

Review

Determinants of jurisdiction in arbitral proceedings for construction contract dispute resolution in Nigeria.

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Well known to construction industry contracts are disputes such as unresolved claims and are inimical to achieving project objectives. This has attracted provision of dispute resolution clause in contractual agreements such as Arbitration clause aimed at resolving any emerging dispute. However, the issue of challenge of jurisdiction (powers) of the arbitrator(s) remains a reoccurring determination in Nigeria courts. Considering arbitral agreements/ clause in domestic perspectives, the paper reviewed provisions of Nigerian Arbitration and Conciliation Act, (ACA) 1988, some other relevant laws and decided court cases as related to determinants of arbitrator(s)' jurisdiction. It discovered that interplay of several factors including principle of parties' autonomy; project specific characteristics, complexity of construction etc are essential determinants. The paper however concluded that it may be complex to enlist determinants for jurisdictional powers of arbitral panel but recommended that basic requirements should not be far from those provided for by the national arbitration law and the characteristic of construction project contract and environment, while contracting parties must have in view court decisions on construction industry market in drafting arbitral agreements.

Key words: Arbitral Proceedings, Construction Contract, Jurisdiction Nigeria.

INTRODUCTION

The dynamic and uniqueness of typical construction industry projects is their being conditionally contractual, complex and lengthy which makes them vulnerable to risk variables and disputes inimical to the project objectives (Ojo and Akinradewo, 2011). By this, many projects have failed due to many factors including unresolved disputes between contracting parties: or due to actions of the parties or breach of any silent conditions of the contract (Ojo, 2008).

This, often than ever, has attracted the practice that contractual agreements now reasonably contemplate dispute between parties hence, dispute resolution clauses are couched into such agreements. Bryan et al ¹ opine that this allows parties the ability to plan early for possible disputes and the flexibility to customize the most time- and cost-effective resolution process for their cases, hence diminishing the effects of those disputes on the project when and if they occur.

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However, in carrying out this term of contractual agreement, arbitration amongst other non-adversarial Alternative Dispute Resolution (ADR) mechanisms has taken the lead in employment (Kolawole Mayomi, 2010). Accordingly, proviso Nigerian Arbitration and Conciliation Act, 1988. Cap A18 Vol.1, Law of the Federal Republic of Nigeria, 2004, (ACA, 1988)² (Orojo and Ajomo, 1999), an agreement in which two or more persons agree that, in respect of future disputes or of existing disputes, between them be decided in a legally judicial and binding manner by one or more persons of their choice, such express statement couched into a commercial agreement with specific mention of arbitration as a method of dispute resolution or a reference to a statute making it mandatory to arbitrate in the event of a dispute amount to Arbitration Agreement /clause. This is in tandem with the principle of parties' autonomy. Arbitration is appellate to other ADR methods especially where multi-tiered Dispute Resolution mechanism is agreed.

However, despite the avalanche of Arbitration Agreement/clause in contract agreements, the issue of challenge of jurisdiction of the arbitrator(s) remains a reoccurring dispute for determination in Nigerian courts³. For instance, if the arbitrators sought to resolve an issue beyond their competence, they could be restrained from doing so by the courts on the plea of any of the parties: though, likewise, the courts recognized that arbitral panels possessed an inherent power to determine their jurisdiction. Arbitral Jurisdiction has severally and divergently been viewed across provisions of various national laws and institutional rules^{4,5}. However, common to all is that, jurisdiction is the Arbitrator(s)' authority to decide a dispute; jurisdiction confers powers on the arbitrator(s) to arbitrate and often availed by the parties. It is therefore a truism that jurisdiction is related and central to any judicial proceeding and to building and sustaining confidence of the disputants in adjudicatory system like arbitral proceeding.

The question of jurisdiction is typically⁶ a preliminary matter for the arbitral tribunal to determine. This means whether it is valid and whether the dispute lies within the scope of the arbitration agreement. Or whether as a matter of construction of the arbitration agreement, a tribunal possesses the jurisdiction to hear a dispute. Another challenge to the issue of jurisdiction is to foreclose whether the possibility of lack of jurisdiction is sufficient to rob the trial of minimum requirement of fair play and fair hearing. Or, by extension whether the result of lack of jurisdiction makes an award a nullity⁷. Therefore, whenever there is challenge of judicial (arbitral) jurisdiction, such affords adroit and judicious determination devoid of favor and acrimony.

