effect.

An arbitration clause in an agreement generally does not oust the jurisdiction of the court or prevent the parties from having recourse to the court in respect of dispute arising therefrom. **Lignes Aeriennes Congolaises (L.A.C) v. Air Atlantic Nigerian Limited (A.A.N) (2006)**³

The arbitral tribunal

Where the parties have failed to make adequate provision for the constitution of the arbitral tribunal, and there are no applicable institution or other rules (such as the UNCITRAL Rules), the intervention of the court is usually required.

Section 7 of the Arbitration and Conciliation Act provides for intervention of court to appoint an arbitrator where parties fail to agree.

7. (1) Subject to subsection (3) and (4) of this section, the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator.

3. 2 NWLR part 963 page 49 at 73 paragraph D

(2) Where no procedure is specified under subsection (1) of this section-

(a) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third, so however that-

(i) if a party fails to appoint the arbitrator within thirty days of receipt of request to do so by the other party; or

(ii) if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement;

(b) in the case of an arbitration with one arbitrator, where the parties fail to agree on one arbitrator, the appointment shall be made by the court on the application of any party to the arbitration agreement made within thirty days of such disagreement.

(3) Where, under an appointment procedure agreed upon by the parties-

(a) a party fails to act as required under the procedure; or

(b) the parties or two arbitrators are unable to reach agreement as required under the procedure; or

(c) third party, including an institution, fails to perform any duty imposed on it under the procedure,

any part may request the court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.

(4) A decision of the court under the subsections (2) and (3) of this section shall not be subjected to appeal.

(5) The court in exercising its power of appointment under subsection (2) and (3) of this section shall have due regard to any qualifications required of arbitrator by the arbitration agreement and such other consideration as are likely to secure the appointment of an independent and impartial arbitrator.

Surprisingly, despite the provisions of S.7(3)(b) of ACA, a Lagos High Court declined jurisdiction to appoint an umpire or third arbitrator in a case where the arbitration clause provided for only two arbitrators and one of them refused to participate in the proceedings at a centre stage.

Challenge to jurisdiction

The tribunal has the power to rule on questions pertaining to its own jurisdiction. See section 12 of Arbitration and Conciliation Act, the final decision on jurisdiction rests with the court as a dissatisfied party may chose to apply to court. The result is that there is concurrent control of the arbitration by the court and the arbitral tribunal on the question of jurisdiction. There is also the danger of parties using the issue of jurisdiction to cause unnecessary delay particularly when there is an application before the court.

The Arbitral tribunal before whom an application challenging jurisdiction is pending has some options to wit:

- Decide immediately
- Take submissions and issue interim award on jurisdiction
- Join issue with substantive claim. The danger here is that time of parties must have been wasted if the Tribunal finds at the end of the proceedings that it had no jurisdiction in the first place.

2. During the Arbitral Proceedings

The general rule is that arbitral tribunal shall be independent of national courts and the parties are vested with freedom to dictate the procedure to be followed by the tribunal. This rule is captured in the guiding principle of party autonomy as reflected in most sections of the ACA which empowers the parties to specify or agree to procedures. For instance section 9 ACA provides

"The parties may determine the procedure to be followed in challenging an arbitrator"

The words ***"unless otherwise agreed by the parties"*** as contained in most sections of the ACA further reinforces party autonomy.

However, party autonomy is not unlimited. It is restricted by the tribunal's consideration of fairness and equality of access.

"In any arbitral proceedings, the arbitral tribunal shall ensure that the parties are accorded equal treatment and that each party is given full opportunity of presenting his case" section 14 ACA

Though, it is expected that arbitration once commenced should be conducted without any need to refer to a court, however the involvement of court is necessary in order to ensure the proper conduct of the arbitration. For instance section 23 A.C.A provide thus:

23. (1) The court or the judge may order that writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before any arbitral tribunal of a witness wherever he may be within Nigeria.

(2) The court or a judge may also order a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before any arbitral tribunal.

(3) The provisions of any written law relating to the services of an execution outside a State of the Federation of any such subpoena or order for the production of a prisoner issued or made in civil proceedings by the High Court shall apply in relation to a subpoena or other issue or made under this section.

