AN INVESTIGATIVE ANALYSIS OF THE CONSTRAINTS IN THE ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA

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ABSTRACT

Arbitration as an Alternative Dispute Resolution mechanism is not a new concept in Nigeria as it dates back to antiquity and overtime it has become a veritable means of resolving conflicts and disputes especially in commercial and social dealings. The binding force of the arbitration system makes it a very credible and useful form of dispute settlement between foreign investors and host countries. For instance, most dispute arising from Joint Venture (JV) and Joint Development Agencies (JDA) partners in the oil and gas industry are settled in Arbitration which invariably accomplishes positive outcomes as well as upholding the business relationships of the parties. Generally, arbitrations are governed by two strands of rules viz: The express terms of the contract between the parties and the implied terms of the contracts which can be deduced from appropriate local and international laws. The Arbitration and Mediation Act 2023 is the principal legislation of arbitration in Nigeria. The article discusses the basic constraints and remedies in the enforcement of arbitral awards in Nigeria and adopts the doctrinal research method, relying on primary and secondary sources of law. It found out that factors bedevilling the enforcement of arbitral awards in Nigeria include the impotency of the extant laws as well as poor enlightenment or education of the citizens on the importance of Arbitration. The article therefore concludes with a call for more robust, deliberate and concerted efforts towards improving the arbitration architecture if Nigeria is to fully enjoy the benefits of arbitration and also place the country on the global map as an arbitration hub in Africa. Consequently, the article recommends, among others, for a strong judicial system devoid of bribery and corruption, improved legal framework as well as enlightenment and education of the populace on all the facets and benefits of Arbitration.

Keywords: Constraints, Enforcement, Arbitral Awards.

INTRODUCTION

It is trite that Disputes Settlement is a fundamental aspect of any legal system and one of the pre-requisites of a peaceful society is that settlement of disputes be by processes which are non-violent in character of which arbitration is one. Modern history of international arbitration dates back to the Jay Treaty of 1794 between the United States of America and Great Britain. However, the most significant historical point in history of arbitration is the Alabama claim Arbitration of 1872 between United Kingdom and United States of America; by the purport of the treaty of Washington of 1871, the United States of America and United Kingdom agreed to submit to arbitration claims by the United States of alleged breaches of neutrality by the United kingdom during the American Civil War. The two states agreed to an arbitral panel made up of five members to be appointed by the heads of states of Brazil, Italy, Switzerland, the United Kingdom and United States of

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America.[1] The arbitral award was to the effect that United Kingdom should pay compensation to United States of America which was promptly complied with thus setting the litmus test for universal acceptance of arbitration as one of the foremost dispute resolution mechanisms not only in Nigeria but also all over the world.

By the purport of the Arbitration and Conciliation Act,[2] section 57(1) which was the principle legislation on arbitration in Nigeria prior to the enactment of Arbitration and Mediation Act 2023, Arbitration is defined as commercial arbitration whether or not administered by permanent arbitral institute. Whereas, Black's Law Dictionary defines arbitration as the settlement of dispute whether of facts, law or procedure between parties to a contract by a neutral third party arbitrator(s) without resorting to court action.[3] Nonetheless, there are two types of arbitration viz, Domestic and International arbitration and both are governed by two strands of rules namely, the express terms of the contract between the parties and the implied terms of the contract which are deduced from appropriate local and international laws. Intrinsic in an arbitration agreement is the belief that parties to a dispute undertake to be bound by the outcome of the proceeding in good faith thus implying that upon delivery of an award, if the unsuccessful party fails to abide by it, it is a breach of an implied term of the arbitration contract of which the successful party is permitted to enforce through court action.[4] Again, where a party is aggrieved by the action or omission of another, he or she must take steps to seek redress timeously so that the right to redress will not expire by virtue of limitation period. Also foreign award in most cases is not considered as a domestic award by the state where its enforcement and or recognition is being sought. This segregation implies that foreign award must pass through the process of registration and recognition by the enforcing state before its enforcement thus constituting one of the major constraints in the enforcement of arbitral award in Nigeria. However, the constraints can be tackled by strengthening the judicial system, improving the legal framework promoting awareness, et ceteria.

