

Review

Some aspects of the law and practice of commercial arbitration in Nigeria

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Arbitration is considered as a cheaper, quicker and technicality-free alternative dispute resolution mechanism than litigation. This paper examines some aspects of the law and practice of commercial arbitration in Nigeria under the arbitration and conciliation act 1990. In particular, it examines the law and practice of commercial arbitration relating to arbitration agreements, appointment of arbitrators, conduct of arbitration, arbitration awards and the enforcement of awards. It also examines the multi-door courthouse concept which integrates alternative dispute resolution processes into the regular court system. It suggests that the various states in Nigeria should follow the initiative of Lagos state in providing multi-door courthouse facilities. This will enhance access to justice and minimize delays in justice delivery.

Key words: Commercial arbitration, alternative dispute, law and practice.

INTRODUCTION

Disputes are inevitable in modern societies be they traditional, industrial or commercial. While the law seeks to avoid such disputes, it also provides different methods for resolving them when they arise. It goes without saying that litigation is the most obvious method of resolving disputes. However, the high cost of litigation, the length of time required for conducting a lawsuit and the technical rules of procedure have given rise to a number of extra-judicial methods and procedures, which have come to be known as "alternative dispute resolution." There are four primary alternative dispute resolution methods. These are negotiation, mediation, conciliation and arbitration.

Arbitration differs from other alternative dispute resolution methods in that it has the same force and effect as the judgment of a court of law. This paper examines

some aspects of the law and practice of commercial arbitration in Nigeria. In particular, it examines the law and practice of commercial arbitration relating to arbitration agreements, appointment of arbitrators, conduct of arbitration, arbitration awards and enforcement of awards. It also examines the multi-door courthouse concept and suggests that other states in Nigeria should follow the initiative of Lagos state in providing multi-door courthouse facilities.

Alternative dispute resolution Alternative dispute:

Resolution refers to a range of processes designed to aid parties in resolving their disputes without the need for a

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Formal judicial proceeding (Farley, 1995).¹ It has also been described as a variety of dispute resolution options such as negotiation, mediation, conciliation, arbitration and a host of hybrid mechanisms (Ladan, 1997).² The term, therefore, refers to extra-judicial dispute resolution methods designed to complement the courts and the parties in resolving disputes more quickly and cheaply than litigation. It is not a “substitute” to litigation but an “aid” to litigation. It complements the judicial process by resolving disputes involving on-going relationships such as commercial disputes and family disputes with a view to maintaining such relationships between the parties after resolving the disputes between them.

Negotiation: Involves discussions between the parties with a view to reconciling their differences and reaching a settlement, which would be mutually beneficial to them. The settlement is essentially a compromise, that is, one party giving up something in order to get something in return. The procedure adopted by the parties will depend largely on their skill, knowledge and experience. Generally, the parties will first identify their areas of differences as well as their preferences. Then the parties will make compromises until they reach a mutually satisfactory agreement.

Mediation: Is the intervention of a third party called a mediator who assists the parties to reach a settlement of the dispute. The mediator meets with the parties separately and brings them together to work out a settlement for themselves. He does not himself suggest the terms of settlement to the parties and he cannot compel the parties to reach a settlement (Ezejiolor 1997).³

Conciliation: Is the process in which a third party called a conciliator, at the request of the parties, seeks to bring the parties together to discuss the subject matter in dispute and reach an amicable settlement. Conciliation proceedings are governed by the provisions of part II of the arbitration and conciliation act 1990⁴ and the conciliation rules set out in the third schedule.⁵

A party who wishes to initiate conciliation must send to the other party a written request to conciliate. The request must set out the subject of the dispute. If the request is accepted, the parties shall submit the dispute to a conciliator appointed jointly by the parties, or a conciliation body consisting of three conciliators in which case each party shall appoint one conciliator and the two conciliators shall appoint the third conciliator.⁶

¹See Farley J (1995) “Alternative Dispute Resolution and the Outward Court Experiment” being a paper delivered at the *International Bar Association Meeting*, Lagos, p. 1

² See Ladan M (1997) “Alternative Dispute Resolution” being a paper delivered at *Government Legal Advisers’ Workshop*, Nigerian Institute of Advanced Legal Studies, Lagos, p. 2

³See Ezejiolor G (1997) *The Law of Arbitration in Nigeria*, Ikeja: Longman Nigeria Plc, p. 7.

⁴ Now *Cap A18, Laws of the Federation of Nigeria 2004* (hereinafter simply referred to as “the Act” except the context otherwise suggests).

⁵ *Ibid*, s. 55

⁶*Ibid*, ss.38 - 40

The conciliator or conciliation body must acquaint himself or itself, as the case may be, with the details of the case and procure all information for the settlement of the dispute. The parties may appear in person before the conciliator and may have legal representation.⁷ After examining the case and hearing the parties, the conciliator submits his terms of settlement to the parties. If the parties accept the terms of settlement, the conciliator draws up and signs a record of settlement. If the parties do not accept the terms of settlement, they may submit the dispute to arbitration or resort to litigation.⁸

Nature of arbitration

Arbitration has been defined as a process whereby a dispute arising between two or more parties is settled by a tribunal chosen by them (Orojo and Ajomo, 1999).⁹ It has also been defined as the reference of a dispute or difference 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.¹⁰ Simply put, arbitration is the voluntary submission of a dispute to a person or body of persons chosen by the parties for a binding decision (Otuturu, 2003).¹¹ This may result either from agreement of the parties to the dispute or from a statute which requires the settlement of certain disputes by arbitration. It may further arise by order of court.

Arbitration may be customary, industrial or commercial. Customary arbitration is a process of having a dispute amicably settled between parties who voluntarily submit to the decision of traditional chiefs or elders of the community. The range of disputes that may be submitted to customary arbitration include chieftaincy disputes, landlord and tenant disputes, family disputes and sale of land under customary law. The primary aim is not to hand down rigid decisions as a court of law or to impose severe penalties on a party adjudged guilty by the arbitrators, but to have a compromise solution to the dispute between the parties and thereby remove possible disturbance of the public peace.