It may also be necessary before or during arbitration to apply to make an order for the preservation of the property which is subject of the dispute, or to take some other interim measure of protection. See section 13 A.C.A and Article 26

An important point to add here is that the arbitral tribunal has no coercive power. It relies on the court to exercise such powers and assist the arbitral process.

3. At the end of arbitration

At the end of the arbitral process, the tribunal gives an Award which is binding on parties and upon application to court is enforceable like judgment of court except it is set aside.

See A.C.A ss. 31 & 51, s. 29(2)); or s.30 (1); s.48 A party to an arbitration agreement may, however, apply to the court to refuse recognition or enforcement. (A.C.A. ss. 32 & 52).

The above reveals the extent of court's intervention in arbitration process and by the provision of section 34 it appears that court's

intervention in arbitration is restricted to those areas stipulated under A.C.A.

3. ARBITRAL AWARD

The first section focused on appointment of arbitrators, arbitral process and court's intervention in the process.

Having passed through the trouble and expense of arbitration, parties expect that unless settlement is reached, the proceedings will end with an award which will be binding upon them. This expectation is reflected in both international and national rules of arbitration. For instance, the UNCITRAL Rules simply states:

"The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay"

Article 1.2 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, otherwise known as the New York Convention defines the term arbitral award to "include not only awards made by Arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted".

The Award informs the parties to a dispute of the Arbitrator's decision.

It is a reasoned decision of an Arbitrator or Arbitrators(s), which disposes of all issues submitted to the arbitral tribunal, after taking into consideration the evidence adduced by the parties to the reference. An award is complete in itself and it is a final decision on the matters to which it relates.

In general the requirements of form of award are dictated by:

- The arbitration agreement; and
- The law governing the arbitration (the *lex arbitri*)

The various types of awards are:

- **Final Award:** this is the award that completes the arbitral tribunal's mission. Subject to certain exceptions, the delivering of final award renders the arbitral tribunal *functus officio*

The exception referred to above is as stated in Section 28 of the ACA which provides as follows:

- (1) Unless another period has been agreed upon by the parties, a party may within thirty (30) days of the receipt of an award and with notice to the other party, request the arbitral tribunal**
- a. To correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature;**
 - b. To give an interpretation of a specific point or part of the award.**

- **Interim Award:** it usually deals with preliminary issues that occur in the course of arbitration. Unlike a final award, it does not dispose of all the matters in dispute except those matters it decides.
- **Partial Award:** this is similar to interim award save that it can deal with non preliminary issues and the decision on that issue is final and enforceable like a final award provided it complies with the requirements of a final award.
- **Agreed Award:** parties resolve their disputes and request that the terms of settlement be entered as an award.

See Section 25 A.C.A

25. (1) If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and shall, if requested by the parties and not objected to by the arbitral tribunal, the settlement in the form of an arbitral award on agreed terms.

(2) an award on agreed terms recorded under subsection (1) of this section shall-

(a) be in accordance with the provisions of subsection 26 of this Act and state that it is such an award; and

(b) have the same status and effect as any other award on the merits of case.

- **Default Award:** where a party to arbitration fails refuses or neglects to participate at proceedings, the arbitral tribunal can continue with the proceedings and give its award in the absence of the defaulting party. This award is similar to *ex parte*. See Section 21 (b) of the ACA

- **Additional Award**

Section 28 (4) to (7) of the ACA 1988 provides that:

(4) Unless otherwise agreed by the parties, a party may within thirty days of receipt of the award, request the arbitral tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award.

(5) If the arbitral tribunal considers any request made under subsection (4) of this section to be justified, it shall, within sixty days of the receipt of the request, make the additional award.

(6) The arbitral tribunal may, if it considers necessary, extend the time limit within which it shall make a correction, give an interpretation or make an additional award under subsection (2) or (5) of this section.

(7) This provision of this section 26 of this Act, which relate to the form and contents of an award, shall apply to any correction or interpretation or to an additional award made under this section.