[1] A Enabulele and Bazuaye, *Teaching on Basic Topics in International Law* (Malthouse 2019).
[2] Arbitration and Conciliation Act, s 57(1).
[3] S A Garner, *Black's Law Dictionary* (9th edn, West Publisher 2004).
[4] K G Kingston, *Oil and Gas Law: A Guide for International Practitioners* (Germany Lap Lambert Academic Publishing, 2018).

HISTORICAL EVOLUTION OF ARBITRATION IN NIGERIA

Arbitration is not novel in Nigeria. Arbitration and other alternative mechanism have a rich historical origin influenced by both indigenous dispute resolution mechanisms and Western legal systems. Before the advent of colonialism, customary arbitration had been in existence. Thus, the historical evolution of Arbitration as a dispute resolution mechanism in Nigeria can be classified into three main periods viz:- The pre-colonial, era, the colonial era, and post independent era.

The Pre-colonial Era

It is a common knowledge that traditional societies in Nigeria had well established customary dispute resolution mechanism before the arrival of colonial masters. The chiefs and elders of the communities constitute the arbitral panel and their decisions are binding on the disputing parties. These decisions must be obeyed or the defiant stand the risk of serious sanction. The decisions of the chiefs and elders are often reached through consensus or mediation.

The Colonial Era

It is trite that Nigeria, as a former British Colony, inherited the common law, the doctrines of equity and statutes of general application which were in force in England on the 1st of January 1990 and were in force within the jurisdiction of the court.[5] By this development, English Arbitration mechanism became enshrined into Nigeria legal jurisprudence even though customary arbitration continued to play a significant role in dispute resolution especially within the rural areas.

The Post Independent Era

On attainment of independence in 1960, the quest by Nigeria to develop her legal system became more pronounced and compelling which was highly influenced by a number of factors such as the high cost of litigation in courts, and delay in justice delivery among others. The major mile stone

[5] S Abiola, Introduction to Nigerian Legal Method (Obafemi Awolowo University Press Limited, 2006).

in reversing the ugly trend was the enactment of the Arbitration and Conciliation Act in 1975 which provided the legal framework for arbitration practice in Nigeria. This Act was later repealed by the Arbitration and Conciliation Act of 1988 that was modelled after the United Nations Commission on International Trade Law or International Commercial Arbitration (UNCTRAL).[6] Furthermore, Nigeria continued to modernize its arbitration framework with the enactment of the Arbitration and Conciliation Act of 2004[7] which incorporated provisions from the UNCTRAL model law. This was further improved upon with the enactment of what we have today as Arbitration and Mediation Act 2023. These steps were significant steps towards aligning Nigeria arbitration practices with international best practices and standard thereby shaping a dynamic evolving legal landscape for dispute resolution architecture in Nigeria.

MEANING AND NATURE OF ARBITRATION

Arbitration as an alternative dispute resolution mechanism has received a lot of juristic ink spilled over it with a view to unravel a universally acceptable definition of the word. According to Black's Law Dictionary,[8] Arbitration is defined as a dispute resolution process in which the disputing parties choose one or more neutral third party to make a final and binding decision in resolving their dispute. Whereas, the New International Webster Comprehensive Dictionary of English language defines Arbitration as 'the hearing and settlement of a dispute between two parties by the decision of a third party or court to which the matter is referred to by the contestants as a means of avoiding war, strike, a lawsuit,' etcetera.[9]Again, the Business Dictionary defines 'Arbitration' as the settlement of dispute (whether of facts or procedure) between parties to a contract by a neutral third party/arbitrator(s) without resorting to court action.

