ARBITRATION IN PLACE OF LITIGATION FOR THE SETTLEMENT OF COMMERCIAL DISPUTES IN LAGOS NIGERIA: A DISCOURSE.

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Abstract

Conflict of interests among parties in commercial activities as in other facets of human endeavours can occur in various circumstances and comes out with different consequences on the parties when the issues are adjudicated upon and judgment given by courts. The most observed issue in commercial disputes is the reluctance of parties, especially foreign business men to submit their disputes and themselves to foreign courts for determination.In Nigeria, civil courts have remained the traditional and popular venue for the resolution of the large volumes of commercial disputes that occur in her various cities including Lagos. The article focuses on canvassing for adoption of arbitration in settlement of commercial disputes that occur in Lagos State in lieu of litigation. It is a desk top research that examines the main existing legal processes of resolving commercial disputes in Lagos State. The article recommends the actors and stakeholders in the commercial sector to understand properly the details of arbitration of commercial disputes especially its contributory effectiveness in the dispute resolution frame works, that arbitration can be used to settle disputes in commercial transactions. This will encourage better planning and administration of the justice system of Lagos State by strengthening the effectiveness of arbitration for the survival of businesses in the state.

Keywords: Arbitration, Commercial Disputes Settlement, Litigation and Nigeria

1. Introduction

Globally, commercial activities involve the blend of parties whether on the local or international scenes to execute to conclusion the subject matter involved. Adedoyin[1] confirmed that the combining of efforts in commercial transaction is further made common these days because of globalization, liberalization of markets, bilateral and multilateral agreements, that opened more windows for commercial interactions. Ibe[2]agrees that one of the effects of these interacting opportunities is the plethora of commercial disputes that occur among the interacting parties.The conflict of interests among parties in commercial activities as in other facets of human endeavor, can occur in

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[1] Adedoyin R. (2010). "Recent arbitration related developments in Nigeria". *41 Arbitration Journal, 76 pp. 130-135*

[2]Ibe C.E. (2014). Arbitration practice in Nigeria. A review of arbitration law and guidelines. *Journal of Law, Policy and Globalization, Vol. 23, pp.56-66*

various circumstances and comes out with different consequences on the parties when the issues are adjudicated upon and judgment given by courts. Aside the judgement likely having far reaching effects on the parties in the settling of these conflicts or disputes by courts, there may be several issues that could disrupt the judicial process before the decision is reached. The most observed issue in commercial disputes is the reluctance of parties, especially foreign business men, to submit their disputes and themselves to foreign courts for determination.

Researchers on judicial legal systems have posited that one of the ways to measure the efficiency and impartiality of the administration of justice in courts of many countries is to weigh the magnitude of local and foreign parties who may have other choices but elect to submit their disputes to it. The reluctance to submit to local or foreign courts is informed by uncertainties in the nature of the administration of justice by these courts. Uncertainties such as the years that the resolution of the conflict would be delayed and the likelihood that justice may not be obtained amongst others by the foreigners.Akin[3] observed that businessmen do not have problems with the legal concepts of the common law as modified by statutes that would be applied to their business dealings, rather they are more in need of certainty and equality as an underlying basis for their activities. They equally desire to know what will be when they do certain things in certain ways or enter into an agreement in a certain form or their rights and liabilities be defined and ascertained in advance with that legal process. Despite these desires of businessmen which the courts as a mechanisms had agreed to apply the acceptable standards to allay the fears of the businessmen, the courts still appears elusive and have continued to be accused of having legal procedures that are too complicated, technical, indirect, dilatory, wasteful of their times and that of everyone else in commercial dispute settlement as not to warrant businessmen to continue taking an avoidable chance with the judicial mill.