Following from the foregoing, to promote a hitch – free process, what then are the determinants of jurisdiction in arbitral proceeding in view of the Arbitration and Conciliation Act, 1988. Cap A18 Vol.1, Law of the Federal

Republic of Nigeria, 2004, case laws and literal reasoning of the courts and authorities? This paper intends to identify determinants of jurisdiction in arbitral proceeding as applicable to construction contract dispute particularly in construction contract arbitration agreements. The significant of this study is premised on the weight attached to jurisdiction by ACA⁸.

Overview of arbitration and arbitral agreements

One important issue is that most commercial transaction agreements like construction contracts often reasonably contemplate dispute between parties. Hence dispute resolution clauses are couched into such agreements and a mechanism apart from litigation often adopted is Arbitration.

Arbitration (as means of Alternative Dispute Resolution (ADR)) is an adjudicatory process or a private legal technique for the resolution of disputes outside the courts, in which a neutral third party (a person or a panel) is empowered to decide disputed issues, referred to it, after hearing evidences and arguments from the parties. Though Arbitration may be voluntary (based on principle of parties autonomy) that is, where the parties agree to use it or it may be mandatory, it is the exclusive means available for handling certain disputes in consideration of some factors. Arbitration is applicable under the ACA⁹, Trade Disputes Act Cap.T8 Law of the Federation of Nigeria (LFN), 2004; Nigerian Investment Promotion Act Cap.N117 LFN), 2004 in Nigeria and are suitable examples.

In Nigerian commercial context, arbitration is now being preferred to litigation largely owing to the limited jurisdiction and enforceability of court judgments¹⁰. This is evidential in the growing number of Arbitration bodies relevant to national and international arbitration that are based¹¹ in Nigeria. This does not list or delimit matters which are not capable of settlement by arbitration. An arbitration agreement is an agreement where the parties consent to have disputes arising from or related to their contract submitted to arbitration (Susler O.2009). Arbitration agreements are thus contractual in character. However, under the separability principle, almost in every legal order including Nigeria, an arbitration clause which forms part of a contract is treated as an agreement independent of the rest terms of the contract agreement^{12,13} and a decision that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.¹⁴ But an exception to this, in certain limited cases example fraud, the arbitration agreement may be declared invalid on the same grounds as the wider contract.¹⁵

However, where arbitration agreement is not expressly availed, it can be implied- an ad hoc dispute resolution agreement inferred is usually call submission agreement.

Some dispute resolution institutions have suggested standard clauses to ease the hassles of dispute resolution clause¹⁶ since a one – off clause/agreement cannot suffice for all types of disputes. ACA (1988) Section 1 (1a) expressly mandates that arbitration agreement must be written, in the language best understood by the parties, and signed by the parties, hence intention to arbitrate become apparent and sacrosanct. Generally Commercial disputes arising under valid arbitration agreements are arbitrable.

Jurisdiction: Its essence and exigency

Jurisdiction of the arbitral Tribunal has been a crux of interest. Unlike the public law system where jurisdiction has also been emphasized¹⁷ but premised on the constitutional right to seek redress in Court¹⁸, which gives the Court the power to hear and determine any questions as to the civil rights and obligations of a person and between persons¹⁹, hence the premised of jurisdiction of the court system. The Nigeria ACA (1988) in sections 12 and 13 essentially requires the arbitral tribunal to possess jurisdiction that is authority to decide a dispute.

In the case between Nigeria National Petroleum Corporation (NNPC) v Clifco Nig Ltd (supra), Rhodes-Vivour JSC succinctly described jurisdiction in judicial proceedings thus;

Jurisdiction is the heart and soul of a case. No matter how well a case is conducted and decided if the court had no jurisdiction to adjudicate, the whole exercise would amount to a nullity and mere academic exercise.