In the same vein, Hemuka defines arbitration as the simplified process of adjudication whereby the adjudicatory process or judicial role of the courts are kept in abeyance for the time

[6] K Ogbaegbe, 'The need for Harmonized Customary Law Arbitral Process in Nigeria' *Imo State University Journal of Public Law*, Owerri, AMON Investment Nigeria Limited.
[7] Ibid.
[8] Bryan Garner, *Black's Law Dictionary* (Third edn. 2004).
[9] *The New International Webster Comprehensive Dictionary of English Language* (2003).

being, while the parties try to settle the disputes between them by a perfectly legal and statutorily sanctioned but extra-judicial means.[10] Furthermore, according to Fulton Maxwell J, Arbitration is a private process whereby a private disinterested person called an arbitrator, chosen by the parties to a dispute acting in a judicial fashion but without regard to legal technicalities, applying either existing law or norms agreed by the parties and acting in accordance with good conscience and perceived merit of the dispute makes an award to resolve the dispute.[11] But according to Halsbury law of English, arbitration is the reference of a dispute or differences between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction.[12]

In all, Arbitration may simply be defined as the legal method of settling disputes between parties to a dispute outside ordinary court procedures by deferring to a mutually agreed third party who has the authority to determine an award which is a legally binding decision. From the above definitions, it is evident that arbitration by its nature is governed by two major strands of rules viz: The express terms of the contract between the parties and the implied terms of the contracts which can be deduced from appropriate local and international laws. Intrinsically too, the parties are bound to abide by the decision of the arbitral panel.

Arbitral Awards

The final determination of any arbitral proceeding is the award which the arbitral tribunal is obligated to deliver and which the parties to the dispute are at law expected to abide by. However, in some cases, the unsuccessful party sometimes resort to court action setting aside the award from the arbitral tribunal. An award itself could be explained to mean a legal document that contains enough information that enables the court to enforce without labourous enquiry. It therefore must

[10] N Hamuka, The Nigerian Institute of Estate – Surveyors and Valuers Professional Examination 1983 – 1988 Question and Answers on Legal Studies (Brenin, Hemuka Real Estate Publishers 1999).
[11] M J Fulton, *Commercial Alternative Dispute Resolution in Nigeria*, (The Law Book Co. Ltd. 1989).
[12] S GT Halsbury, *The Law of England*, (4th edn. Butterworths, 1999).

conform to relevant provisions of the Act. For example, the Arbitration and Conciliation Act, section 26 provides that;

a) The award shall be in writing and signed by the arbitrator.

b) The award shall be a reasoned award except the parties agree otherwise or the award is a consent award.

c) The award shall state the date and place it was made.

d) A copy of the award shall be delivered to each party.

It follows that an arbitrator should adhere strictly to the provision or requirements of Section 26 of Arbitration and Conciliation Act as a condition precedent for an enforceable award. Therefore a valid award is expected to serve as a deterrence of *res judicata* in any subsequent judicial proceedings between the parties.[13] However, an award is impeachable as provided in Section 29 and 30 of the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria 2004 which state *inter alia* that a person who intends to succeed in an application for impeachment shall be required to file his application in the High Court by way of motion on notice and shall be heard by one judge: The motion must be accompanied by relevant documents which include (i) A sworn affidavit (ii) Copies of the motion and supporting affidavit which must be served on the parties concerned. Thus the following grounds must be established before an award becomes impeachable viz:-

a) **Misconduct:** This entails among others any mishandling of the arbitration proceedings which is likely to amount to substantial miscarriage of justice and or where an arbitrator has so conducted himself that a reasonable man would think that the arbitration would not fairly determine the issue(s) on the basis of the evidence and argument to be adduced before them.[14] Also, an award obtained in violation of the rules of natural justice, even where there is no breach of agreed procedure, would be set aside on grounds of misconduct.