In Nigeria the civil courts have remained the traditional and popular venue for the resolution of the large volumes of commercial disputes that occur in her various cities including Lagos. Their scope on dispute resolution are boundless as they treat both local and foreign commercial disputes of all kinds. The overloading of the courts with commercial cases is seen as part of what made the courts in Nigeria not to live up to the expectations of the society, the businessmen and other stakeholders in the areas of commercial transactions and dispute settlements. The courts in Nigeria have particularly been accused of corruption, indolence, inefficiency, dearth of expertise in commercial activities and disputes resolution, inflexibility of procedures and many others pitfalls.The actors in commercial sector in Lagos have been agonizing under the present regime of using litigation in courts to resolve commercial disputes. They hinged their

[3]Akin, A. (2008). Arbitration in Africa. Paper presented at the conference for promotion of arbitration in Africa, pp.9-11.

dissatisfaction on the myriads of obstacles such as protracted delays and lack of exposure by the judges and lawyers. Research has shown that the settling of commercial disputes through litigation in national courts faces more challenges when the dispute has foreign character. Foreigners who are to face national civil courts for resolving of commercial dispute view the courts as alien environment because of their unfamiliarity with the procedures that may be followed, the laws to be applied and even the mentality of the National Judges.The case of Nigeria courts is aggravated by the worldwide perception of the national courts as corrupt, time wasting, lack of expertise in the handling of commercial matters, indolent and nepotism. The foreign businessmen have perceived them as biased, expensive and time-consuming civil courts with history of inconclusive cases. There is therefore the need to provide an adequate alternative means that will assuage the plights of commercialists and businessmen in resolving their disputes whether it is local or international in nature.

Lagos state recently introduced the "Lagos State Civil Procedure Rules" 2019 which is aimed at foisting efficient justice administration system in Lagos State. It is mainly intended to devise means of resolving disputes in a timely manner and also to address the long-standing problem of congestion in Lagos State Courts. In a bid to achieve this aim, the new civil procedure rule adequately encouraged alternative dispute resolution techniques as means of unclogging the congestion in court dockets. The implication of this intendment by Lagos State is that the state has realized that it courts alone can no longer support commercial disputes resolution and other matters, rather a proactive method with multifarious benefits to the state, the commercialists and other stakeholders is required at this period.The expectation following these huge developments in the commercial world is that the main traditional medium for settling commercial disputes - the 'national court system'should upgrade so as to be able to provide State funded alternative dispute resolution (ADR) services such as arbitration to litigants.

This article is intended to enlighten the public on the state of the arbitral legal frameworks for commercial settlement of disputes and awaken the authorities to review the laws where necessary to meet the needs of the expanding commercial sector.

2. The Legal Regime on Arbitration

Arbitration could be defined as the reference of a dispute or differences between not less than two parties for determination, after hearing both sides by persons other than a court of competent jurisdiction. Similarly, commercial arbitration is a process of settling disputes that occur in the line of business relations or interactions either in the local or international scenes by referring the dispute(s) to a neutral person (arbitrator) or institution selected by the parties for a decision based on the evidence and arguments presented to the panel or tribunal. Relationships of a commercial nature could requireeither international or domestic arbitration.

An arbitration is 'international' if the parties to the arbitration agreement have their places of business in different countries or one of the following places- place of arbitration, or a place where the substantial part of the obligation is to be performed or place where the subject matter of the dispute is closely connected- is situated outside the country in which the parties have their place of business; or the parties expressly agreed that the subject matter of the arbitration agreement relates to more than one country, or the parties, despite the nature of the contract, expressly agree that any dispute from the commercial transaction shall be treated as an international arbitration. Domestic arbitration in contradistinction to an international arbitration is an arbitration involving nationals of a state only. Any arbitration which is not international is domestic.

