A CRITICAL EXAMINATION OF CHALLENGES FACING THE ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA

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ABSTRACT

The aim of this paper is to critically examine the challenges facing the enforcement of Arbitration awards in Nigeria. The research focused on only doctrinal imperatives using both primary and secondary sources of materials. Legislative enactments, rules, conventions and protocols constituted the primary source, while textbooks, journals, articles and related reports formed the secondary sources. Some of the challenges enumerated in this work are: parties lack of trust in the arbitrators or counsels from the developing countries especially in matters relating to international commercial arbitration has mitigated the practice of Arbitration in Nigeria. Also, lack of transparency of arbitration proceedings, lack of special training for Arbitrators and separate training for counsels in arbitration. The problem of enforcing a foreign award is one of the pressing challenges that have discouraged the practice of Arbitration. The decision made in an arbitration or the enforcement is influenced by the Government policies (whether harsh, favorable to parties or not) and the business community status. Also these challenges have some effects on the society at large either positive or negative. This study also gave some recommendations which include among others that; legal practitioners and Arbitrators should be properly trained in ADR courses. The Nigerian Bar Association can encourage lawyers to do those courses and be trained as Counsels in Arbitration and not only Litigation. The errors or lacunas in the Arbitration and Conciliation Act 2004 should be corrected by the National Legislators. Government in Nigeria or other countries should emulate policies that are not only favorable to their countries but their investors in other to protect their lives and investments.

Keywords: *Arbitral Enforcement Challenges, Doctrinal imperatives*

INTRODUCTION

Arbitration is fast becoming the choice for the parties and bodies for resolving their conflicts owing to the fact that it is flexible, less time consuming and cost effective when compared to litigation. With regards to other dispute resolving mechanisms, arbitration is arguably the most sought after process because of certain concepts and procedures which it involves which the other alternative dispute resolution methods lack. Some of these concepts/procedures include the binding nature of an arbitral award and the fact that an arbitral award and the fact that an arbitral award

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can be enforced in the same manner as the judgment of a court. Unlike commercial litigation where litigants spend many years in court for their dispute to be resolved by a judge an arbitral proceeding is fast and flexible. The parties agree on the process of resolving their dispute. Arbitration proceeding are confidential and an arbitral award is not subject to appeal. Notwithstanding the advantages of arbitration over litigation, there are many challenges facing Arbitration as a means of resolving commercial disputes and noncommercial disputes in Nigeria (Ekpenyong, 2014). In Nigeria, we have different forms of Arbitration such as: Domestic Arbitration, International Arbitration, Ad-hoc Arbitration, Institutional Arbitration, Construction Industry Arbitration, Maritime Arbitration, Arbitration of Investment disputes with Government, and Multi-party Arbitration.

Domestic arbitration occurs when two parties who are conducting business in the same nation at the time of the contract's conclusion agree that the contract must be carried out in that nation. This decision is unaffected by the parties' nationality or place of residence. Arbitration between Nigerian businesses or individuals conducting business in Nigeria is therefore domestic in nature. If the arbitration is to take place in Nigeria and the parties are foreigners and citizens of other nations, as long as they both conduct business in Nigeria at the end of the contract, it will still be considered domestic.

As worldwide business transactions have increased, so too has Nigerian international arbitration. Nigeria has entered into a number of business agreements with individuals and organizations from the more developed nations of Europe, America, and Asia for the exchange of foreign commodities, knowledge, and funds. These contracts' arbitration clauses were typically based on the rules of their arbitration institutions as well as the laws and customs of international arbitration in those nations (Olakunle & Ayodele, 1999). Ad-hoc arbitration is one that is carried out in accordance with any applicable laws and the parties' submission to arbitration. Here, the parties stipulate the arbitration's process to be followed. Conversely, institutional arbitration is one that is carried out by or under the authority of an arbitrational organization that supports or manages the arbitral procedure. Examples include the London Court of International Arbitration (L.C.I.A.), the International Chamber of Commerce (ICC), and the International Center for the Settlement of Investment Disputes (ICSID).