[13] E Akpan, *The Nigerian Arbitration Law in Focus* (West African Book Publishers 1997).
[14] *Modern Engineering (Briton) v Miskin and Sons Ltd* (181) 1 Lloyd, Rep 135.

b) **Error of Law:** The right of a party to impeach an arbitration award on the basis of error of law exists at common law independent of statute. For this to constitute a ground for impeachment of an award, there must be found on the award that which is erroneous.

c) **Lack of Jurisdiction:** This lack of jurisdictional boundary to arbitrate is of different forms. It may arise as a result of non-agreement by the parties to arbitrate or it may also arise where the arbitrator(s) exceed his jurisdiction by way of making an award in excess of what is contained in Section 29(2) of the Act.

d) **Incapacity of the Parties:** It is trite that parties to a contract must have the legal capacity to enter into that contract otherwise the arbitration agreement will be invalid. This is unequivocally recognized by the Arbitration and Conciliation Act, the New York Convention and the model laws of arbitration.

e) **Fair Hearing:** This implies that the party must be heard, be allowed to prepare, present his case and defend the case against him. He must also be given adequate notice of the appointment of the arbitrator and the proceedings. Failure to adhere to this may be fatal to the success of the award.

RECOGNITION AND ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS IN NIGERIA

'Recognition' and 'enforcement' are sometimes used as though they are the same but in reality, they mean different things. When a court 'recognizes' an award, it acknowledges that the award is valid and binding and thereby gives it a preclusive effect. The award is clothed with official legal status and cannot be re-arbitrated or litigated upon. Whereas, 'Enforcement' on the other hand means the process by which an award is reduced to a judgment of the court or the means of using official means available in the enforcing jurisdiction to collect the amount awarded as damages to the successful party to carrying out any mandate provided in an award which is the 'Execution'.

In jurisdictions like Nigeria, the law requires that the award must be recognized before the successful party can apply the enforcement mechanism of the court. It follows that once a tribunal has awarded damages or any form of remedy to the awardee, he needs to take steps expeditiously to enforce the arbitral award to avoid being cut-off by the web of time limitation. He must investigate to be sure that the arbitral award debtor has sufficient assets in Nigeria to be able to enforce the award. The mode of application is usually by motion on notice to the Federal High Court whose duty is to recognize the award by granting leave to the creditor to register same and enforce same as judgment of that court as elucidated in the case of *Adeoye Maghagbeola v Jemitope Sanni*[15] where the court held that the Federal High Court has Federal Jurisdiction and that execution order against assets of the award debtor can be attached in any state of the federation. In furtherance to the foregoing, Arbitration and Mediation Act 2023, section 57(1) stipulates that,

a) Arbitral awards shall irrespective of the country or state in which it is made be recognized as binding and in application in writing to the court be enforced by the court subject to the provision of the section and Section 58 of this Act.
b) The party relying on an award or applying for its enforcement shall supply the following;
i. the original award or a certified copy of it;
ii. the original arbitration agreement or a certified copy of it; and
iii. where the award or arbitration agreement is not made in the English language, a certified translation of it into the English language.

Specifically, subsection 3 further stipulates that an award may with the leave of the court be enforced in the same manner as a judgement or order to the same effect.

Grounds for Refusal by the Nigerian Court to Enforce the Award

The foregoing notwithstanding, there are instances where the court may refuse to recognize the enforcement of an arbitration award. Therefore, it means that the enforcement of arbitral awards by the Nigerian court is not just a cast on the iron. There are a plethora of cases where the court refused the application for enforcement of arbitral awards as seen in the case of *M.ss v Kano Oil*

[15] (2005) 11 NWLR (Part 936) 239, 253 Para A – C (Supreme Court Nigeria).

Millers[16] where the Supreme Court of Nigeria decided that 'reciprocity of treatment' is material in the enforcement of foreign arbitral awards in Nigeria as amply supported by the Arbitration and Conciliation Act, section 51 hence, the application for enforcement may be refused if the Respondent against whom enforcement is sought furnishes proof of the following facts.

a) That a party to the arbitration agreement was under incapacity.

b) That the arbitration agreement is not valid under the law in which the parties have indicated should be applied.

c) That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings.

d) That the award deals with dispute not contemplated by or not falling within the terms of the submission to arbitration.

e) That the award contains decision on matters which are beyond the scope of the submission to arbitration. However, that if the decisions or matters submitted to arbitration can be separated from those not so submitted only part of the award which contains decisions of the matter submitted to arbitration may be recognized and enforced.