2.1 Applicable Law in Commercial Disputes.

The applicable law in arbitral proceedings is determined by the nature of dispute and the parties involved. For a corporate entity, the applicable lawto determine capacity is the law of the place of incorporation. However according to the doctrine of separability, the law applicable to the arbitration agreement may be different from the law applicable to the main contract; the *lexarbitri* (law applicable to the arbitral proceeding) is usually the law of the place where the arbitration is taking place - the*lexcausae*(law applicable to the dispute).The parties often choose the applicable law which may be *lexfori*–the law of the forum where the arbitration is taking place or the Arbitration Rules or the conflict rules of the seat of arbitration. There is also the law applicable to the enforcement of the award which is the law of the country where the enforcement is sought. Essentially, there may be four or more laws applicable to one arbitration proceedings. The law governing the performance of obligations under the contract is known as the 'governing law' or the 'proper law of the contract.' This law may be uncertain if the parties fail to make an express choice in which case the law of the seat of the arbitration – the *lexfori* which may be the *lexarbitri* will determine this by the ordinary conflict rules or the 'equity clause.' The proper law of the arbitration agreement may either be the same or different from the proper law of the contract. Matters usually covered in an arbitration agreement include the interpretation, validity, violability and discharge of the agreement to arbitrate.

The locus *arbitri* is the geographical location to which the arbitration is tied and which prescribes the procedural law of the arbitration. The procedural law may be different from the proper law of the contract and the proper law of the arbitration agreement. Generally, the "Seat" refers to a city, for example, Lagos rather than a country.The laws that govern arbitration in Nigeria include the Constitution[4] and various statutes regulating arbitration such as the Arbitration and Conciliation Act,[5] the UNCITRAL Model Law and Arbitration Rules,[6] the New York Convention on the Recognition and Enforcement

[4] 1999 Constitution of the Federal Republic of Nigeria (as amended).
[5]Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria (LFN), 2004.
[6]See UNCITRAL Model Law and Arbitration Rules.

of Foreign Arbitral Awards,[7] Lagos State Arbitration Law,[8] the Lagos Court of Arbitration Law,[9] Case Laws (Local and Foreign) and Foreign Legislations.

3. Regulatory Legal Structures for Settling Commercial Disputes in Nigeria

The Nigerian federation consists of thirty-six (36) States and a federal capital territory. The judicial powers of the Federation and the States are vested in a restricted list of courts established by the 1999 Constitution and these courts are expressly designated as the only superior courts of record in Nigeria.*Smith*[10]observed that out of the ten courts listed in the 1999 Constitution, five of them are most significant for the purpose of commercial dispute settlement namely: the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Courts of the States and the Federal Capital Territory (FCT), Abuja and the National Industrial Court. *Ibidapo*[11]stated the Supreme Court is the apex court in the Nigerian Judiciary and the final Court of Appeal with broad jurisdiction to entertain matters brought to it on appeal from the Court of Appeal. The Court of Appeal is the next court in the hierarchy of the Nigerian Judiciary, with broad jurisdiction to entertain appeals from the Federal High Court, the High Courts of the States and of FCT and the National Industrial Court.

The Constitution further recognized the powers of the Federal and State legislatures to establish other courts as they may deem fit but expressly provides that such courts shall be courts of subordinate jurisdiction to State High Courts.[12]As observed by *Ladapo*[13]the three High Courts listed in the Constitution are courts of first instance and the primary judicial institutions for the resolution of commercial disputes in Nigeria. These three have coordinate jurisdiction and appeals from their decisions go straight to the Court of Appeal. The territorial jurisdiction of the Federal High Court and the National Industrial Court covers the whole of Nigeria, and the process of these courts and their judgments can be served and enforced respectively anywhere within the Federation. However, these courts sit in several divisions for administrative convenience. The territorial jurisdiction of the High Court of the FCT and the High Courts of the thirty-six States of the Federation are confined to their respective territories, but there is an efficient mechanism for the service of interstate process and for the recognition and enforcement in any State of the judgments obtained in other States of the Federation. This mechanism is provided in the Sheriffs and Civil Process Act.