It is possible for a party to arbitration to refuse to willingly abide by an award. When this happens, the successful party's enforcement of the award becomes a significant concern. Unlike traditional courts, arbitration lacks the means to uphold its rulings. If the award's directives are not voluntarily followed, it must resort to using the ordinary courts' apparatus to execute them. The enabling Act governing arbitration

in Nigeria is the Arbitration and Mediation Act (AMA) 2023. The Act makes provision urging courts to recognize and enforce arbitral award in Nigeria Section 57 (1) of AMA provides:

An Arbitral award shall be recognized as binding and subject to S. 58 of this Act, shall, upon application in writing to the court, be enforced by the court'

The aforementioned provision encourages courts irrespective of the country or state to recognize and enforce both domestic and international arbitral awards upon application to the court, regardless of the country that issues the award, even though the award to be enforced is occasionally issued outside of Nigerian territory. In reality, the losing party frequently contests the award in court, as is always the case. In order to avoid compliance, the unsuccessful party may have grounds to ask the court to set aside the award. In both situations, parties will litigate the matter in courts they previously avoided.. Therefore, this article focuses on the difficulties that the victorious party will face, starting with the proper process, should he decide to ask the court for help in recognizing and enforcing the award. This essay will evaluate Nigeria's arbitral award enforcement from both a domestic and international arbitral award standpoint. Since courts have regulations that must be adhered to by anybody who approaches them, this essay will also look at the pertinent court rules' clauses pertaining to arbitration and the process for requesting recognition and enforcement.

There are still several obstacles or mitigating variables that have impacted the effectiveness of the arbitral process in both domestic and international arbitration, notwithstanding the benefits and fundamental nature of arbitration over litigation. The difficulties with the Arbitration and Conciliation Act, the procedures, the difficulties faced by the parties and their attorneys, the government, corporate organizations, and society at large will be the main topics of this study

2. LITERATURE REVIEW

2.1 Conceptual Review

"A binding and final decision made by a neutral third party (the arbitrator or arbitral tribunal) resolving a dispute" is how Katia and Catharine (2024) characterized an arbitration award. It is a significant result of the arbitration process and is legally enforceable, barring agreement between the parties. All parties to the arbitration must abide by the conditions of the arbitral award since it is legally binding on them. Arbitration awards are usually enforceable by the courts, so if one party doesn't follow the award, the other side can ask the court to enforce it. An impartial and unbiased arbitrator or arbitral tribunal, selected by the parties

to hear and decide the dispute, makes the decision.. Similarly, Mgbeoma (2019) defined arbitration is one of the alternative dispute resolution mechanisms just like Conciliation and Mediation, usually party driven to ensure that parties personally oversee the settlement of their dispute and ultimately abide with the Awards and settlements that arise from the procedure for settlement adopted by them.

In this work, we will discuss some of the many arguments and viewpoints that many authors and experts have expressed regarding the difficulties of arbitration in Nigeria. The advantages and drawbacks of arbitration were covered by Gurvey and Craver (2013) in "Alternative Dispute Resolution: Negotiation, Mediation, Collaborative Law and Arbitration." He noted that although arbitration provides the seclusion that most people seek, there are situations where a party wants the matter to be made public. Compared to court, arbitration gives the parties far greater influence over the proceedings. They said that if both sides have equal resources and power, the technique can be beneficial, but they also raised several concerns and listed some of the difficulties they saw, including:

What happens if the arbitration clause is found in an unnegotiated employment or consumer agreement? b. Does the weaker complainant benefit more from arbitration? They argued that the optimal forum isn't necessarily arbitration. Even in those cases, a satisfying outcome is not guaranteed (Gurvey & Craver, 2013).

After assessing the benefits of arbitration, another author by the name of Dele Peters talked about its drawbacks. He claimed that because arbitration has become formalized, it has developed some of the procedural and procedural delays that are inherent in litigation and that it may be more costly and time-consuming than a negotiated settlement that could have been reached otherwise (Dele, 1958-2005).

Additionally, several authors found that complaints regarding the expense of traditional arbitration's delays have been growing. In light of this, they noted and argued that the current arbitration structure is insufficient and urgently needs to be changed. They also criticized arbitration because, according to him, there is ambiguity surrounding the arbitrators' authority because of the intervention of traditional courts, which has caused delays, formalities, and costs for a number of businesses or industries that have used arbitration (Henry & Arthur, 1999).

Despite arbitration's benefits over litigation, Idonighie (2015) identified the areas in which it has been criticized. He made the point that even while arbitration has advantages over litigation, there are some cases that are better suited for litigation. Litigation is appropriate in cases where legal aid is sought. He

claimed that arbitration suffers from the same issues that plague the courts, such as access refusal, delay, and expense (Idornighie, 2015).

The aforementioned stance supports Bingham's assertion that "The arbitration process has betrayed its birthright by becoming as slow, as expensive, and almost as formal as the court proceedings from which it was intended to offer an escape by mimicking the processes of the courts and becoming over-legalistic and over-lawyerered."