- **Declaratory Award:** this award merely pronounces on the rights of the parties and no more, it is regarded as a declaratory award.

FORM AND CONTENT

Article 31 of the UNCITRAL model Law provides that:

- "1. The award shall be made in writing and shall be signed by the arbitrator or arbitrators.***
- "2. The award shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.***

"3. An award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place".

The above provision is *impari materia* or identical with the provision of Section 26 of the ACA.

Apart from being in writing, an award must:

- Give the reasons for the award except agreed otherwise by the parties.
- It must be signed by the Arbitrator or Arbitrators, dated and the seat of the arbitration noted on it.
- It is usual but not compulsory to have the signature of the Arbitrator witnessed.
- Identify the parties at the heading while the recital would recapitulate the background and details of the dispute in question.
- An award should be complete, certain, final and capable of enforcement. In other words, it must then completely decide all matters in dispute.
- It is necessary for an award to be certain.

Besides the above, one of the most important features of an award in an international commercial arbitration is that it should be readily transportable. It must be capable of being taken from the state in which it was made, under one system of law, to other states in which it is able to qualify for recognition and enforcement, under different systems of law.

Arbitration awards may cover a range of remedies including:

- Monetary compensation
- Punitive damage and other penalties
- Rectification
- Restitution
- Interest
- Costs, etc.

TIME LIMIT

An award is expected to be made within a reasonable time. Where however, a time limit is imposed, the said limit must be observed, as an arbitral tribunal would no longer have the jurisdiction to continue after the expiration of such time.

The purpose of time limit is to ensure that the case is dealt with speedily; such time may be imposed by the rules of an arbitral institution, by the relevant law, or by the agreement of the parties

4. RECOGNITION AND ENFORCEMENT

An award which cannot be enforced at the end of the day is useless.

The successful party in arbitration expects the award to be performed without delay. That is a reasonable expectation. As stated earlier once award has been rendered, the arbitral tribunal usually has nothing to do with the dispute unless on exceptional grounds as stated above.

The losing party has some options:

- He may simply carry out the award voluntarily,
- He may use the award as a basis for negotiating a settlement
- He may challenge the award through application to set aside
- He may resist any attempt by the winning party to obtain recognition or enforcement of award

Where a court is asked to enforce an award, it is asked not only to recognize the legal force and effect of the award, but also to ensure that it is carried out by using such legal sanctions as are available.

In Nigeria, once an award is registered in the court, it becomes enforceable as a judgment of that court. Thus section 31 of ACA provides:

31. (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.

Arbitration awards can also be enforced in most countries of the world provided that those countries are signatories to the Geneva Convention on the Execution of Foreign Arbitral Awards or the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Article 1.1 of the New York Convention provides that:

"This convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards are sought and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the state where their recognition and enforcement are sought"

Section 51 of ACA provides for recognition of awards made in other countries:

51. (1) An arbitral award shall, irrespective of the country in which it is made, 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 a duly certified copy thereof;

(b) the original arbitration agreement or a duly certified copy thereof; and

(c) where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

Despite the above provisions, a party may request the court to refuse recognition or enforcement of award.

Section 32 ACA provides that any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award. See also section 52(1)

The circumstances under which a court will refuse to recognize and enforce an award are provided under section 52(2) ACA as follows:

52(2) 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 recognise or enforce any award-

(a) if the party against whom it is invoked furnishes the court proof-

(i) that a party to the arbitration agreement was under some incapacity, or

(ii) that the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the law of the country where the award was made, or

(iii) that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case, or

(iv) that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or

(v) that the award contains decisions on matters which are beyond the scope of submission to arbitration, so however that if the decision on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced, or

(vi) that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, or

(vii) where there is no agreement within the parties under sub-paragraph, that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place, or

(viii) that the award has not yet become binding on the parties or has been set aside or suspended by a court in which, or under the law of which, the award was made; or

(b) if the court finds-

(i) that the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria, or

(ii) that the recognition or enforcement of the award is against public policy of Nigeria.

These are the same grounds for setting aside. If the courts in one country refuse recognition or enforcement, one can go to another county which may recognize and enforce the award.