[7]See New York Convention on the Recognition and Enforcement of Arbitral Awards, 1958.
[8]Lagos Sate Arbitration law, No. 10, 2009 (LSAL).
[9]Lagos Court of Arbitration Law, No. 8, 2009 (LCAL).
[10]Smith, I. O. (2005). Secured credit transaction. Lagos: Globe Publishers, pp.54-58
[11]Ibidapo, A.A. 2012 Case management in Lagos State, pp.49-50
[12]Smith, op cit.
[13]Ladapo, A.O 2008. Where does Islamic Arbitration fit into the judicially recognised ingredients of arbitration in Nigeria jurisprudence. African *Journal of Conflict Resolution*, Vol. 8, No. 2, 106

Litigation is the most common form of domestic and foreign dispute resolution method in Nigeria. According to*Abia*[14]*et al*, the legal system and method of litigation is modelled after the English common law. As with other common law jurisdictions, Nigeria operates the adversarial system of adjudication, with opposing parties seeking an outcome most favourable to their position and the Judge playing a non-inquisitorial role. The jury system is not used in the administration of justice and the presiding Judge is both a judge of the law as well as the facts.

3.1 The Litigation Process

Litigation is initiated in Lagos State on any dispute when a claimant files originating processes against other parties in a court with the required jurisdiction to adjudicate over such action. *Etuk*[15]observed however, that determination of questions of jurisdiction between the Federal High Court and the High Courts of the FCT and the States has proved problematic ever since the establishment of the Federal High Court in 1973. The enabling legislation by which the Federal High Court and the High Courts of the FCT and the States are created make provision for their respective jurisdiction, and these provisions are further supplemented by the provisions of the Constitution of 1999 allocating specific causes such as aviation, banking, trademarks and copyright, insolvency, receivership, shareholding, company taxation and other allied corporate issues, shipping to the exclusive jurisdiction of the Federal High Court and leaving the residue to be determined by the State High Courts. Despite these provisions, the issue of jurisdiction is not always clear-cut. Some of the matters that come before these courts are borderline cases that offer a mixed-bag of causes of action that arguably fall within the jurisdiction of one or the other of these courts, and this has led to interminable jurisdictional challenges.

Akanbi[16]confirmed that the Nigerian courts have been notorious for their inefficiency and this has resulted in frustrating delays to the commercial dispute resolution processes. This problem has been particularly acute in the commercial nerve centre and former federal capital, Lagos. In commercial disputes, where time is invariably of the essence, the length of time it takes to litigate a matter through the Nigerian courts has frustrated many litigants and caused them to abandon the pursuit of their claims or to seek alternative means of resolving their disputes.Jurisdiction is a threshold issue that has affected the

[14]Abia, O.T and Ekpoattai, I.T. 2014. Arbitration as an alternative method of conflict resolution among the Ibibio of South-East Nigeria *American Journal of Social Issues and Humanities,* Vol. 4, Issue 1, 31; Ezejiofor, C., The law for arbitration in Nigeria, (Lagos: Longmans, 1997); 1 Udofa. 2010. Customary Arbitration in Land dispute and doctrine of Res Judicata: Need for judicial consistency. *University of Uyo journal of Commercial and Property law.* 1: 17; Agu v. Ikewibe (supra) 583 and Abasi v Onido (1989) NWLR (Pt. 548) 89.

[15]Etuk, C. 2013. The Lagos Muliti Door Court House, Premium Times, January 12, p.25.

[16]Akanbi, M.M., Abdulrauf, L.A and Daibu, A. A. (2015). Customary arbitration in Nigeria: A review of extant judicial parameters and the need for paradigm shift *Afe Babalola University: Journal. of Sustainable Development and. Urban Policy, vol. 6: No. 1,209.*

efficiency of dispute resolution in Nigerian courts over the years, particularly as it concerns the superior courts of records that are most relevant to commercial dispute resolution; the Federal High Court on the one hand and the High Courts of the FCT and the States on the other.