According to Ekpenyong (2014), litigation progressively took over as the primary method of settling business disputes in Nigeria, either intentionally or by accident. While some lawyers choose to fight an issue amenable to arbitration, other corporations insist on settling complex commercial disputes by starting legal processes in court. Despite judges receiving ongoing training on the use of arbitration in dispute settlement, some judges remain reluctant to refer cases to arbitration out of concern that arbitration may eventually supplant their positions and the courts' authority. The development of arbitration in Nigeria is seriously hampered by this deeply rooted litigation culture.

The report also notes that uncertainty and confusion might result from a badly written or unclear arbitration or submission agreement. If an arbitration or submission agreement is unclear about the number and process of arbitrators, the arbitration's scope, venue, seat, language, rules, and governing law, it may cause the arbitration to be delayed or even undermine the parties' goal of using arbitration to settle their business dispute.

In his talk at the Nigerian Institute of Advanced Legal Studies on the "Challenges of Arbitration Practice in Nigeria," Idornighie (2015) emphasized the difficulties that Nigerian arbitration has faced since pre-colonial times, when customary arbitration—the oldest type of arbitration—has persisted to this day. He also mentioned the difficulties that arbitration faces, which render the procedure and its application ineffectual.

Regarding customary arbitration, the author believes that it is the most traditional type of arbitration. According to G. Ezejiofor's book, the customary arbitration system lowers the burden on the overburdened regular courts while also promoting peace and stability among communities. He then backed the idea that all governmental agencies should promote its use as a dispute resolution procedure. But in the Okpuruwu v. Okpokam case ((1988) NWLR (Pt 90) 554), Uwaifo JCA ruled that "no community in Nigeria regards the

settlement by arbitration between disputing parties as part of native law and custom; there is no concept known as customary." or native arbitration in our jurisprudence.

It is established in Nigeria that a customary arbitration award is enforceable as estoppels when it is pleaded (Idornigie, 2015). Based on Uwaifo JCA's position, he believes that Nigerian jurisprudence does not support customary arbitration. Some, however, referred to the traditional method of resolving conflicts as customary arbitration, which is used by people who share similar cultural patterns and habits.

Beyond the standard guidelines and processes outlined in the Arbitration and Conciliation Act of 2004, arbitration presents unique difficulties. The difficulties that have not yet been noted, seen, or resolved in both domestic and international arbitration were also covered by the author. The author of this paper intends to identify and address the mitigating factors that have made arbitration frustrating, unreliable, and unable to resolve disputes between parties in an amicable manner after observing and reading all of the arguments and criticisms made against it by various scholars and authors. The author of this paper will go into great length about these issues, some of which are partially addressed in the writings of other academics and others of which the author has identified.

2.2 Brief History of Arbitration

Arbitration and Alternative Dispute Resolution (ADR) are not imported mechanisms in Nigeria, but Litigation was imported into the Nigerian legal system. Arbitration and ADR have been in existence before Litigation was imported from the British legal system. Traditionally in Nigeria like most of Africa disputes were traditionally resolved through Arbitration and ADR. Indeed customary law arbitration and ADR remains part of the Nigerian Legal System.

In the case of Oparaji vs Ohanu the Hon. Justice Iguh (JSC) stated thus: -

“Where two parties to a dispute voluntarily suSbmit the issue in controversy between them to an arbitration according to customary law and agree expressly or by implication that the decision of such arbitration would be accepted as final and binding, then once the arbitrators reach a decision, it would no longer be open to either party to subsequently back out or resile from the decision so pronounced” ((1999) 9 NWLR (Pt 618) 290 at 304 , Mrs Adedoyin Rhodes Vivour)

The rapid growth of international and domestic commercial relations enhanced the development of English commercial law and has stimulated efforts to improve the practical significance of extra-judicial tribunals established to resolve commercial disputes.

The modern law of arbitration that came into existence during the time when courts exercises control over the arbitrator(s) conduct of the reference was shaped during the period when the courts attached paramount importance to freedom of contract. The idea behind this was that where parties cannot settle by means of litigation, they can settle out of court by conducting arbitration in a way that such contracts.

In Nigeria, evolution in Nigeria can be treated under three broad sub headings, namely during the pre-colonial period, the colonial period and the post-colonial period. In the pre-colonial period, the various ethnic groups in Nigeria adopt our indigenous methods of settling disputes. In Benin City for example, the Village head (Odionwere) or the family head (Okaegbbe) principally functioned as the arbitrator or the mediator to resolve the disputes among disputants. Despite that Nigeria has embraced the England Legal system, customary arbitration is still a method recognized for settling disputes especially in rural areas (Idonighie, 2015).