The procedure is flexible. In most cases, the parties would state their cases and put questions to the opposing parties and their witnesses. Where documents are tendered, as it is done these days, the opposing parties are allowed to inspect them and ask questions on them. The decision of the arbitrators is basically a compromise solution to the dispute between the parties. If the parties accept the decision or award, then the matter is settled. If

⁷ *Ibid*, s. 41

⁸ *Ibid*, s. 41

⁹ See Orojo JO and Ajomo MA (1999) *Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos: Mbeyi & Associates (Nigeria) Ltd, p. 37.

¹⁰ Hailsham V (1978) *Halsbury’s Laws of England*, 4ed, Vol. 2, London: Butterworth & Co. (Publishers) Ltd, para. 501

¹¹ See Otuturu GG (2003) *The Legal Environment of Business in Nigeria*, Port Harcourt, Ano Publication, p. 77.

any party is not satisfied with the decision or award, he is free to reject it. It is this freedom of the parties to accept or reject the decision or award that is the unique feature of customary arbitration when compared with adjudication by a court of law.

Thus, in *Agu v. Ikewibe*¹² the supreme court stated that a customary arbitral award becomes binding only after subsequent signification of acceptance of the suggested award from which either party is free to resile at any stage up to that point. Karibi-Whyte JSC restated the modern law on customary arbitration as follows:

It is well accepted that one of the many African modes of settling dispute is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based upon the subsequent acceptance of the suggested award, which becomes binding only after such signification of its acceptance and from which either party is free to resile at any stage of the proceedings up to that point. This is a common method of settling disputes in all indigenous Nigerian societies.¹³

In *Eke v. Okwaranya*¹⁴ the Supreme Court stated that for a customary arbitration to be binding on the parties, the following ingredients must be pleaded and proved:

1. That there had been voluntary submission of the matter in dispute to an arbitration of one or more persons;
2. That it was agreed by the parties either expressly or by implication that the decision of the arbitration will be accepted as final and binding;
3. That the said arbitration was in accordance with the custom of the parties or their trade or business;
4. That the arbitrators reached a decision and published their award;
5. That the decision or award was accepted at the time it was made.¹⁵

Industrial arbitration: Is the submission of an industrial dispute (or trade dispute) to the industrial arbitration panel in accordance with the provisions of the trade disputes act 1990¹⁶ which enjoins parties to a trade dispute to settle it amicably by any agreed means of settlement apart from the Act. If the attempt to settle the dispute by any agreed means of settlement fails or if there is no such agreed means of settlement exists, the parties shall within seven days of the date on which the dispute arises meet together by themselves or their representatives under the presidency of a mediator mutually agreed upon or appointed by or on behalf of the parties with a view to the amicable settlement of the

dispute.¹⁷

If within seven days of the date on which a mediator is appointed, the dispute is not settled, the dispute shall be reported to the minister of labour by or on behalf of either of the parties within three days of the end of the seven days. The report shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement. Within fourteen days of the receipt by him of a report, the minister shall refer the dispute for settlement to the Industrial Arbitration Panel (Arbitration and Conciliation Act, ss. 5 to10).¹⁸ This form of arbitration negates the general conception of arbitration as the voluntary submission of the parties. It is better described as compulsory arbitration because it is initiated at the instance of the minister of Labour and not the parties to the dispute.

Commercial arbitration: Is governed by the arbitration and conciliation act. The Act simply defines arbitration as “commercial arbitration whether or not administered by a permanent arbitral institution.”¹⁹ However, the act does not define commercial arbitration. Instead it defines “commercial” as “all relationships of a commercial nature including any trade transaction for the supply of goods and services, distribution agreement, commercial representation or agency, factoring, leasing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road.” Accordingly, commercial arbitration may be defined as the voluntary submission of a dispute arising from relationships of a commercial nature for determination in a judicial manner by a person or body of persons chosen by the parties. Except otherwise indicated, any further reference to arbitration means commercial arbitration.

Forms of commercial arbitration

There are two basic forms of commercial arbitration. These are domestic arbitration and international arbitration.

Domestic arbitration: Is one in which all the parties have their places of business in one country, for example, Nigeria. In this case, it is immaterial whether the parties are Nigerian citizens or foreigners, provided they all carry on business in Nigeria and the arbitration is held in Nigeria.

International arbitration: On the other hand, is one in which the parties have their places of business in

¹² (1991) 3 NWLR (Pt. 180) 385 SC

¹³ *Ibid.*, at p. 407.

¹⁴ (2001) 12 NWLR (Pt. 726) 181 SC

¹⁵ *Ibid.*, at 208 SC. See also *Odonigi v. Oyeleke* (2001) 6 NWLR (Pt. 708) 12 at 28 SC.

¹⁶ Now *Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria, 2004*

¹⁷ *Ibid.*, s. 4.

¹⁸ See *Arbitration and Conciliation Act*, ss. 5-10.

¹⁹ *Ibid.*, s.57 (1)

different countries or the subject matter of the arbitration relates to more than one country or a substantial part of the obligation of the parties is to be performed outside their places of business. In addition, the parties may, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as an international arbitration.²⁰ Commercial arbitration, whether domestic or international, may be further classified into two categories: ad hoc arbitration and institutional arbitration. Ad hoc arbitration is one in which the parties themselves prescribe the mode of appointment of the arbitrator who, upon being appointed, controls the proceedings himself within the limits laid down by law.

Institutional arbitration: Is one in which the arbitrator is appointed, the proceedings conducted, and the award issued in accordance with the rules of a trade or arbitral organization. There are many international organizations concerned with commercial arbitration. Among the leading ones are the international chamber of commerce (ICC), the London court of international arbitration (LCIA), the American arbitration association (AAA), the united nations commission on international trade law (UNCITRAL), and the international centre for the settlement of investment disputes (ICSID).