LEGAL FRAMEWORK FOR ARBITRATION IN NIGERIA

Arbitration is backed by several laws aimed at strengthening its practice in Nigeria as to conform to the best international best practices. The most prominent of them are discussed below;

The Constitution of Federal Republic of Nigeria (1999) as amended

In the hierarchy of norms, the constitution[17] is the supreme law of the land. It is referred to as the grumnorm and the vine from which all other sources of law derive their validity. Nigeria is a Federal State made up of a Federal Government and a division of the country into 36 component

[16] (1965) 1 All NLR 1, 307.
[17] CFRN (as amended).

states and the Federal Capital Territory.[18] Thus, there is allocation of responsibilities between the Federal/Central Government and the component units. The National Assembly consisting of the Senate and House of Representative[19] has power to make laws for peace, order and good government of the federation or any part thereof.[20] Therefore, the need for the enactment of Arbitration as a dispute Resolution mechanism falls within the ambits of the National Assembly. Consequently the National Assembly has enacted various laws which include Arbitration and Conciliation Act, the Arbitration and Mediation Act, the Petroleum Industry Act, the Nigeria's Extractive Industry Transparency initiative Act, among others. Specifically, the constitution provides for judicial adjudication in oil and gas disputes under Section 251(1) which states that the Federal High Court shall have jurisdiction to the exclusion of other courts in civil cases and matters relating to mines and minerals (including oil field, oil mining, geographical surveys and natural gas). It therefore follows that the Federal High Court has original jurisdiction over disputes arising within the oil and gas sectors in Nigeria. Again, Section 6 of the constitution established the judicial arm of the government vested with the responsibility to preside over legal issue and disputes between persons, persons and government as well as disputes between governments.[21]

The Arbitration and Mediation Act 2023

The Act formally known as the arbitration and conciliation Act is the principal law governing commercial arbitration in Nigeria. By the purport of the Act, provision is made for methods by which parties may establish a legally binding arbitration agreement highlighting how arbitration may begin and end including the procedural process in constituting an arbitration tribunal.

[18]Ibid, s 1(1) 3 *PDP v CPC* (2011) 17 NWLR (Pt 1277) 485 at 511: *Attorney General of Federation v Attorney General Bendel* (1982) All ALR 85 SC; Attorney General Federation (2001) 11 NWLR (Pt. 725) 689 SC; E Malemi, *The Nigerian Constitution Law* (3rd edn, Princeton Publishing Co. 2012) 2.
[19] Ibid.
[20] Ibid.
[21] CFRN 1999 (as amended), ss 272(1) and 232(1).

It must be emphasized that the Arbitration and Mediation Act is not restricted to a particular state of the federation but is binding and applicable in all the 36 states of the federation including Abuja. The Act however does not affect other laws which provide for the settlement of dispute by arbitration instead it validates or supplements such laws. It must be noted that the Arbitration and Mediation Act is modelled after the UNCITRAL model on arbitration with some modification.

The Nigeria Liquefied Natural Gas (Fiscal Incentives Guarantees and Assurances)[22]

The need to attract foreign investors in the oil and gas industry necessitated the need for the enactment of this Act by the Nigeria government for the overall development of the sector.

By the purport of Section 22 of the Act, where there is a dispute between foreign investor(s) and the Nigerian government, such dispute is expected to be settled amicably. However, where amicable means fails, it shall be submitted to ICSID arbitration within 90 days in which the parties failed to have amicable settlement of the dispute. This provision clearly underpin the importance arbitration as a dispute resolution mechanism is accorded by the Nigerian government in ensuring that oil and gas which is the mainstay of the country's economy is devoid of unresolved disputes so as to maintain the business relationship and for overall economic growth of the nation.