During the colonial period, Lagos was introduced to English law by virtue of Ordinance no. 3 of 1863. Ordinance No 4 of 1876 gave rise to the statutes of general application, the rules of common law and doctrines of equity became part and sources of our law. The evolution of arbitration as at then was centered arround common law and customary arbitration. Arbitration Act of 1889 became of local legislation on arbitration. In 1914 when the Northern and Southern Protectorates were amalgamated to form a country called Nigeria, the act was still adopted. This Act later become inadequate for the settlement of commercial disputes in Nigeria thus leading to its repeal. As at the time Nigeria gained independence in the year 1960, the Arbitration Act was the main Nigerian legislation on Arbitration

In June, 1958, the New Your Convention on the Recognition and Enforcement of Foreign Arbitral Awards came into force. This Convention was adopted by various countries who are involved in international relations. As at independence, the Arbitration Act was still applicable to Lagos, while the regions (now states) had their own Arbitration laws. The Act was later repealed

during the Military regime and provides that the Act shall apply all through the Federation of Nigeria and not only restricted to Lagos. This rule does not vitiate or terminate the Arbitration Laws available in the other states, it simply means by the rule of covering the field, this simply means in the face of the Act, the

decree cannot stand where there is a clash between the rules. Consequently, it was discovered that the Act only convers commercial Arbitration and the states cover both the commercial and non-commercial. Sec 54(1) of the Act provides for the application of the 1958 New York Convention while Section 53 of the same Act provides for the application of the UNICITRAL Arbitration Rules.12

2.3 Forms of Arbitration:

Arbitration may be domestic or international, adhoc or institutional.

a. Domestic Arbitration: between persons who, at the time of concluding the contract, are doing business in the same country and the contract is to be performed in the same country and the contract is to be performed in the same country. It is not international arbitration as defined in Section 57(1) of the Act.

b. International Arbitration: It‟s an arbitration between persons having their place of business or carrying on business, in different countries or where the parties agree that the dispute be treated as international.

c. Ad hoc Arbitration: which is conducted pursuant to the submission, the agreement of the parties and any applicable law and is not conducted under the rules of any Arbitration institution.

d. Institutional Arbitration: This is conducted by or under the auspices of an Arbitration Institution which promotes and administers the arbitral process.

These institutions have their Rules of Procedure. The following are some of the institutions:

i. Lagos Regional Centre for International Commercial Arbitration
ii. International Chamber of Commerce (I.C.C) in Paris.
iii. The London Court of International Arbitration (L.C.I.A)
iv. American Arbitration Association (A.A.A)
v. Lagos Court of Arbitration (International Centre For Arbitration And Mediation Abuja (ICAMA), 2016).

2.4 The Advantages of Arbitration Over Litigation

Arbitration is a method of resolving disputes without going to court. Sometimes an attorney will recommend arbitration to a client as the best means to resolve a claim. In arbitration, the dispute is submitted to a third party (the arbitrator) who resolves the dispute after hearing a presentation by both parties. The presentation may be just documents submitted to the arbitrator by each side. More often, in addition to the documents submitted, each side will make an oral argument in person. Usually each side

will have an attorney to make the oral argument for them. Occasionally the presentation also includes witnesses who testify.

There are numerous advantages to arbitration as a way to resolve a case.

a. The parties to the dispute usually agree on the arbitrator: The arbitrator must be someone that both sides have confidence will be impartial and fair (Clayton, 2016). In arbitration, the parties have the freedom to choose the particular tribunal they want, taking into consideration the personality, professional background, experience, availability and costs of the arbitrator(s). In litigation on the other hand, the parties have no such choice because the judge employed by the state is in place to hear all cases referred to him irrespective of his expertise. Apart from choice of tribunal, parties to an arbitral agreement have to decide on the composition of the tribunal. It could be made up of arbitrators for various disciplines such as Lawyers, Accountants, and Surveyors etc
b. . Confidential: Some businessman has trade secrets and confidential information that should not be known publicly. Arbitration readily comes to their aid. This is so because as a private sector judicial proceeding, the tribunal sits in private. The arbitrators, the parties and representatives are the only parties allowed to participate unless the parties and the tribunal agree otherwise. The public have no right to attend a hearing before an arbitral tribunal unless the parties consent. In the case of litigation, proceedings are usually conducted in public except in few cases (Idornigie , 2015). Parties who may want privacy include sellers of allegedly defective products, banks, securities brokers, and suppliers of medical services. Since arbitrations are kept secret, the normal arbitration ends silently with a cryptic written “award” that is not disclosed to the public.
c. Arbitration Proceedings are characterized by the Principle of Party Autonomy: Parties are free to choose not only the arbitral tribunal, but the venue and in the case of international arbitration, the law. In choosing the place, the parties will take their convenience, that of the arbitrators and witnesses into account. In practice, the place of arbitration expressly stated in the arbitration agreement might be different from the venue where the arbitration hearing is conducted. The parties choose both the substantial and procedural laws, the tribunal may determine this by invoking the conflict of law rules.
d. Adjudication: An arbitration represents an adjudicatory trial. While arbitrations are normally more informal than court trials, they nonetheless constitute reasoned presentations of proof by the disputants to the decision maker, a single arbitrator or multiple arbitrator. Arbitration is, essentially,