The tribunal's jurisdiction describes its authority or power to decide a dispute (Alexander, 2006). Hence, pursuant to ACA, 1988, some examples of Powers of the Arbitrator are not limited to:

- i. To rule on his own jurisdiction – Section 12(1)
- ii. To order interim measures of protection in respect of the subject-matter of the dispute – Section 13
- iii. To determine the procedure to be adopted in the arbitral proceedings – Section 20
- iv. To administer oaths, take affirmations – Section 20(5)
- v. To appoint experts – Section 22
- vi. To determine the language of the arbitral proceedings – Section 18
- vii. To record a settlement in the form of an award – Section 25

The importance of jurisdiction has largely orchestrated most arbitration statutes and institutional rules to provide for the arbitrators to render a preliminary award on jurisdiction²⁰. That is, the arbitral tribunal or panel to determine whether it is valid and whether the dispute lies

within the scope of the arbitration agreement or whether by the arbitration agreement, a tribunal possesses the jurisdiction to hear the dispute. This strengthens the theory that parties are more likely to be acting in good faith with legitimate concerns about the arbitrators' jurisdiction and ultimate awards. Beside this is based on the principle of competence-competence, meaning that, arbitrators are empowered to rule on their own jurisdiction.

Challenge of jurisdiction in arbitral proceeding

It is not uncommon to find disputant through their counsels filing applications seeking arbitrators to disqualify themselves from commencing a case or from further participation in a proceeding on grounds of likelihood of lack of jurisdiction. When this occurs, what is the position of the law?

Actually, jurisdiction is a threshold matter and a question of law. There seem to be a universal position of the law that the issue of jurisdiction can be raised at any stage of the proceedings, in the court of first instance, on appeal and even in the Supreme Court²¹. However, this rule seem vacated in the NNPC v Clifco Nig Ltd on issue 1 for determination premised on the provision of ACA(1988) section 12(3) thus;

In any arbitral proceedings, a plea that the arbitral tribunal, (a) does not have jurisdiction may be raised not later than the time of submission of the points of defence and a party is not precluded from raising such a plea by reason that he had appointed or participated in the appointment of an arbitrator and (b) The arbitral tribunal may in either case admit a later plea if it consider that the delay was justified.

In that case, His Lordships concord with the lead judgement²² delivered by Rhodes-Vivour JSC that;

“the interpretation of the above and the position of the issue of jurisdiction in arbitral proceedings is that jurisdiction to hear and determine a dispute is raised before the arbitral panel within the time stipulated in the arbitral Act. It can only be raised after the stipulated period if the arbitral panel finds reasons for the delay justified. An appeal on the issue of jurisdiction can be entertained by the High Court provided there was no submission to jurisdiction. A party who did not raise the issue of jurisdiction before the arbitral panel is foreclosed from raising it for the first time in the High Court. The reason being that the foundation of jurisdiction in an arbitration is submission.”

It will not therefore be in the extreme to assert that lack of jurisdiction may result in judicial bias (Iwilade Akintayo 2012). And judicial bias is a serious judicial mishap²³-an act of partiality. Hence, it is trite that justice must be enshrined in confidence of not only of the disputants but

that of a reasonable and right-minded person.

Factors determining jurisdiction in arbitral proceeding

The position of the law applicable in the regular courts as related to jurisdiction seems largely in variance to and does not apply to arbitral proceedings. For instance, section 12(1) of the ACA(1988) Act governs the issue of jurisdiction in arbitral proceedings in Nigeria. The Arbitrator is only authorized to exercise the jurisdiction and powers by;

Details of the provisions of arbitration agreement

By the arbitration agreement, the parties mutually granted this authority to a tribunal and excluded state courts. Hence, the foundation of jurisdiction in arbitration is the voluntary submission by the parties to arbitrate²⁴. This is in accord with the contractual doctrine of parties' autonomy with national and international supports.²⁵ Following from this, a one – off clause/agreement cannot suffice for all types of disputes but every arbitration agreement become unique and must be of large extent to address statutory requirements and essentialities on arbitration, capable to prognosis any dispute (Ojo and Akinradewo 2011). The requirements for a valid arbitration agreement can be distilled from the provisions of the ACA:

- i. The arbitration agreement must be in respect of a dispute capable of settlement by arbitration under the laws of Nigeria²⁶.
- ii. The parties to the arbitration agreement must have legal capacity under the law applicable to them²⁷.
- iii. The arbitration agreement must be valid under the law to which the parties have subjected it or under the laws of Nigeria²⁸.

Apart from above, arbitration agreement for construction contract agreement ought to incorporate;

- i. the place (or seat) of arbitration,
- ii. language of arbitration,
- iii. Composition (number of arbitrators)²⁹,
- iv. Appointment and qualifications of Arbitrator(s)³⁰.
- v. Statutory Governing law or rules of institution etc.