The Petroleum Industry Act 2021

The new Act does not contain a provision equivalent to Section 11 of the repealed PA. Nonetheless, there are salient provisions in relation to arbitration in the PIA either for the awards or consequences of arbitration on stakeholders in oil and gas industry. Thus;

a. Under the PIA, the Nigerian Midstream and Downstream petroleum Regulatory Authority is charged with the duty of making regulations concerning dispute resolution. This is provided for in Section 33(1) of the Act as follows: Subject to Section 216, the Authority shall make regulations concerning dispute resolution and customer's protection.

[22] Cap N38 LFN 2004.

b. Alongside the description of the acreage and the term of conditions of the licence and lease, the PIA, section 76(1)(F) mandates that the model licences or model lease for each bid round should include a clause containing the rules for resolution of disputes including arbitration, mediation, conciliation or expert determination. The provision states thus:

> The model licence or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include the following clause, rules for the resolution of disputes including arbitration mediation, conciliation or expert determination.

c. Section 4 of the first schedule to the PIA made pursuant to the PIA, section 3(3) also provides that any disputes as to whether a delay was due to cause beyond the control of the licensee/lessee shall be settled by agreement between the minister and the licensee/lessee or in default of agreement by arbitration.[23]

d. It is important to also note the savings/transition provisions of the PIA preserving Arbitration as a means of Dispute Resolution Mechanism in Nigeria oil and gas industry.

The Nigerian Investment Promotion Act 2004[24]

This piece of legislation governs all forms of foreign investments in Nigeria including oil and gas businesses. It provides among others in Section 26 of the Act that in the event of a dispute between an investor and any government of Nigeria to which this law applies, settlement shall be through mutual understanding. But Section 26(1) provides that where the mutual discussion fails, the matter then can be tendered for arbitration.[25] Furthermore, Section 26(3) on the other hand unequivocally encourages the settlement of disputes in the field of oil and gas in Nigeria by arbitration. It section stipulates that where a dispute or disagreement arises between an investor

[23] Section 317 of the Petroleum Act 2021.
[24] Cap N117 LFN 2004.
[25] The Nigerian Investment and Promotion Commission Act Cap N17 LFN 2004.

and the Federal Government of Nigeria in respect to mechanism of settlement to be used, in that case the International Centre for the Settlement of Investment Dispute Rules shall be applicable.[26]

International Centre for Settlement of Industrial Dispute Rules

The International Centre for Settlement of Industrial Dispute (ICSID) is an International organization established to regulate foreign investment particularly dispute resolution in Nigeria. It may be recalled that Nigeria is one of the countries that signed up this agreement and also went further to adopt ICSID investment code into the nation's Investment Promotion Commission Act. It is important to state here that the Investment Promotion Commission Act, Section 26(3) indicates that the ICSID rules shall be applied in the case of disputes between foreign investor(s) and the Federal Government. This is to ensure and provide alternative method of dispute settlement outside of the Nigerian laws.

The benefit of government in submitting to the ICSID cannot be far-fetched. First, it gives some level of confidence to international investors in having dealings with the Federal Government thereby promoting the influx of businesses into the country and also ensuring its growth. Secondly, it assures the international investors that there is on ground a recognized dispute settlement mechanism which takes the shape and colour of the legal rules that they are used to. Finally, it also opens the doors of government to international best practices in settlement of disputes through arbitral process without over depending on the bureaucratic processes and delays associated with litigation. One particular provision governing the international centre for settlement of investment dispute arbitration states that,

> Any arbitration proceeding shall be conducted in accordance with the provisions of this section and except as parties otherwise agree, in accordance with the arbitration rules in effect on the date on which the parties consented to the arbitration if any question of procedure arises which is not covered by the section or the arbitration rules or any rules agreed by the parties, the tribunal shall decide the question.[27]

[26] Ibid.
[27] Article 62 of ICSID.