a trial-like device. At the arbitration hearing the disputants make presentations of their proof to the arbitrators, who must resolve the relevant issues (Edward , Charles & Ellen, 2016)

e. Avoids hostility: Because the parties in an arbitration are usually encouraged to participate fully and sometimes even to help structure the resolution, they are often more likely to work together peaceably rather than escalate their anger and hostility toward one another, as is often the case in litigation.
f. Flexible: Unlike trials, which must be worked into overcrowded court calendars, arbitration hearings can usually be scheduled around the needs and availabilities of those involved, including weekends and evenings.
g. Simplified rules of evidence and procedure. The often convoluted rules of evidence and procedure do not apply in arbitration proceedings -- making them less stilted and more easily adapted to the needs of those involved. . In Nigeria the Evidence Act Cap E 14 LFN 2004 applies all over the Nation in all judicial processes. In Nigeria, arbitral proceedings are not regulated by the Evidence Act. However, the fundamental rules and principles of evidence apply to arbitral proceedings for a tribunal to do justice and be fair in making an award.

The arbitral proceedings does not operate in a vacuum but are firmly guided by Rules of Procedure.

Section 14 of the ACA

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 15 (1) of the ACA

The arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the first schedule to this Act. (2) Where the rules referred to in subsection

(1) of this section contain no provision in respect of any matter related to or connected to any particular arbitral proceedings, the arbitral tribunal may, subject to this Act, conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure fair hearing.

(3) There power conferred on the arbitral tribunal under subsection (2) of this section, shall include the power to determine admissibly, relevance, materiality and weight of any evidence placed before it.

Section 15(3), ACA confers power on the arbitral tribunal to determine the admissibility, relevance, materiality and weight of any evidence placed before it.

h. Arbitration is faster than Litigation. The Arbitral process seems to be faster since parties select their arbitrators who are group of professionals of the field concern. The professionalism and the experience of arbitrators are the factors that aid the fast process of Arbitration than Litigation. Unlike Litigation, its procedure can take so many years and there‟s no possibility of a court‟s decision been reached or amicably settled between parties to the dispute. Arbitration aims at maintaining relationships between the parties even after an award is given unlike Litigation which practice more of win-lose mode of settling disputes and might end up causing enmity between the parties during the hearing and after a judgment is delivere.

3. RESEARCH METHODOLOGY

The research focus on only doctrinal imperatives using both primary and secondary sources of materials. Legislative enactments, rules, conventions and protocols will constitute the primary source, while textbooks, journals, articles and related reports will form the secondary sources

4. FINDINGS

Challenges of Arbitration in Nigeria Society

Despite the merits of Arbitration over Litigation, being aware of the possible drawbacks of arbitration will help anyone who's willing to adopt the mechanism to settle disputes to go ahead or take the risk and to adopt Litigation or any other dispute settlement mechanism suitable for the disputes to be adopted apart from Arbitration. It also make you make an informed decision about whether to enter or remain in a consumer transaction that mandates it or whether to choose it as a resolution technique if a dispute arises. The author after considering the practice and procedure of Arbitration in Nigeria is of the opinion that the essence of Arbitration has been slowed down due to some mitigating factors which we shall look into. These are the factors that put to test the ability or effectiveness of Arbitration or that need to be considered in order to reach its apex in Nigeria. The author identifies these factors below.

Nationality of the Arbitrators: It is not surprising that most developing countries including Nigeria see international commercial arbitration as a process being administered by the developed countries of the world in which the developing countries are placed in a disadvantageous position. This form of suspicion

has placed international commercial arbitration at the door step of the developed world whereas the developing countries are lagging behind. Following this is also the fact that most international commercial arbitration takes place outside the developing countries (Chukwud & Emenogha, 2015). The developing countries have a challenge to position themselves well so as to participate and play their roles well.47