These elements in the arbitration agreement would ensure that the parties have good measure of control and autonomy and hence arbitrators' ease of determination of jurisdiction.

Issues conferred on the arbitrator(s) by the parties

This is the dispute at hand to resolve. For example, claims

relating to contract, delay, variation, fluctuation and common law issues are common sources of construction dispute in Nigeria³¹. Hence, disputants confer on arbitral tribunal to determine in event of their occurrence. However, if the arbitrator(s) seek to or delve into extraneous issues beyond the pleas of the parties, it amount to not only exceeding its bounds and out of jurisdiction³² but could be restrained from doing so by the courts. This position is aptly reinforced by Nigerian law.³³

Matters conferred by statutes and the law

The scope of the supervening law or rules clearly implicates the arbitrators' jurisdiction. For example, Arbitrators have no jurisdiction over issues the parties did agree, and otherwise upon those procedures not included within arbitration agreement (Alan S. Rau 2003). This rule is not premised in the main arbitration agreement, but rather on the arbitration statutes, rules/guidelines or laws of the state or institutions where the arbitration is held (known as *lex arbitri* or *the seat*) and perhaps laws of any jurisdiction where the agreement will be enforced.

Under the ACA, where the parties otherwise agreed, the arbitrator is at liberty to determine such issues related to its jurisdiction thus;

- i. the place (or seat) of arbitration³⁴,
- ii. language of arbitration³⁵,
- iii. Arbitration Rules for example power to determine admissibly, relevance, materiality and weight of any evidence placed before it³⁶.
- iv. Conduct of arbitral proceedings³⁷
- v. appoint one or more experts³⁸
- vi. Make an Award³⁹.

Intervention of the courts

Under the Nigerian law, arbitral jurisdiction can be conferred by the intervention of the court. This is achieved where the parties refer to the court to derive powers as may be conferred by the applicable laws. Specifically, court in exercising its power of appointment of arbitrators⁴⁰, the arbitral panel concomitantly assume jurisdiction. However, the section laid responsibilities on the court to give due regard to;

- i. qualifications of arbitrator,
- ii. reference to arbitration agreement and
- iii. other considerations

In order to ensure independence and impartiality of arbitral proceeding. The strength of this jurisdiction is that the decision of the court is immune from appeal by any of the parties⁴¹. This may be largely because the determination of the merit of application of determination of

jurisdiction can only be lawfully made and particularly to the standard imagination of a reasonable man.

Case test of selected arbitration agreements in construction contracts

With more local and international construction projects coming up in and into Nigeria due to liberalization policies, contract agreements and particularly, dispute resolution agreement is becoming sophisticated and local practices – in the use of Standard Form of Contract Conditions - may be threatened, given way to bespoke contract. From the forgoing, this paper examines the provisions of two selected Arbitration Agreements in Construction project Contracts as shown in Case 1.

The construction project is for the fabrication of flare Scrubber, a compartment part of an oil platform. The parties, Chevron Nigeria Limited and Nigerdock Nigeria Plc, are major companies in Nigerian oil and gas sector. No dispute ensued between the parties in the contract. However, from this dispute resolution agreement, as agreed by the parties, the jurisdiction of the arbitrators can be derived. The agreement also elucidates on requirements and essentialities on arbitration, in terms of anticipated dispute and conferred power on Arbitrator, mandatory procedures and duration prior arbitration, seat and language of proceeding, the governing law, number and appointing body of Arbitrator and limitations of powers of award etc capable to prognosis any dispute. Precisely, sections 15.1, 15.2 and 15.3 A, B and E are the major determinants of arbitral jurisdiction in this contract.

Standard Form of Building Contract of Nigeria (1990) is a major contract in use in Nigeria's building construction industry (Case 2). In fact, a large number of parties adopt it without any amendment. This clause implicitly, as often adopted and agreed by parties, confers Issues on the Arbitrator (details the natures and characteristics of dispute) admissible for arbitration; mandatory procedures and the qualification, quality, number and appointing authority of the arbitrator; the governing law regardless of seat of Arbitration and limit of powers of award. However, the clause is silent and irresponsive to language of proceeding, seat of arbitration and duration prior arbitral proceeding. While it can be said that the jurisdiction of the arbitrator derived from this clause, the clause stands controversial and capable of engendering challenges to jurisdiction if employed for transnational construction project.