The above presupposes that where parties agree to arbitrate according ICSID rules, they have the assurance that they will take full advantage of the procedural rules specifically adopted as well as the administration which will be exempted from control of the domestic court this is a provision that guarantees investors of adequate security of their investment in Nigeria.

MAJOR CONSTRAINTS IN THE ENFORCEMENT OF ARBITRATION AWARDS IN NIGERIA

Despite the numerous strides made in Nigeria towards improving the practice of arbitration and its awards, there are still some manifold challenges that are bedevilling it and manifesting like cankerworm towards enforcing arbitral awards in Nigeria just like in every human endeavour these are shackles that will always manifest as a clog in the wheel of progress. In other words, there are manifest challenges militating against the enforcement of arbitral awards in Nigeria prominent among which include but are not limited to the following viz:

Limitation of Time

The Limitation Act 1966 imposes time limit within which an action to enforce arbitral awards must be brought. It therefore means that if the enforcement action is not initiated within the prescribed period, the award may ultimately not be enforced. In other words, it will be deemed to be a 'Status Barred' claim. This position of the law received judicial approval in the landmark case of *City Engineering Nigeria Limited v Federal Housing Authority*,[28] where the Supreme Court of Nigeria held *inter alia*, that:

> Where an arbitration agreement is not under seal or made under any other enactment other than the Arbitration Law, the limitation period applicable to it is six years. The limitation period for the purpose of an action subject of arbitration agreement begins to run from the date of accrual of the cause of action in the arbitration agreement and not from the date of making of arbitral award…

[28] (1997) NWLR (Pt. 520) 224.

The implication and importance of the above cannot be overemphasized. It therefore implies that an awardee must, as a matter urgency, bring up an action to enforce the award timeously or stand the risk of being cut-off by the web of time limitation. However, there is an exception to the six years Limitation Rule as provided in the case of *Scott v Avery*[29]where the respondent claimed under the policy for losses but a dispute arose as to the amount to be awarded. Avery was dissatisfied with the amount offered and refused to refer the matter to arbitration instead he took the matter to court arguing that the clause requiring the matter to be referred to arbitration was illegal. However, the court ruled that there can be no cause of action until an arbitration decision had been made.

Public Policy Consideration

Again, the enforcement of Arbitral awards in Nigeria is most times constrained by public interest consideration. The courts may refuse to enforce an arbitral award where in the wisdom of the court the interest of the public will be jeopardized if the award is enforced; for example, enforcement of an award that will deprive the public ease of way. Furthermore, where an award is deemed to be against national security or public order, the court may not be disposed to giving an order for its enforcement.

Lack of Specialized Expertise

In some cases, there is absolute judicial incapacitation arising from inability of Nigerian courts lacking the specialized expertise necessary to handle complex arbitration matters especially in the oil and gas industry where the sophisticated nature and huge financial investment requires specialist expertise necessary to handle such complex arbitration matters professionally which potentially leads to delays and miscarriage of justice. Again parties may struggle to find legal counsel with the requisite experience and knowledge in international arbitration and even when they find one, they may also be constrained financially with respect to the charges or bills of such specialized experts.

[29](1855) 5HL Cas 811 in Kato Gogo Kingston, Oil and Gas for International Practitioners (Germany: Lap Lambert Academic Publishing (2018).

Recognition and Enforcement of Foreign Awards

It is trite that Nigeria is a signatory to many international treaties on international arbitration including the New York Convention which facilitates the international enforcement of arbitral awards. However, the major challenge faced in Nigeria is the ability in providing the award validity and finality where enforcement is sought. Besides, on the domestic scene, the domestic laws and procedures are not potent enough compared to the New York Conventions Framework.