This particular obstacle is avoidable because parties to arbitration are at liberty to appoint their own arbitrators and also to specify the venue for their arbitration. There is nothing in any law or legislation that denies the parties the right to specify who their arbitrators should be as this is part of the principles of party autonomy granted by the arbitration practice. Under most of the commercial and investment Conventions, State parties have right to designate their own arbitrators to the Centre. For example, in the case of International Centre for the Settlement of Investment Disputes (ICSID), States that are parties to a dispute have an effective remedy at their disposal, namely, to participate actively in the appointment of the arbitrators. Most of the provisions of ICSID Convention regarding the number and the selection of arbitrators are permissive, so that the parties are free to make their own arrangements. The Secretariat keeps a panel of arbitrators, of which four are named by each contracting State and an additional ten are named by the chairman of the Administrative Council. The parties to a dispute may choose arbitrators from the panel or from outside the panel.48

The problem is actually with the developing countries and not that of the developed countries. It must be mentioned that most scholars, investors, and businessmen have failed and refused to pay attention to the study and training as arbitrators.

However, effort must be intensified to encourage developing countries to send list of candidates suited to serve as arbitrators on ICSID tribunals and also make special effort to train persons Lawyers in particular, in matters concerning the settlement of transnational disputes. There is need to increase awareness on the desirability of experts in arbitration matters in the developing countries (Ibrahim Shihata, 1986). For one to be an expert arbitrator, training is required so as to be acquainted with the laws, rules, and procedures applicable to international commercial arbitration matters. The developing countries should intensify efforts in training skillful men who can handle international commercial arbitration proceedings.

The problem of the moment is that a number of our developing country members to ICSID have not designated persons to serve on the panel. Another reason is that some States have unnecessarily designated public officials to serve on the panels (Ibrahim Shihata 1986). The fact remains that public officials may

not have the requisite capacity to arbitrate or may not have the time to participate. It must be stated that it is not an act of discrimination that members of developing countries have not participated in most or major international arbitration.49

The Duration of Arbitration Proceedings: Some of the advantages of arbitration over litigation are speed, efficiency, and informality. Parties patronize arbitration because they want their matter to be disposed within the shortest given time. This also explains why arbitral proceeding is not subject to the rules of civil procedure and the Evidence Act. Some scholars and antagonists have criticized arbitration as being too technical and slow because of the long period and duration of its proceedings. In fact, this has made some to see arbitration as litigation by another name. In international commercial arbitration, parties have the right to choose the applicable law to the arbitration. The law as specified by the parties may have limitation period for undertaking any step in the matter. The parties have the right based on the principles of party autonomy to also specify the time for undertaking any step in the proceedings. The duration for the arbitration is then dependent on the parties, the arbitrators, and the applicable law.

The recent practice of arbitration now most times delays the duration of arbitral proceedings as parties or their representatives are now found of challenging arbitrators based on personal or professional relationships or experience. Any party has the right to challenge an arbitrator on the grounds of personal or professional relationships with the parties or coarbitrators or legal representatives, and secondly the experience or the professionalism of the arbitrator. However, just like in litigation, preliminary objection sometimes is a tool used by advocates to frustrate or delay the proceedings in some cases, also challenge could also be used to delay the arbitral proceedings where parties might need to keep changing arbitrators, thereby prolonging the matter before the tribunal. The mere fact that parties have powers to select or appoint their arbitrators and even challenge them shouldn‟t be misused for the purpose of initiating delay.50

Lack of Transparency: As mentioned, the fact that arbitration hearings are generally held in private rather than in an open courtroom, and decisions are usually not publicly accessible, is considered a benefit by some people in some situations. Others, however, lament that this lack of transparency makes the process more likely to be tainted or biased, which is especially troublesome because arbitration decisions are so infrequently reviewed by the courts.51

@A Publication of the Department of Economics, ADSU, Mubi. ISSN- Print: 2550- 7869; ISSN-Online: 3043-5323. Journal homepage: https://ajaefm.adsu.edu.ng

Cost of Arbitration: Section 49 of the Arbitration and Conciliation Act (ACA Cap A18 LFN, 2004, S 49) provides what constitutes the cost of arbitration and these include among other

i. The fees of the arbitral tribunal which must state what each arbitrator is to earn.
ii. The travel and other expenses incurred by the arbitrators.
iii. The cost of other experts and other assistance required by the arbitral tribunal.
iv. The travel and other expenses of witnesses
v. The cost of legal representatives.

Cost is the amount of money required to be paid for something in a more technical sense such as law, it is the amount spent in pursuing a legal action, especially those expenses that the losing party may be required to pay in arbitration the issue of cost is crucial as parties in disputes would have to bear not only their own cost but also that of the opponent‟s legal and other cost. Most times, arbitration cost is fixed when it has to do with arbitral tribunal is institutional. The institution promotes or administers arbitral process such as Chartered Institute of Arbitration Nigeria Branch, Lagos Court of Arbitration, International Chamber of Commerce, the London Court of International Arbitration (LCIA) etc. They fix fees of arbitration in accordance with the schedule of fee set down in their respective rules.

