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BOOK REVIEW

***Commercial Arbitration Law and Practice in Nigeria through the Cases*, by Adedoyin Rhodes-Vivour. Published by LexisNexis Africa (2016, 760pp). Price USD110.**

Adedoyin Rhodes-Vivour intends her new book to be a comprehensive overview of Nigerian arbitration law and practice, with an emphasis—as the title indicates—on the case law. The author succeeds admirably in her task.

Each chapter is organized with Ms Rhodes-Vivour's goal in mind. In order for the case law to be understood in its proper context, the author begins each chapter with the statutory framework. In Nigeria, that framework involves, for almost every topic: ordinance-based law, the Federal Arbitration Act, and (for Lagos State) the Lagos State Arbitration Act. The overlay of these different sources of law is one of the more involved topics for the non-Nigerian practitioner to understand. The author also makes frequent reference to sources of law outside of Nigeria.

In Chapter 1, 'Definition and nature of arbitration', the author explains, among other things, the sources of Nigerian arbitration law. In Nigeria, the first statute on arbitration was the Arbitration Ordinance, enacted by the British colonial administration in 1914 (based on the English Arbitration Act of 1889) and subsequently adopted by the Regions and then States of independent Nigeria. The Federal Arbitration Act, based on the UNCITRAL Model Law, was enacted by the Federal Military Government of Nigeria in 1988 (the first country in Africa to do so), at the same time as the New York Convention of 1958 was adopted. The 1988 Act did not repeal the existing statutes. In Lagos State—home to the city of Lagos, the commercial nerve centre of Nigeria and the most populated city in Africa—the Lagos State Arbitration Law applies, except where the parties have agreed otherwise. The Lagos State Arbitration Law incorporates the 2006 revisions to the UNCITRAL Model Law of 1985. As Ms Rhodes-Vivour notes, the sources of Nigerian arbitration law also include international conventions, the received English statutes of general application in force in England as of 1 January 1900, the common law, and doctrines of equity.

Following the statutory framework, each chapter moves to the cases Ms Rhodes-Vivour has selected as illustrating the state of the law in Nigeria on the topic in question. The author begins each case with a very useful synopsis of what the case stands for, usually in two to four lines. There then follows the most relevant excerpt from the decision itself, including case citations. Ms Rhodes-Vivour takes care to excerpt the most relevant parts, and the excerpts thus vary in length.

The third part of each chapter is the commentary section, in which Ms Rhodes-Vivour explains the relevant concepts and rules. She begins each commentary with a section on definitions, explains why the notions are important, and then helps the reader make sense of the relevant notions discussed in the case law. For example, in the important chapter on arbitrability, she distinguishes arbitrability from jurisdiction and explains the relationship with public policy and the law. She gives a helpful list of matters that are considered non-arbitrable, including those matters that are reserved for the Federal High Court, according to the Nigerian Constitution and some statutes. On the difficult and currently troublesome question of the arbitrability of tax matters under Nigerian law, the author sets out what should be the operative distinction—between issues of taxation, on the one hand, and disputes in relation to commercial contracts that may touch upon taxation, on the other—but does not (and cannot, as they postdate the book) address the 22 August and 31 August 2016 decisions of the Abuja Court of Appeal in which it was held that issues arising from certain commercial contracts touching upon taxation were not in fact arbitrable.[1] We understand, however, that most Nigerian and foreign arbitration practitioners would have preferred that the Abuja Court of Appeal follow the compelling distinction proposed by Ms Rhodes-Vivour in her book.[2]

In this way, Ms Rhodes-Vivour's book incorporates the case book method but is not a case book. The relevant cases are quoted and summarized but are not presented alone. This is particularly important for the non-Nigerian reader, who will rely heavily on Ms Rhodes-Vivour's excellent interpretation of and navigation through the primary sources.

In terms of the content, Ms Rhodes-Vivour covers all the major arbitration topics in 16 full chapters: from, for example, the important chapters on the arbitration agreement, jurisdiction, challenging the award, and recognition and enforcement of awards to more focused chapters on topics such as costs, interest, and counsel in arbitral proceedings.