5. SETTING ASIDE AN AWARD

Arbitration award can be set aside on grounds of misconduct or other procedural irregularity by the courts. See sections 29(1) and 30(1) of the ACA.

Section 29(1) provides that:

"A party who is aggrieved by an arbitral award may within three months-

(a) from the date of the award or

(b) in a case falling within section 28 of this Act, from the date the request for additional award is disposed of by the arbitral tribunal, by way of an application for setting aside request the court to set aside the award in accordance with subsection (2) of this section.

Section 29 (2) provides that:

"The court may set aside an arbitral award if the party making the application furnishes proof that the award contains decisions on matters which are beyond the scope of the submission to arbitration so however, that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matter not submitted may be set aside.

Section 30(1) provides thus:

"Where an Arbitrator has misconducted himself, or where the arbitral proceedings, or award, has been improperly procured, the court may on the application of a party set aside the award."

There are also numerous Nigerian cases to the effect that an award can be set aside when the Arbitrator has misconducted himself

See K.S.U.D.B. vs. FANZ CONSTRUCTION LTD (1990) NWLR part 142 page 1 at 43,

TAYLOR WOODROW (NIG.) LTD vs. SUDDEUTSCHE ENTAWERK GMBH (1993) 4NWLR part 286 page 127 at 141 – 144

BAKER MARINE NIGERIA LTD vs. CHEVRON NIGERIA LTD (2000) 12 NWLR part 681 page 393.

Thus arbitration award can be set aside on grounds of absence of jurisdiction or misconduct.

The Supreme Court's decision in Taylor Woodrow (Nig.) Ltd V S. E. GmbH (1993) 4 NWLR (Part 286) 127 stated:

"misconduct" has been stated not to lend itself to an exhaustive definition and the term has been described to include "on the one hand that which is misconduct by any standard, such as being bribed or corrupted, and on the other hand, mere "technical misconduct" such as making a mere mistake as to the scope of the authority conferred by the agreement of reference"

Misconduct covers the following areas:

- failure to decide all matters referred;
- Deciding matters not included in the reference;
- Material mistake of fact;
- Irregularity in the conduct of the arbitral proceedings;
- Failure to act fairly towards both parties;

- Delegation of arbitral authority;
- Accepting hospitality of one of the parties, where such is offered with the intention of influencing the decision;
- Interest in the subject matter of the reference;
- Accepting a bribe

Further jurisdiction issues which constitute a ground for setting aside may include:

- whether there is a valid arbitration agreement;
- whether the tribunal is properly constituted;
- what matters have been submitted to arbitration in accordance with arbitration agreement; and
- whether these matters are arbitrable.

Section 48 of ACA provides for the circumstances under which a court can set aside an award as follows:

48. The court may set aside an arbitral award-

(a) If the party making the application furnishes proof-

(i) that a party to the arbitration agreement was under some incapacity,

(ii) That the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria,

(iii) That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case, or

(iv) That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or

(v) That the award contains decisions on matters which are beyond the scope of submission to arbitration, so however that if decisions on matters submitted to

arbitration can be separated from those not submitted, only that part of the award which contains decision on matters not submitted to arbitration may be set aside, or

(vi) That the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or

(vii) Where there is no agreement between the parties under subparagraph (vi) of this paragraph, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or

(b) if the court finds-

(i) that the subject-matter of the dispute is not capable of settlement by arbitration under laws of Nigeria; or

(ii) that the award is against public policy of Nigeria.

Section 48 is a mere reproduction of Article 4 of 1958 New York Convention and the Model Law.

Again, there is a distinction between setting aside an arbitral award and recognition and enforcement of such award.

Setting aside where it is done by the court of the seat of arbitration may affect the validity of the award in such a way that no other national court in any other country will regard the award as valid for recognition and enforcement.

On the other hand, mere refusal to recognize and enforce an award does not affect the validity of such an award in other national courts. This indeed is a significant difference for practitioners to note in making their decision as to challenge of an award.