The project entails Renovation of Health Centre for the benefit of the communities within Ikaram-Ibaram cluster villages. UNDP adopted this standard clause under this contract (Case 3). Though no dispute ensued, however, the clause unconditionally, adopted and agreed to Arbitration as the method of dispute resolution (details the natures and characteristics of dispute) with specific

reference to UNCITRAL as the governing law, yet regardless of seat of Arbitration and limit of powers of award. This clause is mute on issues like language of proceeding, seat of arbitration; but indicated duration or prior arbitral proceeding. The jurisdictional power of the arbitrator derived from this clause, appears weak and vulnerable to engendering challenges to transnational construction project disputes resolution.

Table 1, distils out in comparison basic requirements of ACA, 1988 and the provisions in the dispute resolution clauses case studies. This comparative review depicts interplay of several factors and interfering of common law jurisdiction order. These include principle of autonomy of the parties, project specific characteristics, complexity of construction and parties etc. In Case two and three, it can be depicted to be grossly deficient of the requirement of Nigeria Arbitration and Conciliation Act, 1988, while case one seeming flexibility comes concomitantly with tint of far preference for foreign laws and regulations. This divergence only showcases privacy and flexibility in adoption of Arbitration in dispute resolution for commercial contracts like the construction contract business.

The import and perhaps implications of the above is far reaching. An arbitrator on panel of contracting parties using Case Two stands vulnerable to more grievous risk of lack of jurisdiction in case of any dispute. This can be infer from gross deficiencies by non-compliance with ACA, 1988. Though, this might be subsumed during pre-trial of the arbitral proceeding.

CONCLUSION AND RECOMMENDATION

As attractive as arbitration might be to investors in the emerging Nigeria construction and infrastructure market, issue of disputes which seems to characterize the construction industry is very significant to consider. Moreover, the jurisdiction of the arbitrator in determining and resolving disputes is essential- useless there is jurisdiction, the Arbitrator has no powers. Determining the jurisdictional powers of the arbitral panels seems clear-cut except for the entrenched inhibiting factors and its attendant limitations, making the issues seeming more complex. The complexity is orchestrated by determinant factors ranging from party autonomy, divergent provisions of arbitration agreement, Issues conferred by the parties, matters conferred by statutes and the roles of national and international laws, rules and conventions including the various approaches of national courts across common law jurisdictions.

From this vague position, it may be difficult to enlist model determinants hence the jurisdictional powers of arbitral panel may remain a complex one. However, it is recommended that basic requirements should not be far from those provided for by the national arbitration law. Beside further suggest that the rest determinants

15. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 15.1 **Governing Law.** This Contract is governed by and interpreted under the laws of the Federal Republic of Nigeria, without regard to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods, 1980 (known as “the Vienna Sales Convention”) does not apply to this Contract.
- 15.2 **Resolution of Disputes.** If any Dispute arises out of or in relation to this Contract and if the Dispute cannot be settled by direct negotiations, either Party may initiate mediation. If the Parties fail to settle the Dispute within thirty days of notice of mediation, either Party may initiate binding arbitration.
- 15.3 The following provisions shall apply to arbitration proceedings pursuant to Section 15.2:
- (A) The place of arbitration will be Lagos, Nigeria.
 - (B) One arbitrator will conduct the arbitral proceedings, in English, in accordance with United Nations Commission on International Trade Law Arbitration (“UNCITRAL”) Rules. The American Arbitration Association is the appointing authority (in the case of Disputes involving all U.S. Parties). The International Centre for Dispute Resolution is the appointing authority (in the case of Disputes involving a non-U.S. Party).
 - (C) The Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense and any counterclaim or reply. Neither Party may compel the other to produce additional documents. The maximum number of witnesses each Party may call to give evidence is three witnesses of fact and one expert witness.
 - (D) The arbitrator does not have the power to award, nor shall the arbitrator award, any punitive, indirect or consequential damages (however denominated). Each Party will bear its own costs of legal representation and witness expenses.
 - (E) The arbitrator must render a reasoned award in writing. The award is final and binding.
 - (F) The Dispute will be resolved as quickly as possible. The arbitration award must be issued within three months from completion of the hearing, or as soon as possible thereafter.