This last topic, counsel in arbitral proceedings, is one of particular importance for the non-Nigerian practitioner interested in understanding the practice of arbitration in Nigeria. This short chapter addresses not only the conduct of counsel in arbitration but also the thorny question of the possibility of representation by foreign counsel in arbitration, including international arbitration, in Nigeria. The restrictions on foreign counsel acting in international arbitrations seated in Nigeria are not currently clear. Ms Rhodes-Vivour notes that the 'restriction against a general right of audience of foreign counsel before the arbitral tribunal may impact on the attractiveness of Nigeria as a preferred destination for international arbitration'. She explains that such restrictions may harm the perception of Nigeria as an 'arbitration-friendly jurisdiction'. To drive the point home, the author includes a short section discussing how other jurisdictions handle this question, noting, *inter alia*, that there are no restrictions in the UK on foreign counsel representing parties in arbitration and that

1 *Shell Nigeria Exploration and Production et al v Federal Inland Revenue Service and Nigerian National Petroleum Company*, Abuja Court of Appeal, 31 August 2016, CA/A/208/2012, and *Esso Exploration and Production Nigeria Limited et al v Nigerian National Petroleum Company*, Court of Appeal of Abuja, 22 July 2016, CA/A/507/2012.

2 See eg Kolawole Mayomi, 'Recent Developments on the Arbitrability of Tax Disputes in Nigeria', 21 December 2016, http://www.lexology.com/library/detail.aspx?g=2731a03b-a6ae-43da-a685-58cddf7d67f7.

Singapore and Malaysia have amended their laws to make it easier for parties to be represented by foreign counsel in arbitration.

Nigeria's perception as an arbitration-friendly jurisdiction is an important concern for Ms Rhodes-Vivour, who considers arbitration (and, in particular, international arbitration) to be very important for the country's economic development. For arbitration to play that role, it is necessary for the users of arbitration not to view arbitration as a foreign encroachment, to be guarded against. In this vein, the author notes that arbitration is not an imported dispute-resolution mechanism but rather is the 'traditional dispute resolution mechanism of the Nigerian people'. Although she distinguishes customary arbitration from modern commercial arbitration by, among other things, the requirement of a written arbitration clause, in fact in some jurisdictions—such as France, where we practice—there is no such requirement. Indeed, while there are some features of customary arbitration that differentiate it from modern commercial arbitration, there most certainly are more similarities than differences.

For arbitration to play its rightful role in economic development, it is of course also vital that the courts not view arbitration as something foreign against which they must protect Nigerians. In Chapter 15 on 'Court support and intervention', Ms Rhodes-Vivour examines both the need for the courts to let arbitration proceed undisturbed and for them to support arbitration when needed. The author provides helpful charts indicating the sections in the Federal Arbitration Act and the Lagos State Arbitration Act where the different roles of the courts are addressed, in the periods before constitution of the arbitral tribunal, during the proceedings, and then post-award.

Given the Nigerian courts' important role in allowing arbitration to be a motor of economic development, it is fitting that the Foreword to Ms Rhodes-Vivour's book is written by Hon Justice Olufunlola Oyelola Adekeye, a retired justice of the Supreme Court of Nigeria (and the second woman to be appointed to that post). Justice Adekeye also notes the important role of arbitration as a 'vehicle of economic change locally and internationally'. For arbitration to play that role, it must be well understood by practitioners, users, and the courts. This book plays its part in achieving that understanding. Justice Adekeye calls it 'by any standard a compilation of industry, hard work, dedication, deft research and above all, a valuable legal resource'. We agree.

Ms Rhodes-Vivour's book is essential reading for any practitioner, whether Nigerian or international, with an interest in arbitration in Nigeria. Along with previous works published, including by CA Candide-Johnson SAN and Olasupo Shasore SAN[3] and Fabian Ajogwu SAN,[4] it reflects the extensive interest in arbitration in Nigeria and underscores the strong expertise and experience of the Nigerian legal profession in the field of commercial arbitration.

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3 *Commercial Arbitration and International Practice in Nigeria* (LexisNexis 2011).

4 *Commercial Arbitration in Nigeria: Law & Practice* (Centre for Commercial Law Development 2013).