Legal disputes arising directly out of investment between states and nationals of other states may be settled under the rules of the international centre for the settlement of investment disputes (ICSID), established at the international bank for reconstruction and development (IBRD) in Washington. These rules are contained in an international convention known as the Washington Convention, 1965. The centre has jurisdiction only if the parties have agreed in writing to submit the dispute to it. Again, one of the parties must be a state, which is a contracting state. ICSID awards are final and binding on the parties and are not subject to review by national courts. The procedure for the recognition and enforcement of ICSID awards in Nigeria is contained in the ICSID (Enforcement of awards) act.²¹ The act provides that an ICSID award shall be enforced judgment of the supreme court if a copy of such an award, duly certified by the secretary general of the centre, is filed in the supreme court by the party seeking its recognition and enforcement.²²

Applicable law

There are two main sources of the law relating to commercial arbitration in Nigeria. The first is the common law and the doctrines of equity and the second is statutes. The principal statute governing commercial

arbitration in Nigeria is the arbitration and conciliation act. However, the act is not a complete code. It only provides a legal framework for arbitration and conciliation, (Moh IS 2013)²³ leaving all the lacunae and crevices to be filled by the common law and the doctrines of equity supplemented by trade usages and the agreement of the parties (Orojo and Ajomo, 1999).²⁴ There are other statutes that contain provisions for arbitration.²⁵ The various high court (Civil procedure) rules also contain provisions for reference of any matter for settlement by arbitration and other recognized alternative dispute resolution methods during pre-trial conferences (Bayelsa state high court rules 2010).²⁶

Arbitration agreements

The foundation stone of modern commercial arbitration is an agreement between the parties to submit any dispute between them to arbitration. Section 1 of the act stipulates that an arbitration agreement must be in writing contained in a document signed by the parties or in exchange of letters, telex, telegrams or other means of communication which provide a record of the arbitration agreement. It may also be contained in an exchange of points of claim and points of defence in which the existence of an arbitration agreement is alleged by one party and not denied by another.

An arbitration agreement may take the form of a separate agreement or it may take the form of a clause contained in a contract concluded by the parties. Whether, as a separate agreement or as part of a contract, it is regarded as a separate contract. It is irrevocable except by agreement of the parties or by leave of court.²⁷ An arbitration agreement may be framed in such a manner as to prevent any right to court proceedings until an award is first made. Such a clause is known as a Scott v. Avery clause from the leading English case of Scott v. Avery.²⁸

In that case, a mutual insurance company inserted in all its policies a condition that any member who suffered any loss or damage would be paid such an amount of money as would be determined by a committee and if the member refused to accept the amount so determined, the matter would be submitted to arbitrators; provided that

²³ See Moh IS (2013) "An Overview of alternative Dispute Resolution (ADR) in the Dispensation of Justice in Nigeria" in Fagbohun O and Oloworaran BD (eds.) *Readings in Contemporary Law and Policy Issues*, Port Harcourt, Pearl Publishers, p. 139.

²⁴ See Orojo, TO and Ajomo MA (1999) *Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos, Mbeyi & Associates (Nigeria) Ltd, p.12.

²⁵ See, for example, *Trade Disputes Act*, ss. 5-10 which provide for reference of trade disputes to arbitration at the instance of the Minister of Labour. See also *Nigerian Investment Promotion Commission Act, Cap N117*, s.26 (3) (a) which provides for the application of ICSID Rules in arbitration of investments disputes.

²⁶ See, for example, *Bayelsa State High Court Rules 2010, order 25 rule 8*.

²⁷ See *Arbitration and Conciliation Act*, s.2

²⁸ (1856) 5 HLC 81

²⁰ *Ibid*, s.57 (2)

²¹ Cap. 120, *Law of the Federation of Nigeria, 2004*

²² *Ibid*, s. 1(1).

such a member would not be entitled to maintain an action at law, or a suit in equity, on the policy until the matter has been decided by the arbitrators, and only for the amount awarded by them. It was held by the House of Lords that the clause did not oust the jurisdiction of the court but merely made an award a condition precedent to the institution of an action in court.

The implication of the decision is that where there is a Scott v. Avery clause in an arbitration agreement, there is no right of action until the arbitrators have made their award. If a party goes straight to court to file an action without reference to arbitration, as contained in the agreement, the defendant has an option to proceed by way of application for a stay of proceedings or to rely on the defence open to him under the Scott v. Avery clause to strike out the action for non-fulfillment of a condition precedent to the institution of the action (*Oyedele v. New India Assurance Co, Ltd* 1969).²⁹ In *African Insurance Dev. Co. Ltd v. Nigeria LNG Ltd*³⁰ the Supreme Court described the two forms, which a Scott v. Avery clause may take. They are:

- 1). An express or implied term of the contract that no action shall be brought until an arbitration has been conducted and an award made; or
- 2). A provision that the only obligation of the defendant shall be to pay such sum as the arbitrator shall award.³¹

An arbitration agreement may also contain a clause that a claim shall be deemed to be waived and absolutely barred if an arbitrator is not appointed within a specific time. Such a clause is known as Atlantic shipping clause from the English case of *Atlantic shipping and trading co. Ltd v. Louis Dreyfus and co. Ltd*.³² If such a condition is not complied with, the claim cannot be enforced by an action in court.

In that case, the respondents chartered a ship to carry a cargo of linseed from Rosario to Hull. The charter party contained an arbitration clause to the effect that all disputes under the contract should be referred to two arbitrators appointed by the parties within three months of final discharge and where the provision is not complied with the claim shall be deemed to be waived and absolutely barred. Shortly after the arrival of the ship, the respondents informed the appellants that they intended to put in a claim in respect of damage occasioned to the linseed in the course of the voyage, but they did not appoint their arbitrators within three months of the final discharge of the cargo. They later commenced this action alleging damage to the cargo. The appellants opposed the action contending that the respondents failed to appoint their arbitrator within three months.