3.2 Enhancing Litigation Efficiency in Lagos State

Lagos State has historically suffered the most from congestion and delay in its courts, due to its dense population and the volume of commercial activity that goes on within the state. It is not surprised that it has been at the forefront of attempts to address the delays in the dispute resolution process. It pioneered the adoption of "Front-Loading" in Nigeria in 2004 by adopting in part the recommendations of the *Lord Justice Woolf Commission*[17] for the reform of the practice and procedure of the High Court in England. This procedure requires that hardcopies of an originating process to be filed in court will not be accepted for filing unless they are accompanied by witness depositions and copies of every document that the claimant intends to rely upon as an exhibit at the trial − thus eliminating frivolous or unsupportable actions at an early stage.This innovation has since been adopted by the Federal High Court, the High Court of the FCT, Abuja and by several of the High Courts of the States of the Federation. It has greatly enhanced the efficiency of the dispute resolution process in Lagos State.

In an attempt to alleviate the overcrowded situation with the courts on commercial disputes resolutions, the state adopted a frontloading method to speed up the process of litigation. It later established the Lagos Multi-Door Court House (LMDC). The schemes were designed to provide fast and alternative dispute resolution process for the resolution of various commercial disputes as part of the justice system. An empirical assessment of the effectiveness of the LMDC scheme in Lagos State in 2007 affirmed that commercial cases topped their deliberations with great success rate regarding the conclusions of the cases referred to them. This result has encouraged the canvass for the need of an alternative dispute resolution mechanism for commercial disputes in Lagos State instead of litigations.[18]

The Lagos State Civil Procedure Rules which became effective on 31st December 2019, mandated Lagos State High Court to introduce further radical measures aimed at decongesting the courts and increasing the speed at which matters are determined. *Omojola*[19]confirmed that the most radical of these measures is the requirement that in addition to front-loading, all originating processes must be accompanied by a "Pre-action

[17] Lord Justice Woolf's Commission, 1998 aimed at reforming initially and intended to help reduce the cost litigants and time courts spent on civil proceedings in England.
[18]Akomolade, I.T and Akpabong, E.M. (2010). Good governance, rule of law and constitutionalism in Nigeria, 3. *UNAD Law journal*
[19]Omojola, T.A, 2019. Law and Development, Lagos, pp.28-32.

Protocol Form 01."This form contains provisions compelling parties to explore settlement through alternative dispute resolution (ADR) methods such as arbitration, mediation and conciliation as a condition precedent to approaching the court. Specifically, the form requires that the claimant or his legal practitioner must provide answers to the following questions under oath and attach supporting documents:

(i) that he has made attempts at amicable resolution of the dispute through mediation, conciliation, arbitration or other dispute resolution options
(ii) that the dispute resolution was unsuccessful, and that by a written memorandum to the defendant(s) he set out his claim and options for settlement and
(iii) that he has complied as far as practicable with the duty of full and frank disclosure of all information relevant to the issues in dispute.

In addition, Order 3 Rule 11 authorizes the High Court Registry to screen all originating processes upon filing, to assess their suitability for ADR. Upon a finding that such a matter is suitable for ADR, the new rules authorize the Registry to automatically refer the matter to the Lagos Multi Door Court House or other appropriate ADR institution in accordance with Practice Directions to be issued by the Chief Judge from time to time. Furthermore, Order 25 Rules 1(2)(c), 2(l) and 6, confer extensive case management powers on the courts to promote and compel parties to explore settlement ADR in appropriate cases during what used to be called the "Pre-Trial Conference" but is now described as the Case Management Conference.

As with its precursor *Olagunji*[20]confirmed it is expected that the "Case Management Conference" will increase the efficiency of the dispute resolution process by providing an opportunity for the court and the parties to explore settlement by ADR, narrow the issues in dispute, organize and schedule the discovery, inspection and production of documents and deal with "such other matters as may facilitate the just and speedy disposal of the action."The Civil Procedure Rule 2019 stipulates that Case Management Conferences should be concluded within three months of their commencement with the pre-trial judge subsequently preparing a list of the live issues remaining for determination at trial.