Case 1. Construction, Loadout and Transportation of Flare Scrubber, Jisike, Nigeria.
Between Chevron Nigeria Limited and Nigerdock Nigeria Plc.

35. Arbitration

35.1 Provided always that in case any dispute or difference shall arise between the Employer or Architect on his behalf and the contractor, either during the progress or after completion or abandonment of the works as to the construction of this contract or as to any matter or thing of whatsoever nature arising there under or in connection therewith (including any matter or thing left by this contract to the discretion of the architect) or the withholding by the architect of the certificate to which the contractor may claim to be entitled or the measurement and valuation mentioned in clause 25,26,32 and 33 the same shall not be allowed to interfere with or delay the execution of the works but either party shall forthwith give to the other notice in writing of such dispute or difference and such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties to act as arbitrator. Such a person shall be an experienced professional in the construction industry or failing agreement, a person appointed (at the request of either party) by the President of the Nigeria Institute of Architects (NIA).

35.2 The award of such Arbitrator shall be final and binding on the parties.

35.3 Whatever the nationality, residence or domicile of the Employer, contractor, any subcontractor or supplier or the Arbitrator and whatever the works or any part thereof are situated, the law of the Federal Republic of Nigeria shall be the proper law of the contract and shall apply to any arbitration under this contract whatever the same or any part of it shall be conducted.

Case 2: Standard Form of Building Contract of Nigeria (1990), Clause 35.

13.2 Arbitration

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Purchase Order or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Section within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

Case 3: United Nations Development Programme (UNDP): Renovation of the following Health Centers for the Ikaram/Ibaram MVP, Ondo State Clause 13.2

Table 1. Comparison of basic requirements for arbitral panel jurisdiction.

Requirements as per ACA, 1988.	Level of compliance		
	Case one	Case two	Case three
1 The place (or seat) of arbitration	YES	NO	NO
2 Language of arbitration	YES	NO	NO
3 arbitration Rules e.g. power to determine admissibly, relevance, materiality and weight of any evidence.	NO	NO	YES
4 Conduct of arbitral proceedings	YES	NO	NO
5 Appointment of experts/witness	YES	NO	NO
6 Make an Award and Strength of Award	YES	YES	YES
7 Composition of Panel(Number of Arbitrators)	YES	NO	NO
8 Qualifications of arbitrator	NO	YES	NO
9 Reference to arbitration agreement	YES	YES	YES

depends on the circumstances of construction project and contract characteristic, project environment, contracting parties having in view the interplay of the several factors mentioned and the gamut of the construction industry market.

Orojo O, Ajomo A (1999). Law and Practice of Arbitration and Conciliation in Nigeria, University Press,Ibadan, p. 5

Susler O (2009). The jurisdiction of the arbitral tribunal: a transnational analysis of the negative effect of competence MqJBL p. 6

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¹ Bryan S. Shapiro, Shapiro H. And Knutso S. Construction Claims And Construction Strategies, <http://www.shk.ca>. Accessed 11/08/08

² Arbitration and Conciliation Act, 1988. Cap A18 Vol. 1, Law of the Federal Republic of Nigeria, 2004,

³ Rhodes-Vivour JSC in the lead judgment delivered in the case between NNPC v Clifco Nig Ltd (2011) CLR 4 (SC) opined that the courts ought to spend precious judicial time on living issues of jurisdiction.

⁴ Arbitration and Conciliation Act, 1990. Cap A18 Vol. 1, Law of the Federal Republic of Nigeria, 2004,

⁵ The Indian Arbitration and Conciliation Act 1996

⁶ Christopher Brown Ltd v Genossenschaft Oesterreichischer WaldbesitzerHolzwirtschaftsbetriebe Registrierte GmbH [1954] 1 Q.B. 12, 13 (Devlin J).

⁷ See e.g. Art. V(1)(c) of the Recognition and Enforcement of Foreign Arbitral Awards, 1958, (New York Convention).

⁸ Generally, by virtue of section 12(4) of the ACA, a ruling by the tribunal on its jurisdiction is final and binding and is not subject to appeal.

⁹ section 1(2).

