

BOOK REVIEW

***Commercial Arbitration Law and Practice in Nigeria*, by Paul Oboarenegbe Idornigie, LawLords Publications, 2015 (426 pp, kindle edition).**

The concise title of Professor Idornigie's book 'Commercial Arbitration Law And Practice in Nigeria' aptly defines its subject-matter, scope, and spatial domain. Of the various legal regimes and regulatory frameworks on arbitration and alternative dispute resolution (ADR), commercial arbitration law is arguably closest to centre stage. This is due in no small measure to the global reach and impact of trade and commerce on the daily lives, interactions and transactions amongst peoples all over the world. Concomitant to this is the need to manage and resolve peacefully the conflicts and disputes that emanate from commercial relationships.

The value of arbitration is reflected in the widespread recognition of its advantages and benefits in world trade and commerce. Prof Idornigie is not averse to proffering considered opinions and guidance on controversial and complex issues in Nigerian arbitration law. This is demonstrated in various sections of this book. For example, considering it unduly restrictive to confine 'commercial relationship' to 'contractual relationship', the author argues persuasively in this book for the draft Federal Arbitration and Conciliation Bill to define 'commercial' in conformity with the United Nations Commission on International Trade Law (UNCITRAL's) sense of that term to include legal relationships whether contractual or not.

The book is extensive in coverage. The author justifies the scope of this work with the sanguine observation that as arbitration is evolving with new themes emerging there is need to add to the existing literature by aiming this book not only at sustaining the trend but also expanding the scope and updating that literature. The author achieves that objective successfully in the 11 substantive chapters of the book.

As the author himself provides convenient summaries of these chapters in the preface it should suffice, for purposes of this review, to highlight some of the book's striking features.

Arbitration has a long past but scarce history as Lord Michael Mustill famously observed and indeed the historical foundations of arbitration, particularly in Africa, are not easy to excavate. Prof Idornigie embarks on this arduous task by charting the evolutionary course of arbitration in Chapter One in a trajectory that briefly describes the evolution of arbitration generally and then proceeds pertinently and more specifically to its evolution in Nigeria with an arbitration story spanning the pre-colonial, colonial, and post-colonial periods. The story is short, alas too short, but

nevertheless lucid, incisive and a useable foundation for further research. The inclusion of customary law arbitration in this discourse is commendable, being a system of law and practice of particular importance and in common use for dispute settlement among non-urban dwellers in most parts of the continent.

The next five chapters cover familiar ground, dealing in Chapter Two with the Form and the Character of the Arbitration Agreement, the doctrinal principles of Party Autonomy and Separability, the *Lex Mercatoria*, and the Applicable Law, a topic of particular interest and importance in international commercial arbitration. Arbitrability and the controversial subject of fraud in arbitration are covered in Chapter Three where the author submits boldly that where fraud is proved the arbitrator should dismiss the claim.

In Chapter Four the author evaluates the relevance, significance, and efficacy of the international legal regimes regulating commercial arbitration consisting of International Law, the UNCITRAL Model Law and Rules, the 1958 New York Convention and the 1965 Washington Convention. Their evaluation is based on the author's informed perspective and rationale that these legal instruments have in effect 'internationalised' commercial arbitration.

Chapter Five covers the Commencement of Arbitration and Setting Up the Arbitral Tribunal. Here the author extrapolates the important International Bar Association Guidelines on Conflicts of Interest in International Commercial Arbitration in relation to the grounds for challenging an arbitrator and states his preference for mixed tribunals of lawyers and non-lawyers.

Chapter Six deals with the Arbitral Proceedings and the Award and Chapter Seven examines the various means by which an arbitral award can be set aside or enforced.

The Extent of Court Intervention in arbitration receives separate treatment in Chapter Eight no doubt because of arbitration's use of, and dependence on, the residual powers of the court to assist the arbitral process and the enforcement of the arbitral award. Prof Idornigie deals with this topic deftly by clarifying the relationship between arbitration and the courts and setting out the matters on which court assistance may be sought and the parameters of court intervention in arbitration. The author states his preference for courts to give effect to the wishes of the parties to arbitrate rather than litigate, within the permissible limits of arbitrability.

The challenging topic of Investor/State Arbitration also receives separate treatment in Chapter Nine. Those interested or engaged in this area of arbitration practice should find Prof Idornigie's insights particularly informative. The author has researched the topic extensively and brings to bear in the pages of this book his considerable scholarship and experience from which readers should benefit.

The limitation of time is important in both litigation and arbitration and the author discusses the statutory and contractual time limits in Chapter Ten with the conclusion that a line ought to be drawn between the statutory time for commencement of an action (ie six years from when the cause of action arose) and that for enforcing an arbitral award (ie three months from the date of the award).

In the final Chapter, Eleven, the author addresses the need for the reform of Arbitration Laws in Nigeria by enumerating the defects in several areas of the Federal Statute concluding with a recommendation for the draft Arbitration and

Conciliation Bill of 2006 to be passed by the Federal Government and the remaining states, noting that only Lagos State has enacted the draft bill into the Lagos State Arbitration Law, 2009. The several specific areas of the existing Act requiring attention and amendments are helpfully identified and listed.

The book is enriched by the substantial lists of judicial decisions used in the clarification of the laws and statutes governing arbitration practice in Nigeria. The extensive bibliography attests to the extent of the research and the volume of material relied upon in writing such a substantial book on arbitration, for use not only by Nigerians but in jurisdictions where the Nigerian experience may shed light on the challenges encountered in the law and practice of arbitration.

The perception of arbitration today as becoming more procedurally rigid and complex with substantive rules and regulatory frameworks more for specialist practitioners than meeting user expectations is not the promise of arbitration. Arbitration ought therefore to deliver its declared benefits to parties and users by coherent laws and simplified procedures they can understand in order to accept arbitral awards more readily and implement them willingly. This comprehensive treatment of commercial arbitration law and practice in Nigeria is authoritative and the insightful perspectives brought into this book by its learned author makes it a welcome addition to the growing literature on the subject.

The book is written in fluent language, exudes scholarly prescience and analytical vigour, and is user-friendly. It is a valuable book for the student, practitioner, and researcher who desires to keep up to date with developments in arbitration law and practice in Nigeria and beyond.

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