Another significant issue in recognition and enforcement is information as to existence of assets of the losing party. It is important to shop for execution of an award in those countries where there are assets to satisfy the award.

6 OVER LITIGATION IN ARBITRATION

The main reason why business men elect arbitration with its cost implication is to get result within a very short time. This objective is one which our court system has failed to achieve. There are situation of cases in court for years without judgement or result. In this era, business men and women are getting tired of litigating on a matter for years without result.

Arbitration is therefore the key to getting effective result without delay as it is meant to dispose cases with speed.

Note section 34 which provides thus:

34. A court shall not intervene in any matter governed by this Act except where so provided in this Act.

At first sight, section 34 of ACA is a striking declaration of independence. Yet the law cannot exclude and does not seek to exclude the participation of a competent court in carrying out certain functions of arbitration assistance and supervision.

The ACA therefore contains and recognizes a possible role for court

In reality arbitration may not escape court's intervention and the court is meant to assist the process. The question here is how far should this involvement extend? To put it directly, when does involvement by a court become intervention in the arbitral process and when does intervention become interference with a process which is supposed to stand on its own feet?

From the provision of ACA, it is apparent that the point where reliance of arbitration on court begins and ends as stated under ACA which and as listed above are merely formal for instance the grounds for setting aside , recognition and enforcement are technical and do not relate to issues concerning the merits on the substantive issues under the award. Except for challenge on jurisdiction, other interventions discussed above are merely supportive.

It therefore implies that any intervention outside the areas recognized by law is over intervention which will defiantly slow down the arbitral process.

The bad side of having the law which provides for court's intervention is that arbitration cannot avoid being infected with the disease of delay. "What you do not have you cannot give. There is usually no speed in litigation and if court is allowed to intervene with arbitration,

the speed expected of arbitration will be lost which is a case of salt losing its taste and thereby becoming worthless.

In essence over litigation in arbitration will result in:

- Delay
- Excessive cost implication
- Hostility
- Loss of money and business relationships
- Confidentiality associated with arbitration may be lost,
- Lost of essence of arbitration
- Arbitration turns to another litigation, etc

The courts are therefore enjoined to restrict their interference in arbitration to stipulated areas and do so within a very short time bearing in mind that parties before arbitration expects to get results within a short time. The fact that parties agreed to submit to arbitration should always be taken into consideration in handling arbitration related matters.

7. CONCLUSION

I will conclude by stating the principles underlying the arbitral process which are:

- The parties shall be free to agree on how their disputes are resolved, subject only to such safeguards as are necessary in public interest.
- The role of the court is severely restricted. The court shall not intervene except as provided by the Act
- The fair resolution of disputes by an impartial tribunal without unnecessary delay

By this route, the arbitral tribunal itself is asked to provide a fair means for the resolution of dispute.

It is hoped that a provision which allows the tribunal to adopt procedures suitable to the circumstances of the particular case will be inserted in our ACA.

The objectives are to avoid unnecessary delay, expenses, and to provide a fair means for the resolution of the matters to be determined

Where such a provision is allowed, it will further encourage flexibility at hearing.

One problem we have right now is the absence of a clear provision of which court has jurisdiction in arbitration matters. I am currently involved in a matter at the Lagos High Court for appointment of arbitrator on a survey contract for dredging of Imo River. Objection was raised that since it has to do with water ways, it should be the Federal High Court that has jurisdiction. The court overruled the objection and they appealed. We have been there since 2002

In moving forward, one would state that it is important to make arbitration process in Nigeria work efficiently. In achieving that goal, not only should the court act with speed but disputants who originally agreed to be bound by arbitration decision should assist the process. A situation of having the disputants run to court for every little application and bringing in unnecessary applications aimed at stalling the arbitration will not help matters.

Legal practitioners representing parties in arbitration should know the difference between arbitration and litigation and learn to let go of litigation mentality whilst in arbitration. There is need to know that at the end of the various attempts to slow down the process, not only the parties suffer, but the process itself and the business activities resulting into an epileptic economy.

We hope that in no time our law will be amended to enable arbitration award be enforced directly without leave of court.