¹⁰ In C.N. Onusegolu Ent. Ltd. v. Afribank (Nig.) Ltd. (2005) 1 NWLR Part 940 577, the Court held that arbitral proceedings are a recognised means of resolving disputes and should not be taken lightly by both counsel and parties.

¹¹ Chartered Institute of Arbitrators (Nigerian Branch), the Regional Centre for International Commercial Arbitration and the Arbitration Commission of the International Chamber of Commerce (Nigerian National Committee).

¹² Sojuznefteexport V. JOC Oil, Ltd., 15 Y.B. COM. Arbitration. 384, 415-18 (1990) (Ct. App. Berm. 1990) where the tribunal accepted that the main contract was invalid validity under Soviet law having been signed by only one official instead of two but accepted that the arbitration agreement made subsist.

¹³ Arbitration and Conciliation Act, 1988. Cap A18 Vol. 1, Law of the Federal Republic of Nigeria, 2004, section 12(2)

¹⁴ That uniformity derives principally from the wide acceptance of the New York Convention⁵ and the influence of the UNCITRAL Model Law.⁶ The New York Convention now boasts 133 parties,⁷ and the Model Law has served as the paradigm for most recently enacted national arbitration statutes.

¹⁵ United World Inc. v. M.T.S LTD (1998) 10 NWLR (PART 568) 106 Court of Appeal.

¹⁶ Chartered Institute of Arbitration(UK), Practice guideline and protocol www.ciarb.org/information-and-resources/ accessed 23/04/2010.

¹⁷ Bromk Motors Ltd and Anor v. Wema Bank Ltd 1983 1 SCNLR P.296

¹⁸ See Constitution of the Federal Republic of Nigeria, 1999, S.6 (6) (b)

¹⁹ In the case of **Ransome-Kuti v. Attorney General of the Federation**, (1985) 2 NWLR, part 6, 211. the courts established by the Constitution can freely adjudicate on any matter in controversy between a citizen and a government and between governments even where such actions are prohibited under the common law.

²⁰ John J. Barceló III, Who Decides the Arbitrators' Jurisdiction? Separability and Competence-Competence in Transnational Perspective (2003) Vanderbilt Journal Of Transnational Law [Vol. 36:1115

²¹ Usman Dan Fodio University v. Kraus Thompson Organisation Ltd 2001 15 NWLR pt.736 p. 305.

²² NNPC v Clifco Nig Ltd (2011) CLR 4(SC)

²³ Commissioner of Local Government vs Ezemuoke (1991) 3 NWLR (PT) 615, Ogunwale J. describe this as the impression which judicial determinations give to other reasonable person or people.

²⁴ In Ogunwale v. Syrian Arab Republic (2002) 9 NWLR (Part 771) 127 the Court of Appeal held that the test for determining whether a dispute is admissible to arbitration is that the dispute must arise from the clause contained in the agreement

²⁵ See Art. 17(1) ICC Arbitration Rules, Art. 33(1) UNCITRAL Arbitration rules.

²⁶ See section 48(b)(i) and 52(b)(i) of the ACA.

²⁷ See section 48(a) (i) and section 52(2)(a)(i) of the ACA.

²⁸ See section 48(a)(ii) and 52(a)(ii) of the ACA.

²⁹ See section 6 of the ACA.

³⁰ Ogunwale v. Syrian Arab Republic (2002) 9 NWLR (Part 771) 127 on the right of appeal against a decision of the High Court appointing an arbitrator and on the constitutionality of sections 7(4) and 34 of the Arbitration and Conciliation Act

³¹ Ren, Z., Anumba, G.J. and Ugwu, O.O. (2001). Construction claims management: towards an agent-based approach. Engineering, Construction and Architectural Management 8(3), 185-197

³² See Abbas v. Solomon 2001/15 NWLR pt.735 p. 144. Where on appeal the lower court judgement was rendered void for want of and exceeding its bounds and out of jurisdiction.

³³ See section 19(1-3)

³⁴ Section 16(2) ACA

³⁵ Section 18(1) ACA

³⁶ See section 15(3) of ACA, 1990

³⁷ See section 20(1)a-c.

³⁸ See section 22(1) a

³⁹ See section 24(1)

⁴⁰ See section 7(5) subject to the occurrence of such event under subsections (2) and (3) of ACA, 1990

⁴¹ See section 7(4) of ACA, 1990