²⁹ See the cases of *Oyedele v. New India Assurance Co, Ltd* (1969) 3 ALR Comm. 200 HC; *Kurubo v. Zack-Motison (Nig) Ltd* (1992) 5 NWLR (Pt. 239) 102 CA; *Niger Progress Ltd v. North East Line Corporation* (1989) 3 NWLR (Pt. 107) 68 SC

³⁰ (2000) 4 NWLR (Pt. 653) 494 JSC

³¹ *Ibid*, at p.505 per Ayoola, JSC

³² (1922) 2 AC 250

The trial court held inter alia that the appointment of the claimants' arbitrator within three months was a condition precedent to the bringing of any action at all. The court of appeal reversed the decision, holding that the clause was contrary to public policy as it was meant to oust the jurisdiction of the court. The house of lords held that the clause was not objectionable as the effect of it was not to oust the jurisdiction of the courts. Section 5(1) of the act incorporates the principles in both *Scott v. Avery* (supra) and *Atlantic shipping and trading co. Ltd v. Louis Dreyfus* (supra). It provides that if any party to an arbitration agreement commences any action in any court with respect to any matter which is the subject of an arbitration agreement, the other party to the arbitration agreement may, at any time after appearance and before delivering any pleadings or taking other steps in the proceedings, apply to the court to stay the proceedings.

Thus before the court can order a stay of proceedings pending arbitration, the following conditions, which are cumulative, must be fulfilled:

- 1). That there is either an agreement between the parties or a statutory provision which compels arbitration in such matters;
- 2). That the parties before the court are parties to the agreement or the transaction which compels the arbitration;
- 3). That the arbitration sought is within the contemplation of the arbitration agreement or circumstances calling for it;
- 4). That there is no sufficient reason why reference to arbitration should not be made; and
- 5). That the application for stay of proceedings pending arbitration was made in time as envisaged under section 5 of the act (*Nigeria LNG Ltd v. African Insurance Dev. Co. Ltd* 1995).³³

Appointment of arbitrators

The parties to an arbitration agreement may specify the procedure to be followed in appointing an arbitrator. Where no procedure is specified in the arbitration agreement, the parties will follow the procedure specified in the act. In the case of arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third arbitrator. However, if a party fails to appoint the arbitrator within thirty days of the receipt of a request to do so by the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement. In the case of arbitration with one arbitrator, where the parties fail to agree on the arbitrator, the appointment shall be made by the court on

³³ See *Nigeria LNG Ltd v. African Insurance Dev. Co. Ltd* (1995) 8 NWLR (Pt. 640) 677 at p.692 per Uwaifo JCA (as he then was)

the application of any party to the arbitration agreement.³⁴ Where the parties have agreed on the procedure to be followed in appointing an arbitrator and a party fails to act as required under the procedure or the parties or two arbitrators are unable to reach agreement as required under the procedure or a third party, including an institution, fails to perform any duty imposed on it under the procedure, any party to the arbitration agreement may request the court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.³⁵

According to section 7(4) of the act, a decision of the court under subsections (2) and (3) of this section shall not be subject to appeal. In other words, a decision of the high court relating to the appointment of an arbitrator shall not be subject to appeal. Also under section 34 of the act, a court shall not intervene in any matter governed by the act unless so provided by the act. What this means is that no appeal could be made in matters where there are available processes under the Act.

In *Ogunwale v. Syrian Arab Republic*³⁶ the court of appeal stated that it is only a decision strictly within section 7(2) and (3) of the act that shall not be subject to appeal. According to the court, for section 7(4) of the act prohibiting an appeal against a decision of court appointing arbitrator to apply, the following conditions must exist:

- 1) A binding, valid, compellable arbitration clause;
- 2) A dispute capable of being referred to arbitration; and
- 3) A party must have refused or defaulted to make an appointment.

Conduct of arbitration

Arbitration proceedings may vary from the very informal at one extreme to court-like proceedings at the other. In international arbitration, the parties are free to agree on the procedure to be followed by the arbitrator in conducting the proceedings. They may, for example, agree to adopt any domestic arbitration rules, or the UNCITRAL arbitration rules, or any other international arbitration rules. In domestic arbitration, the parties are bound to follow the arbitration rules set out in the first schedule to the arbitration and conciliation act. Article 15 of the arbitration rules requires that the parties are treated with equality and each party is given a full opportunity of presenting his case. Where the rules contain no provision in respect of any matter connected with particular proceedings, the arbitrator may conduct the proceedings in such a manner as he considers appropriate so as to ensure fair hearing. Section 20(1) of

the act provides that the proceedings may be conducted in any of the following ways:

- 1) By holding oral arguments; or
- 2) On the basis of documents or other materials; or
- 3) By both holding oral hearings and on the basis of documents or other materials.

Section 19(1) requires the claimant to submit to the arbitrator his points of claim stating the facts supporting his claim, the points at issue, and the relief or remedy sought by him. The respondent is similarly required to submit his points of defence in respect of those particulars set out in the points of claim. This the respondent does by either admitting or denying each point of claim, thus, narrowing down and identifying the issues in dispute. At the preliminary stages of the proceedings, the parties may agree on a number of issues including the place of the arbitral proceedings, whether there should be oral hearing or not, and the date and time of eventual hearing. If the parties do not agree, the issues shall be determined by the arbitral tribunal having regard to the circumstances. The procedure at the hearing is analogous with a civil action in the High Court. The usual order of proceedings is as follows:

1. The claimant opens his case either by himself or by his counsel and calls witnesses who are examined, cross-examined and re-examined if necessary.
2. The respondent similarly presents his case and calls witnesses who are examined, cross-examined and re-examined if necessary.
3. The respondent sums up his case and the claimant replies.
4. The arbitrator or arbitral tribunal makes the award.