Bribery and Corruption

There is no gain emphasizing the fact that Bribery and corruption is the bane of development in Nigeria of which enforcement of arbitrary awards is not an exception. Bribery and corruption has eaten deep into the very fabrics of our national lives hence no programme can achieve its targeted objectives in the country, because of bribery and corruption. For instance, judicial misconduct remains an impediment to the actual enforcement of arbitral awards in Nigeria. It has always undermined the enforcement processes and delayed proceedings. Bribery in Nigeria is a cankerworm that has made matters worse. Regrettably, it has now become a case of 'the highest bidder takes it all' thereby undermining the principle of fairness and justice and this inevitably hampers the enforcement of arbitral awards.

Social/Cultural Factors

Nigeria as a developing nation has actually not embraced modernization with respect to arbitration and awards. In some cases, parties may be reluctant to resort to arbitration due to cultural or social factors preferring more traditional dispute resolution methods and even barbaric or violent means in handling disputes. This, of course, does not have any useful advantage and is a major constraint in the enforcement of arbitral awards in Nigeria.

CONCLUSION

In the light of the foregoing, it is now obvious that a lot of efforts have been exerted towards a robust and successful enforcement of Arbitral Awards in Nigeria as a way of making Nigeria an Arbitration hub in Africa. However, it is evident too from the foregoing that a lot also has to be done especially in areas like improving the legal framework architecture, promoting awareness and education of the citizens about the benefit of Arbitration and enforcement mechanism, eradication of corruption and bribery especially in the Judiciary, *etcetera* as a panacea to effective enforcement of arbitral awards in Nigeria.

RECOMMENDATIONS

Flowing from the foregoing/conclusion, it's evident that Nigeria has taken some notable steps to improve its arbitration framework which include the enacting of the Arbitration and Mediation Act 2023 with the objective of having a hitch free enforcement of Arbitral Awards. However, efforts are further needed to ensure efficient and effective enforcement of arbitral awards in the country. Therefore, it is imperative that potential solutions geared towards addressing the constraints in enforcing Arbitral award be deduced as a guide to policy makers in Nigeria.

a. **Strengthening the Judicial System:** It is trite that the judiciary remains the bedrock and hope of the common man. It is also the major arm of government that ensure peace and equity. The absence of a strong unbiased judiciary cannot be overemphasized for egalitarian Nigeria. Therefore, concerted and deliberate efforts must be made to strengthen the judiciary system devoid of corruption and bribery. In the same manner, specialized arbitration courts should be established to enhance expertise and efficiency of judges handling arbitration matters. Also, training and re-training as well as capacity building of arbitrators remain a viable solution to the constraints in the enforcement of arbitral awards in Nigeria. It follows that providing comprehensive training to judges and legal Professionals on international arbitration principles and procedures can improve their understanding and decision-making abilities.

b. **Promoting Awareness and Education:** Any society or individual that is lacking in knowledge is assumed to be in the dark. Therefore, the public must be educated by way of conducting public awareness campaigns about the benefits of arbitration and the enforcement mechanisms available.

c. **Addressing Corruption and Bribery**

There is no better way of handling the enforcement of arbitral award if bribery and corruption is not stamped out of Nigeria, or better still reduced to the barest minimum. To this end, Anti-corruption measures by Anti-Corruption agencies such as the Economic and Financial Crimes Commission must be on board to implement anti-corruption measures to fight corruption at all levels in our various institutions including the judiciary. Similarly, there should be robust measures that can ensure transparency and accountability especially in the judiciary.

d. **Cultural and Social Factors**

The promotion of education on the area of Alternative Dispute Resolution Mechanism especially Arbitration hold the key to easy and acceptable enforcement of arbitral awards in Nigeria as a well-informed society implicitly is a developed society: Similarly cultural and social factors must be considered when drafting arbitration agreement and conducting proceedings. This will inevitably eliminate the lacuna associated with Traditional Alternative Dispute Mechanism and International arbitration hence better and easy enforcement of the awards once it is given.

In the light of the foregoing, it is believed that these measures aforementioned can undoubtedly improve the enforcement of arbitral awards in Nigeria and promote its attractiveness as a destination hub for international arbitration.