We also hope that in amending our ACA, a section requiring any application to the court in respect of a matter which is subject of arbitration to be sanctioned by the arbitral tribunal is inserted. This will give the arbitral tribunal an opportunity of seeing those applications and determining their relevance.

It is our desire that some of the above cautions/suggestions be taken seriously and that all parties work together to preserve the value that arbitration adds to the economy.

Remember if the process fails, our efforts have failed and the danger of all is that the value of arbitration will be lost. I will like to conclude with the statement of Redfern & Hunter to wit:

It is sometimes said that the relationship between national courts and arbitral tribunal is one of "partnership". If so it is not a partnership of equals. Arbitration may depend upon the agreement of the parties, but it is also a system built on law and which relies upon that law to make it effective nationally and internationally. National courts could exist without

*arbitration, but arbitration could not exist without the courts.*⁴

4. Alan Redfern and Martin Hunter "Law and Practice of International Commercial Arbitration"

CHIEF ANTHONY IKEMEFUNA IDIGBE (SAN)

Ikemefuna, his middle name means "May my power (or glory) not fade". Chief Anthony Idigbe, Senior Advocate of Nigeria a father's prayer answered. The son of the first Chief Judge of the Mid-West Region of Nigeria, Justice Chike Idigbe, also regarded as one of the finest jurists to sit on the bench of our nation's Supreme Court – young Anthony, in choosing a career in law, had great shoes to fill. And although he is still well short of his 50th birthday he has already achieved great career milestones.

A seasoned legal practitioner, Chief Idigbe has deep experience in diverse areas of civil and criminal law practice. He has represented major companies and institutions in the highest courts of Nigeria. Chief Idigbe was prosecutor for the Nigerian Deposit Insurance Corporation (NDIC); he has acted as counsel to the Security and Exchange Commission (SEC), the National Electric Power Authority (NEPA) and the Bureau of Public Enterprises (BPE). He is a respected capital market adviser and has been involved in several privatization and public offer transactions.

Tony Idigbe graduated with a Second Class Upper degree in Law from the University of Ife in 1982, winning the Justice Orojo Prize for the best student in Company Law. He qualified from the Nigerian law School with a Second Class Upper certificate in 1983 and was elevated to the revered rank of Senior Advocate of Nigeria (SAN) after 17 years of practice in 2000. He is one of a small club of lawyers who have attained this rank before the age of 40.

Chief Idigbe has an LLM (Masters in Law) from the University of Lagos, Akoka (1988); an MBA (Masters of Business Administration) from the Enugu State University of Science and Technology (ESUT), Enugu; a diploma in advertising from the Advertising Practitioners Council (APCON) (1999); and a diploma in arbitration from the Chartered Institute of Arbitrators, London. Chief Idigbe is a notary public and a member of the International Bar Association. He is a

director of Royal Exchange Assurance Nigeria Plc and Chairman, commercial Give 'N' Take Nigeria Limited.

Chief Idigbe is the author of many published articles and scholarly papers and is on the faculty of the ESUT Business School, Enugu, where he lectures Business Law and other Management courses on part time basis. He holds the traditional title of Akuluano Ahaba in his native Asaba and is a member of the Parish Council, Catholic Church of the Transfiguration, Victoria Garden City, Lekki.

The Catholic Chaplaincy, University of Lagos honoured Chief Anthony Ikemefuna Idigbe for his achievements in the legal profession with a Worker's Award on the 7th day of May 2006.

CONTACT ADDRESS:

**PUNUKA ATTORNEYS & SOLICITORS
PLOT 45 OYIBO ADJARHO STREET
OFF AYINDE AKINMADE STREET
OFF ADMIRALTY WAY
OPPOSITE WHITE DOVE HIGH SCHOOL
LEKKI PENINSULA PHASE I, LAGOS
TEL: 234 (01)2704789, 01-2704791
(FAX): 234 (01) 2704790
MOBILE: +234 8022249927, +234 8035403030**

WEB SITE: www.punuka.com
EMAIL ADDRESS: info@punukachambers.com
distinct@linkserve.com.ng
c.Idigbe@punuka.com