Arbitration awards

The decision in arbitration is known as an award. It is final on all issues submitted. There could also be an agreed award resulting from the settlement of the issues by the parties themselves during the arbitral proceedings. In such a case, the arbitrators would terminate the proceedings and, if requested by the parties, record the settlement in the form of an award on agreed terms, which shall have the same status and effect as any other award on the merits of the case. By virtue of section 31 of the act, an arbitral award shall be recognized and enforced by the court upon the application of any of the parties to the award. The party relying on an award or applying for its enforcement shall supply to the court:

1. The duly authenticated original award or duly certified copy thereof; and
2. The original arbitration agreement or duly certified copy thereof.

In *Ebokan v. Ekwenibe and Sons Trading Co* (2001) 2

³⁴See *Arbitration and Conciliation Act*, s. 7(2).

³⁵*Ibid*, s.7(3)

³⁶(2002) 9 NWLR (Pt. 771) 127 at p.146 per Chukwuma-Eneh, JCA

NWLR (Pt. 696) 32³⁷ the court of appeal held that once an arbitral award has been made and there is nothing intrinsically wrong with the proceedings or even the time limit for challenging it has expired, the award becomes final and binding and it should be entered as judgment of the court and enforced accordingly. Galadima, JCA (as he then was) stated that once parties have chosen and submitted themselves to arbitration, no one of such party is allowed to subsequently back out of the decision of the arbitrator. He is estopped from objecting to the final decision of the arbitrator when the award is good on its face even if the award does not favour him. An arbitral award has the force and effect, for all purposes, as a court judgment. However, the parties have the right to challenge the award in court but until any of the parties succeeds in challenging the award. The court is empowered to set aside an arbitral award in the following circumstances:

1. Where the award contains decisions on matters which are beyond the scope of the submission; or
2. Where an arbitrator has misconducted himself; or
3. Where the arbitral proceedings, or award, has been improperly procured.³⁸

The term misconduct in arbitration law is a term of wide import. It has been described as “such mishandling of the arbitration as is likely to amount to some substantial miscarriage of justice.”³⁹In *Comptoir Commercial and Ind. S.P.R. Ltd v. Ogun state water corporation and Anor*⁴⁰ the supreme court held that the admission of inadmissible evidence which goes to the root of the issue submitted to arbitration may amount to misconduct justifying the setting aside of the award. In *A. Savoia Ltd v. Sonubi*⁴¹ the supreme court spelt out some conducts that would amount to misconduct within the law. Some of these are:

1. Where the arbitrator fails to comply with the terms, express or implied, of the arbitration agreement;
2. Where the arbitrator makes an award which on grounds of public policy ought not to be enforced;
3. Where the arbitrator has been bribed or corrupted;
4. Where the arbitrator makes a mistake as to the scope of the authority conferred by the arbitration agreement;
5. Where the arbitrator fails to decide on all the matters which were referred to him;
6. Where the arbitrator has breached the rules of natural justice;
7. Where the arbitrator has failed to act fairly towards both parties, as for example:-

- 1) By hearing one party but refusing to hear the other; or

- 2) By deciding the case on a point not put by the parties.⁴²

Enforcement of awards

An arbitration award is enforceable in the same manner as a judgment obtained in a court of law. The act provides that “an award may, by leave of the court or judge, be enforced in the same manner as a judgment or order to the same effect.”⁴³ Thus, an application can be made directly to the court or judge to enforce an arbitral award or to enter judgment in terms of the award. After obtaining the judgment or order of the court, execution can be levied under the sheriff and civil process act.⁴⁴ However, the other party to the arbitration agreement may request the court or judge to refuse to recognition and enforcement of the award⁴⁵ and protracted litigation may ensue and any aggrieved party may subsequently appeal to the court of appeal and ultimately to the supreme court (Constitution of the Federal Republic of Nigeria 1999).⁴⁶

With the introduction of multi-door courthouses in some States, the procedure for the recognition and enforcement of an award is much easier. Under the Lagos Multi-Door Court House Law, for example, settlement agreements duly signed by the parties shall be enforceable as a contract between the parties and when such agreements are further signed by an ADR Judge or any other person as directed by the Chief Judge, they shall be deemed to be enforceable under section 11 of the Sheriff and Civil Process Law (Lagos multi-door court house law 2007),⁴⁷ By these provisions, a settlement agreement, which includes an arbitral award, signed by an ADR Judge becomes a judgement of the high court of Lagos state and is enforceable under section 11 of the Sheriff and civil process law.⁴⁸

Multi-door court house

The multi-door courthouse concept was created by Professor Frank Sander of the Harvard law school at a national conference on the “Causes of dissatisfaction with the administration of justice” organized in 1976 in honour of Roscoe Pound by the American bar association, the

³⁷ (2001) 2 NWLR (Pt. 696) 32

³⁸ See *Arbitration and Conciliation Act*, ss. 29(2) and 30(1).

³⁹ See *Hailsham V. op. cit.*, note 10, para. 694.

⁴⁰ (2002) 9 NWLR (Pt. 773) 629 SC

⁴¹ (2000) 12 NWLR (Pt. 682) 539 SC

⁴² *Ibid*, at p.547 per Ogundare, JSC

⁴³ See *Arbitration and Conciliation Act*, s. 31(2). By section 57(1), “Judge” means a Judge of the High Court of a State, the High Court of the Federal Capital Territory, Abuja, or the Federal High Court.

⁴⁴ *Cap S6, Laws of the Federation of Nigeria, 2004.*

⁴⁵ *Ibid*, s. 32.

⁴⁶ See *Constitution of the Federal Republic of Nigeria 1999* (as altered), s. 242.

⁴⁷ See *Lagos Multi-Door Court House Law 2007*, s. 19(1).

