

LIMITATION PERIOD FOR THE ENFORCEMENT OF ARBITRATION AWARDS IN NIGERIA
- CITY ENGINEERING NIG. LIMITED vs. FEDERAL HOUSING AUTHORITY

BY

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Introduction

The time from which the limitation period for the commencement of an action for the enforcement of arbitral awards in Nigeria begins to run has been the subject of considerable concern to both practitioners and academics in Nigeria¹ and indeed England². This is even more so, when the legal position in Nigeria appears to differ significantly from that in England.

By virtue of section 8(1) (d) of the Limitation Law of Lagos State³, an action to enforce an arbitration award where the arbitration agreement is not under seal or where the arbitration is under any other enactment other than the Arbitration and Conciliation Act shall not be brought after the expiration of 6 (six) years from the date on which the cause of action accrued. The question then is: when does the time begin to run for the purpose of reckoning the 6 (six) year period of limitation? This was the thrust of the decision of the Supreme Court in *City Engineering Nig. Limited vs. Federal Housing Authority*.⁴

Facts

¹ See Adebayo Adaralegbe, "Limitation Period for the Enforcement of Arbitral Awards in Nigeria" *Arbitration International, Journal of the London Court of International Arbitration*, 2006, Vol. 22 Number 4.

² See Russell on Arbitration (20th Edition) pages 5-6 and Mustill and Boyd, *Commercial Arbitration*, Second Edition, page 418.

³ This provision was the subject of interpretation in *City Engineering Nig. Limited vs. Federal Housing Authority* and is *in pari materia* with the Limitation Laws of other states in Nigeria as well as the Federal Capital Territory of Abuja.

⁴ (1997) 9 NWLR (Part 520), 224

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 12th December 1980. The matter was referred to arbitration and proceedings commenced on 11th December 1981 and ended in November 1985 when the Arbitrator made his award in the sum of ₦3, 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 become statute barred, having been brought in excess of 6 (six) years after 12th 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.

Arguments

The Supreme Court was referred to its decision in *Murmansk State Steamship Line vs. Kano Oil Millers Limited*⁵ where the court, held that the time begins to run from the date of the accrual of the original cause of action in the arbitral agreement, and not from the date of the arbitral award. It was contended that this case was in conflict with *Obi Obembe vs. Wemabod Estates Limited*⁶ and *Kano State Urban Development Board vs. Fanz Construction Co. Limited*,⁷ two Supreme Court decisions rendered subsequent to the *Murmansk* case.

⁵ (1974) 5 SC 115

⁶ (1997) 5 SC 115

⁷ (1990) 4 NWLR (Part 142) 1

The court was further urged to consider the position in England as demonstrated in *Agromet Motoimport Ltd vs. Maulden Engineering Co. (Beds) Ltd.*,⁸ where Otton J. held that time begins to run from the date of the breach of the implied term to perform the award, and not from the date of the accrual of the original cause of action giving rise to the submission.

The Decision

The Supreme Court, *per* Ogundare JSC, after a review of the case law and texts, held that the *Murmansk* case was correctly decided and was thus binding on the lower courts. It further held that no cause had been shown to convince the court to depart from the said decision. The court was also apparently not persuaded by the “breach of implied term to perform the award theory” used by Otton J. in the *Agromet* case.

Furthermore, the court decided that *Obi Obembe* case and *Fanz Construction* case did not conflict with the *Murmansk* case as neither case touched on the issue of limitation period and thus were irrelevant to the instant case. The Supreme Court also rejected the attempt by counsel to find support in the dicta of Agbaje JSC, in the *Fanz Construction* case where the learned Justice of the Supreme Court cited the following commentary from Halsbury’s Laws of England:⁹

... [an] award thus extinguishes any right of action in respect of the former matters in difference but gives rise to a new cause of action based on the agreement between the parties to perform the award which is implied in every arbitration agreement

⁸ [1985] 2 All ER 436

⁹ 4th Edition Paragraph 611, Page 323

The Supreme Court took the view that this reference by Agbaje JSC in the **Fanz Construction** case was irrelevant to the limitation period under consideration as it did not deal with it.

Comments

The position of Nigerian law on the limitation period for the enforcement of arbitration awards appears to have been first settled by the Supreme Court as far back as the case of **Murmansk State Steamship Line vs. Kano Oil Millers Limited**. At the time this decision was rendered, the preponderance of authority even in the England seemed to support this position. Hence, the learned authors of Russell on Arbitration¹⁰ stated as follows:

Date from which time runs: The period of limitation runs from the date on which the 'cause of arbitration accrued; that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned.

This passage was referred to with approval by the Supreme Court in its judgment in the **Murmansk** case.

However, the position of the courts in England has since changed and is now as shown in the **Agromet** case. The court held that it is an implied term of an agreement to submit disputes to arbitration, that any award made upon the submission will be honoured. The "*action*" and "*cause of action*" referred to in section 7 of the English Limitation Act of 1980,¹¹ are therefore the independent cause of action for breach of the implied term to perform the award and not the original cause of action.

¹⁰ 18th Edition of the book took the view at pages 4-5 that

¹¹ This section is *in pari materia* with section 8 of the Limitation Laws of Lagos State.

The learned authors of Russell on Arbitration have in their 22nd Edition restated the law in line with the *Agromet* case as follows:¹²

The limitation period for an action on the award will usually be six years....Time runs from the date of the breach of the arbitration agreement, not from the date of the arbitration agreement or the date of the award.

In the more recent case of *IBSSL vs. Minerals Trading Corp*,¹³ the English court agreed with the conclusion reached by Otton J in *Agromet* case and held that time begins to run from the date on which the implied promise to perform the award is broken, not from the date of the arbitration agreement nor from the date of the award.¹⁴

Although reported over ten years ago, the Supreme Court decision in the *City Engineering* case represents the current position of the law in Nigeria. Its implication is that the arbitration proceedings and the enforcement of the award both constitute a single cause of action that must be prosecuted and enforced within the statutory limitation period.

There is however no doubt that the view expressed in the *dicta* of Agbaje JSC in the *Fanz Construction* case, to the effect that an award by an arbitrator constitutes a separate cause of action based on the agreement to honour the same, accords with the current international judicial opinion. Accordingly, the phrase "*cause of action*" in section 8(1) (d) of the Limitation Law of Lagos State *supra* refers to the action to enforce the arbitration award, the cause of which

¹² See Russell on Arbitration, 22nd Edition, Page 367, Paragraph 8 – 008.

¹³ 1996 1 All ER

¹⁴ See also *Good Challenger Navegante S.A. v. Metal HExport/Import S.A.*, [2003] EWCA (Civ) 1668.

can only accrue where the party against whom the award was made has defaulted in honouring the same.

With due respect, the interpretation given by the Supreme Court in the *City Engineering* case portends palpable difficulties not only for the contracting parties, but also for future of arbitration. For instance, it is not unlikely that the limitation period could have expired before the award is actually rendered. Really, what is the use of an arbitral award if the party seeking to enforce such an award is unable to benefit from the fruits of his victory?

Conclusion

It is hoped that the Supreme Court will sooner than later have cause to reconsider its position in *City Engineering* case to the effect that the action to enforce the arbitral award will be construed as a separate and distinct cause of action from that founded on the dispute between parties to an agreement providing for referral to arbitration. Furthermore, Nigerian law should be brought up to speed with current international judicial thinking (especially in England) exemplified by *Agromet* and *IBSSL* cases. Failure to do so would only draw us back in the bid to make arbitration a viable alternative to the adjudication of matters outside the court room.