There are two main groups of cost related to arbitration name.ly:

a. Arbitration Cost: this includes the fees of arbitrator(s) hiring venue, transcribers, witnesses, administrative expenses.

b. Legal Cost: This involves fees for legal representation and those who assisted in the preparation of the case. Also the legal advice given to the parties are part of the legal costs;. It should also be noted that in arbitral tribunals has modalities in fixing costs. These methods include:

i. Ad valorem: The fees are fixed proportionate to the amount in dispute

ii. . Per diem: The fees are fixed payable per day.

Iii Fixed Fee: This is fixed amount for all arbitration without regard to the amount in dispute or the period of time the arbitration may take to complete (Kuforiji, 2016).

Arbitral Agreement: Delays and inefficiency in our courts have forced disputing parties and legal practitioners to devise alternative methods of settling their disputes out of court. Arbitration is one of such

methods of settling disputes out of court. Arbitration has gained popularity as a method of settling commercial disputes out of court because it is fast, confidential, informal, efficient, convenient, and flexible. The rising popularity of arbitration as the preferred out-of-court method of resolving commercial disputes in Nigeria has led to the proliferation of arbitration clauses in contractual agreements in the country. An arbitration clause is a contractual provision where parties to a contract agree to submit/refer any dispute or disagreement that arises from or relating to such contract to arbitration. Questions relating to interpretation of the terms of the contract are also typically referred to arbitration. While the increasing use of arbitration clauses in contracts in Nigeria is a welcome development, the haphazard manner in which many arbitration clauses are drafted gives cause for concern. Often times than not arbitration clauses are inserted in contracts merely as objects of decoration. It is worrisome that businessmen and their advisers (lawyers inclusive) do not give much thought to the effectiveness of the arbitration clauses they insert in their contracts. Arbitration clauses are usually inserted in contracts as an afterthought. As a result, many of them are poorly drafted and as a consequence, ineffective. A poorly drafted, ineffective arbitration clause is a disaster waiting to happen; it becomes a nightmare when a dispute eventually arises and a party begins to experience difficulties referring the dispute to arbitration. Instead of the quick resolution of disputes that the parties had contemplated when they inserted the arbitration clause in the contract, they would find themselves in protracted litigation which is what they had sought to avoid in the first place. The delays and frustration which they had sought to circumvent would become the very demons haunting and chasing after them. An effective arbitration clause is one that secures a timely submission of a dispute to arbitration and a quick resolution of the dispute by arbitration (Isiekwe, 2016). An effective and valid drafted arbitration agreement should consist of the following

a. It should spell out the number of arbitrators that will hear the dispute,
b. It should state the place/seat of arbitration
c. It should state the language of arbitration. This is very important where parties are from different countries with different language.
d. It should state the substantive law that should govern the arbitral proceeding in Nigeria we have the Arbitration and Conciliation Act, 2004 which a federal Act. We also have the Arbitration Law of Lagos State, 2007
e. It should clearly spell out how the arbitrator or arbitrators will be appointed and by whom
f. It should specify the rules of procedure and evidence to be used in the arbitral proceeding

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The Challenges of Arbitration in Nigeria's Business Society

Nigeria's investment laws and policies are geared towards liberalization, deregulation and competition. Accordingly, all sectors of the economy are open to both foreign and domestic investment. As a result of this favorable climate and the country's economic and political stability, Nigeria has become increasingly attractive to foreign investors. However, with increased investment comes increased potential for disputes. This update examines the infrastructure available in Nigeria for the arbitration of investment dispute

Large-scale investments made in foreign jurisdictions face many risks, particularly when investing in countries with high levels of political and regulatory risk or developing judicial systems, as is often a concern for international investors entering certain African states. In such circumstances, investors are particularly concerned about the legal protections that are available to them during the life of their investments. Bilateral and multilateral investment treaties ("BITs", "MITs") have become the principle vehicle to overcome these challenges and mitigate the risks of government intervention.69

Bilateral Treaties are international law instruments – treaties – agreed between two states while Multilateral Treaties are treaties agreed between more than two states. The purpose of BITs and MITs is to create a stable legal environment that fosters foreign direct investment. This is achieved by the "host state" (i.e. the state in which the investment is made) agreeing to provide certain guarantees and standards of protection to the investments of private foreign investors (i.e. those with the nationality of, or incorporation in, the "home state"). The investor is also provided with the opportunity to enforce its rights under the investment treaty against the host state through independent international investment arbitration where the latter is aggrieved. This is the major innovation of investment treaties, as traditionally it was only states that had standing to bring claims against each other (Stuart & Juliette, 2015).