⁴⁸ Under section 11 of the *Sheriff and Civil Process Law*, judgements of courts may be recovered by levy of execution against the goods, chattels, movable and immovable properties of the judgement debtor that are found within the jurisdiction of the court.

conference of chief justices, and the judicial conference of the United States (Crespo, 2008).⁴⁹

In advocating ways of reducing dissatisfaction with the administration of justice, Professor Frank Sander proposed a comprehensive Justice centre where all cases coming to the courts will be screened by a clerk to determine the most suitable forum for their resolution: whether litigation, arbitration, mediation or other. He thought it dissatisfactory for the civil system of justice to offer just one form of dispute resolution technique (that is, litigation), knowing fully well that not all disputes are suitable for resolution by litigation.

In Professor Sander's own words, "one might envision, by the year 2000, not simply a court house but a dispute resolution centre, where the grievant would first be channeled through a screening clerk, who would then direct him to the process (or sequence of processes) most suitable for his type of case." (Sander FEA 1976)⁵⁰ Thus, the modern day court house should be a comprehensive dispute resolution centre which will not only provide litigation as the means of resolving disputes but also make other processes or "doors" available to disputants. The other processes should include negotiation, mediation, conciliation and arbitration.⁵¹ Some of the criteria that might help to determine the most appropriate process for resolving particular types of disputes include nature of dispute, relationship between disputants, amount in dispute, cost and speed.⁵²

Professor Sander's proposal was implemented by the American bar association's standing committee on dispute resolution. The committee set up a pilot project in D.C. superior court under the stewardship of the then Chief Judge of that court with multi-door courthouses in three places: Tulsa, Oklahoma; Houston, Texas; and Washington, D.C. (Crespo MH, *op.cit.*, note 50, at p. 673).⁵³ The programme was so successful that after four years, the Chief Judge made it a full division of the court (Akikiolu-Ighile, 2000).⁵⁴ It is obvious that the Multi-Door Courthouse Programme of the United States of America has the aim of integrating alternative dispute resolution into the public justice system. Thus, the multi-door courthouse has been described as the formal integration of alternative dispute resolution into the court system

(Nwosu, 2005).⁵⁵ It is a court of law in which facilities for alternative dispute resolution are provided. It is called a "Multi-door courthouse" because of the several "doors" or dispute resolution mechanisms which it provides (Aina 2004).⁵⁶

Professor Mariana Crespo has described the multi-door courthouse as an innovation that routes incoming court cases to the most appropriate methods of dispute resolution, saving time and money for both the courts and the participants or litigants (Crespo, *op. cit.*, note 50, at p. 666).⁵⁷ According to her, it is a paradigm challenge. The paradigm challenge is the adversarial approach to resolving conflicts with litigation as the sole means. "Here, we move from a binary mindset where one person wins and another loses to a win-win mindset, where the interests of both parties are addressed."⁵⁸

The success of the experiments with the multi-door courthouses in the United States has led to the establishment of multi-door courthouses in many countries. There are multi-door courthouses in Argentina, Nigeria and Singapore.⁵⁹ A study revealed that as of May, 2000, there were about 40, 000 pending cases at the Lagos high court. Many of the cases did not stand the chance of being concluded within a decade (Osinbajo Y 2005).⁶⁰ Thus, there were interminable delays and congestions in the regular courts and there was an urgent need for the integration of alternative dispute resolution processes into the civil justice system to facilitate dispute resolution. The goal of the multi-door courthouse is to give citizens access to justice, reduce delays in justice delivery and provide links to related services.

The Lagos multi-door courthouse (LMDC) was established in 2002 as a public-private partnership initiative (PPPI) between the High court of Justice of Lagos State and the negotiation and conflict management group (NCMG), a non-governmental organization. It is the first court-connected Alternative dispute resolution centre in Africa (Aina K 2005).⁶¹ Similar multi-door courthouses have been set up in Abuja in 2003 and Kano in 2009. In Kano, unlike in Lagos, the courthouse has been super-imposed on the existing judicial system. Consequently, the Kano multi-door courthouse (KMDC) is entirely funded by the government

⁴⁹See Crespo MH (2008) "A Dialogue between Professors Frank Sander and Mariana Hernandez-Crespo: Exploring the Evolution of the Multi-Door Court House" *University of St. Thomas Law Journal* 5(3): 665-674 available at <http://www.ssrn.com/abstract=1265221> (accessed 29 April 2014).

⁵⁰ See Sander FEA (1976) "Varieties of Dispute Processing" in A. Leo Levin and Russell R. Wheeler (eds.) *The Pound Conference: Perspectives on Justice in the Future: Proceedings of the National Conference on Popular Dissatisfaction with the Administration of Justice*, St. Paul, Minnesota: West Group, pp. 65-87 at p. 84 available at <http://www.geoffsharp.atomicrobot.co.nz/wp-content/.../03/PoundConfSander.pdf> (accessed 29 April 2014).

⁵¹ *Ibid.*, at p. 68.

⁵² *Ibid.*, at pp. 72-79.

⁵³ See Crespo MH, *op.cit.*, note 50, at p. 673.

⁵⁴ See Akikiolu-Ighile B (ed.) (2000) *Perspectives on Citizens Mediation*, Lagos: Lagos State Ministry of Justice, pp. 47-48.

⁵⁵See Nwosu, KN (2005) "Alternative Dispute Resolution (ADR) as a Tool for Attraction and Protection of Business Investments in Nigeria" being a paper delivered at the *Nigerian Bar Association Annual General Conference*, Jos, p. 7.

⁵⁶See Aina K (2004) "Alternative Dispute Resolution and the Relationship with Court Processes" being a paper delivered at the *Nigerian Bar Association Annual General Conference*, Abuja, p. 3.

⁵⁷ See Crespo MH, *op. cit.*, note 50, at p. 666.

⁵⁸ *Ibid.*, at p. 668.

⁵⁹ *Ibid.*, at p. 666.

⁶⁰See Osinbajo Y (2005) "Reforming Civil Procedure Rules to Enhance Access to Justice in Nigeria: The Lagos State Experience" being a paper delivered at the *Nigerian Bar Association Annual General Meeting*, Jos, p. 2.