By virtue of Section 17 of the Nigerian Investment Promotion Commission Act (Decree No 16 of 1995, N117, LFN 2004), any person, be it Nigerian or Foreigner can participate and invest in the operation of any enterprise in Nigeria (except for items on the negative list). Also, pursuant to Section 54(1) of CAMA, although all foreign companies are required to register with the Corporate Affairs Commission, a company may apply to the Federal Executive Council for exemption if it satisfies the requisite conditions. In addition to this, there also exist a number of incentives that many foreign companies can take advantage of. Such as pioneer status (tax relief for a period of 3-5 years), duty draw back and suspension scheme, Rural Investment Allowance, tax relief for investment in export processing zones, repatriation of 100% of capital

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and profits if importing capital through an authorized dealer. All these are geared towards promoting and enhancing foreign direct investment in Nigeria.

Section 26 of the Act (Nigeria Investment Commission Act(NICA), Chapter N117 (Decree No 16 of 1995) LFN) provides for the resolution of investment disputes through arbitration as follows:

"1. Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement

2. Any dispute between an investor and any Government of the Federation in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions, may be submitted at the option of the aggrieved party to arbitration as follows:-

a) in the case of a Nigerian investor, in accordance with the rules of procedure for arbitration as specified in the Arbitration and Conciliation Act; or

b) In the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties; or

c) In accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties. 3. Where in respect of any dispute, there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Dispute Rules shall apply. "

5 Conclusions and Recommendations

Conclusion

In the world of human interactions and commercial transactions, disputes generally arise as a result of disagreements between the parties involved. When these disputes arise, the need to resolve them as quickly as possible often arises and the common method employed by disputants is litigation in court. The traditional method of resolving such disputes where the transaction fails is by litigation. Globally, this traditional method of dispute resolution is gradually giving way to alternative dispute resolution techniques such as, negotiation, arbitration, conciliation and mediation. These methods have become expedient especially in this electronic age. If it were practicable, businesses would desire an electronic resolution of all disputes! Taking a look at the size of the Nigerian economy, coupled with its commercial, business and

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investments activities which include domestic and international dimensions. The practice of Arbitration in Nigeria is a necessity that we must adopt to grow in different sectors such as financial sectors, economic, commercial, political, social, educational, and 68 agricultural, sports activities, religion sector, and all domestic and international relationships that could be commercial or non-commercial

Recommendations

After having set out the challenges experienced in Arbitration in Nigeria , the writer then went further to states the solution to these problems and how they can be reduced in the Nigerian society and allow the growth and development in Nigerian Arbitration.

The correct training of arbitrators and attorneys in ADR courses is one of the most crucial steps towards the future. The Nigerian Bar Association can urge our attorneys to enroll in those programs and receive training as arbitrators' counsel in addition to litigation. Additionally, the National Judicial Institute ought to support and provide for judicial training. To do this, more seminars or workshops might be held both in Nigeria and in other nations with highly developed arbitration practice skills.

The National Legislators should fix any mistakes or gaps in the Arbitration and Conciliation Act of 2004. According to Section 7 of the Act, three arbitrators would be appointed in cases where the parties failed to select the number of arbitrators in their arbitral agreement. Therefore, it is recommended that in cases where the parties were unable to decide on the number of arbitrators to be selected, they should appoint a single arbitrator.

The third-party notification rule was likewise left out of the Act. The quality of evidence in domestic arbitration has decreased due to the lack of a statutory mechanism for third-party consolidation and joinder. It is advised that the Act incorporate such a law. Additionally, the Act has failed to provide for situations in which a group of companies is a party to an arbitral dispute or in which an arbitral dispute involves a group of companies. The majority of business disagreements involving a group of companies are resolved through litigation as a result of this omission, which may cause the entire process to drag on. It will be reasonable for national legislators to examine these laws and make changes.

Nigeria has found it challenging to enforce foreign awards due to the perception that, in contrast to developed nations that use arbitration to resolve the majority of their international business disputes, developing nations are lagging behind in this area. They resolve domestic and international business disputes as well as non-business ones like sports, international territory claims, religious disagreements,

and political conflicts. Nigeria is among the developing nations that have fallen significantly behind these nations. However, the possibility exists that, in cases where the Act requires it, the parties to the arbitration should select Nigeria as the arbitration's location.

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