⁶¹See Aina K (2005) "The Multi-Door Court House Concept: A Silent Revolution in Legal Practice" being a paper delivered at the *Nigerian Bar Association Annual Conference*, Jos, p. 5.

of Kano state.⁶²The overriding objectives of the Lagos multi-Door courthouse are to:

1. Enhance access to justice by providing alternative mechanisms to supplement litigation in the resolution of disputes;
2. Minimize citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through alternative dispute resolution (ADR);
3. Serve as the focal point for the promotion of alternative dispute resolution in Lagos state; and
4. Promote the growth and effective functioning of the justice system through alternative dispute resolution methods (Lagos state multi-door court house law, law No, 21 of 2007, s. 2).⁶³

Although the Lagos State Multi-Door Courthouse was established in 2002 but the Law which provides the legal framework for its operations was enacted in 2007. Section 15 of the Lagos State Multi-Door Courthouse Law 2007 empowers the Chief Judge of Lagos State to designate and appoint not less than three (3) serving Judges of the Lagos state high court as ADR Judges to take responsibility for the promotion of alternative dispute resolution within the judiciary.⁶⁴ The key feature of the original multi-door courthouse concept is that once cases are filed at the regular court registry, an initial screening clerk will scrutinize the claims and direct the litigant to the appropriate door (Sander FEA, *op. cit.*, note 51, at p. 84).⁶⁵ However, what obtains in practice is that it is the Judge who decides whether or not to refer a case to the alternative dispute resolution centre, if in his opinion or at the request of the parties, it is believed that the matter is not suitable for litigation (Akeredolu A 2010).⁶⁶

There is need for cases filed in the registry of the high court to be subjected to initial screening by the registrar or any person designated by the Chief Judge as screening clerk. This individual could readily screen out those cases which need not take a court's time and preserve the adjudicatory processes for those cases where the issues have been properly joined and where there is a genuine dispute of fact or law (Sander FEA, *op. cit.*, note 51, at p. 78).⁶⁷ This does not, however, remove the powers of the Judges to refer deserving cases to the ADR Centre for resolution.

The concept has so far been a great success. The number of referrals to mediation, conciliation and arbitration has grown incrementally every year and several cases, some of which had gone on in the courts for years have been resolved within days using alternative dispute resolution methods (Osinbajo Y, *op. cit.*, note 61, at p. 2).⁶⁸ It has been reported that the Lagos multi-door court house successfully resolved a total of 780 cases out of the 1, 708 cases referred to it within the last ten years (2002 to 2012). Most of these cases were referred to it from the high court of Lagos state. The cases ranged from commercial disputes, landlord and tenant disputes to family matters (Etuk C 2013).⁶⁹

Advantages Of arbitration

In *Ebokan v. Ekwenibe and Sons Trading Co.* (supra) the court of appeal, per Ogundare, JCA, summed up the advantages of arbitration in the following words:

Parties who make a submission to an arbitrator often do so in order to adopt a quick, simple, inexpensive and technicality-free procedure to resolve their dispute.³⁸

Arbitration procedures are generally much quicker than litigation. The arbitrators appointed for a particular dispute do not have other disputes to settle and thus there is little or no delay. In most arbitration proceedings, formal pleadings and other procedural steps, which tend to prolong litigation, are not required. For example, the evidence act, with its procedural technicalities, does not apply to arbitration proceedings in Nigeria (Evidence Act, Cap E14, Laws of the Federation of Nigeria 2004).⁷⁰ Arbitration is less expensive than litigation. Unlike litigation in which the parties are represented by counsel whose fees are considerably high, there is no need to pay counsel's fees as the parties can represent themselves in arbitral proceedings. Arbitration offers a win-win situation unlike litigation which adopts a win-or-lose approach in which the winner-takes-it-all. The arbitral award is usually a compromise solution to the dispute between the parties.

Arbitration allows the parties to a dispute considerable autonomy. The parties have the opportunity to determine the number of arbitrators and even choose their own arbitrators. It allows the parties in advance to agree upon the person or persons to resolve any disputes that may arise. Arbitration offers the parties privacy and confidentiality. This is because arbitration proceedings do not normally take place in an open courtroom as litigation with persons who are not connected to the dispute in

⁶² See Security, Justice and Growth (SJG) and UK Department for International Development (DFID) *Alternative Dispute Resolution: Multi-Door Courthouses* available at <http://www.j4a-nigeria.org/index.php?> (accessed 29 April 2014)

⁶³ See *Lagos State Multi-Door Court House Law, Law No, 21 of 2007, s. 2*

⁶⁴ The Lagos State Multi-Door Court House was established in 2002 but the Law which provides the legal framework for its operations was enacted in 2007.

⁶⁵ See Sander FEA, *op. cit.*, note 51, at p. 84.

⁶⁶ See Akeredolu A (2010) "Enforceability of alternative Dispute Resolution Agreements: What is New under the Lagos Multi-Door Court House Law?" *Nigerian Bar Journal* 6(1) 202-212.

⁶⁷ See Sander FEA, *op. cit.*, note 51, at p. 78.

⁶⁸ See Osinbajo Y, *op. cit.*, note 61, at p. 2.

⁶⁹ See Etuk C (2013) "Lagos Multi-Door Courthouse Settles 780 Cases in 10 Years" *Premium Times*, January 12 2013 available at <http://www.premiumtimesng.com/news/114914> (accessed 26 April 2014).

³⁸ *Supra*, at p. 43 per Ogundare JCA

⁷⁰ See *Evidence Act, Cap E14, Laws of the Federation of Nigeria 2004* (as amended in 2011), s. 1(4).

attendance. This helps to protect the commercial reputation and trade secrets of the parties.

Arbitration has the advantage of submitting a dispute to an expert for determination. For example, if the dispute involves whether or not a building has been properly constructed, the matter could be submitted to an architect for resolution. If it involves a technical accounting problem, it could be submitted to a chartered accountant for resolution.

Arbitration has the certainty and finality of an award in the same manner as a Judgment or order of a court of law. The underlying principle is that parties to a dispute have a choice. They may resort to the normal machinery for administration of justice by going to the regular courts of the land and have their dispute determined both as to fact and as to law, or they may choose the arbitrators to be the Judge between them. If they take the latter, they cannot, when the award is good on the face of it, object to the award on grounds of law or facts (*Baker (Nigeria) Ltd v. Chevron (Nigeria) Ltd 2000*).⁷¹

Disadvantages of arbitration

Arbitration has its own disadvantages. It is unsuitable for legally complicated matters for which action in court is more useful. In addition, it may give rise to the problem of enforcement, particularly where the applicable law is contrary to the law of the place where it is sought to enforce the award. Furthermore, if a party objects to an award or the court sets aside an award, litigation could ensue and the savings made by the use of arbitration would be lost. A good example is the case of *baker (Nigeria) Ltd v. Chevron (Nigeria) Ltd (supra)*.

In that case, the respondent was a major oil drilling company in Nigeria. The appellant entered into a written agreement with the respondent under which the appellants and its joint venture partner were to provide two jack-up barges for the use of the respondent in its business activities in the coastal, offshore and inland waters of Nigeria. The appellant was also to operate the barges. The agreement was to cover an initial period of one year and renewable for another year. The contract was renewed for another year after the first year. Both parties agreed that the contract was satisfactorily performed. The agreement contained a clause that each of the parties could refer any dispute arising out of the execution of the contract to arbitration.

After the completion of the contract, the appellant declared a dispute and invoked the provisions of the agreement for reference to arbitration. The parties duly filed their claims and defence thereto before the arbitrators. Evidence was led and the arbitrators published their award. They found that the appellant did not prove any pecuniary damages but awarded to the

appellant against the respondent the sum of \$750, 000 (Seven hundred and fifty thousand United states dollars) as damages.

The respondent was dissatisfied with the award and applied to the Federal high court by originating summons praying that the award be set aside or alternatively that the enforcement of the award be refused. The appellant equally issued an originating summons praying that the award be recognized as binding and for leave to enforce it. The two originating processes by both parties were consolidated for hearing. Arguments for and against the grant of the orders sought by each of the parties were taken. The trial court, per Ukeje, J., set aside the award on the found that the arbitrators lacked jurisdiction to award damages and, accordingly, dismissed the appellant's summons for the enforcement of the award.

The appellant was dissatisfied with the judgment of the trial court and appealed to the court of appeal, which upheld the judgment of the trial court and dismissed the appeal. However, the court of appeal did not agree with the trial court that the arbitrators lacked jurisdiction. Instead, the court of appeal viewed the award as an error on the face of the record. It is submitted that this is the correct view. Since the arbitrators found that the appellant was not entitled to damages on the ground that it did not prove the entitlement but went ahead to award substantial damages, it is not a question of jurisdiction but rather an error on the face of the record. The point is that where the high court sets aside an award, the parties are back to square one in the resolution of their dispute. The time, money and other resources which would have been saved through arbitration would be lost as the parties might engage in protracted litigation with appeals up to the Court of Appeal and ultimately to the supreme court.

Finally, the procedure for the recognition and enforcement of an award is subjected to the technicalities of the judicial process. Application for the recognition and enforcement of an award is made by originating summons. The duly authenticated original award or duly certified true copy thereof and the original arbitration agreement or duly certified true copy thereof must be exhibited.⁷² However, the other party to the arbitration agreement may request the court to refuse recognition and enforcement of the award⁷³ and this may lead to protracted litigation as clearly illustrated by the case of *Baker (Nigeria) Ltd v. Chevron (Nigeria) Ltd (supra)*.

However, the multi-door courthouse approach eliminates most of the pitfalls in extra-judicial dispute resolution processes. As we have seen, settlement agreements and awards duly signed by an ADR Judge are enforceable as a judgment of the high court (*Lagos state multi-door court house law 2007*).⁷⁴

⁷¹ See *Baker (Nigeria) Ltd v. Chevron (Nigeria) Ltd (2000) 12 NWLR (Pt. 681) 393at 406 CA.*

⁷² See *Arbitration and Conciliation Act*, s. 31(2).

⁷³ *Ibid*, s, 32

⁷⁴ See *Lagos State Multi-Door Court House Law 2007*, s. 19(1)

CONCLUSION AND SUGGESTIONS

The importance of arbitration in the settlement of commercial disputes cannot be overemphasized. Arbitration is quick, simple, inexpensive and technicality-free. That is why it is most suitable for the resolution of commercial disputes. It is true that delay may be occasioned by any of the parties applying to the court to set aside an award or to refuse its enforcement and an appeal. This is normal as every dispute resolution process has its peculiar problems.

However, with the congestion of the regular courts and interminable delays in justice delivery coupled with the high cost of litigation, it is only reasonable that arbitration and other alternative dispute resolution processes should be integrated into the regular court system. In this regard, the establishment of the Lagos multi-door courthouse should be applauded. It has made consideration progress in the settlement of commercial disputes in Lagos state.

It is suggested that the various states in Nigeria should follow the initiative of Lagos state in providing multi door courthouse facilities. This will give citizens access to quicker and more expeditious methods of settlement of commercial disputes than litigation. It is also suggested that cases filed in the registry of the high court in states with multi-door courthouses should be screened initially by the registrar or any other person designated by the Chief Judge as screening clerk. This individual could readily screen out those cases which need not take a court's time by referring them to the ADR Centre for resolution. This way, only cases in which the issues have been properly joined could be forwarded to the Chief Judge for assignment to Judges and this will help to save the time of both the courts and the parties. This does not, however, rule out the possibility of Judges referring disputes to the ADR Centre in appropriate cases.

Conflict of Interests

The author(s) have not declared any conflict of interests.

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