4. Common Law and Customary Law Arbitration in Nigeria.

In Nigeria, arbitrationcan be treated under three broad sub-headings, namely, during the pre-colonial period, during the colonial period and during the post-colonial period. These three periods fit into the three classical types of arbitration in Nigeria, namely, customary, common law arbitration and statutory arbitration.According to Akpata[21]the various ethnic groups in Nigeria before the advent of colonial rule had indigenous methods of settling disputes. In the environs of Benin City, the Village Head (Odionwere) or the family head (Okaegbe) principally functioned as the arbitrator or the mediator to resolve conflicts or

[20]Olagunji, J. (2018). Commercial mediation: An alternative dispute resolution mechanism, Kaduna, Multiform Limited, pp.7-10.
[21]Akpata, Op.cit

disputes among the people. The parties were also at liberty to request any member of the community in whom they reposed confidence to mediate or arbitrate with the undertaking to abide by his decision.In the Ibo-speaking part of Nigeria, the "Age-grade or Amala" performs arbitral functions. Similarly, in the Yoruba-speaking parts, the Obas perform arbitral functions.

Nwakobi[22]confirmed that customary law arbitration is a particularly important institution among the non-urban dwellers in the country. They often resort to it for the resolution of their differences because it is cheaper, less formal and less rancorous than litigation. Because the system helps in the promotion of peace and stability within the communities and because it assists in the reduction of pressure on the over-worked regular courts, its employment as a dispute settlement mechanism should be encouraged by all organs of the state.As observed by *Akanbi*[23]*et al*, the practice of arbitration therefore, comes so to speak, naturally to primitive bodies of laws, and after courts have been established by the state and recourse to them has become the natural method of settling disputes, the practice continues because the parties to a dispute want to settle them with less formality and expense than is involved in a recourse to courts.The above is true of both England and Nigeria. Despite the fact that we have embraced the English legal system, recourse to customary arbitration is still a method of settling disputes especially in rural areas.

In land matters, arbitration was used to settle disputes relating to land. Thus, in *Larbi v Kwasi,*[24] the Privy Council held that a customary arbitration was valid and binding and that it was repugnant to good sense for a losing party to reject the decision of the arbitrator to which he had previously agreed. Similarly, in *Mensah v Takyiampong &Ors,*[25]the West African Court of Appeal held, inter alia, that in customary arbitration, when a decision is made, it is binding upon the parties, as such decisions upon arbitration in accordance with native law and custom have always been that the unsuccessful party is barred from reopening the question decided and that if he tries to do so in the Courts, the decision may be successfully pleaded by way of estoppel.One distinguishing feature of customary arbitration is that it is usually oral. This takes it outside the ambit of statutory arbitration. From a long line of decided cases it is obvious that arbitration is not alien to customary jurisprudence. It is therefore surprising that Uwaifo JCA held in *Okpurilwu v Okpokam*[26] that:

> No community in Nigeria regarded the settlement by arbitration between disputing parties as part of native law and custom... there is no concept known as customary or native arbitration in our jurisprudence.

[22]Nwakobi, C.G 2014. The law and practice of commercial arbitration in Nigeria (2nd Edition, Enugu: Snap Press Nigeria Limited, 2014), 1
[23]Daibu, et al Op.cit
[24] Larbi v Kwasi, 1934 2 WACA 188
[25]*(1940)6 WACA 118.*
[26]*(1988)4 NWLR (pt.90)554 AT 572 57*

Although the pre-requisites of customary arbitration were, with due respect wrongly stated in *Agu v Ikewibe* and *Ohiaeri v Akabeze*[27] they were correctly restated in *Awosile v Sotunbo*[28] as follows:

(a) Voluntary submission of the dispute to arbitration by the parties;
(b) agreement by the parties expressly or by implication, to be bound by the award;
(c) Conduct of the arbitration according to customary law;
(d) publication of a decision which is final.

The Colonial Period began by Lagos colony been ceded to England in 1861 by virtue of the Treaty of Cession of that year. However, English Law was introduced to the Colony by virtue of Ordinance No. 3 of 1863. With this Ordinance especially Ordinance No. 4 of 1876, the statutes of general application, the rules of common law and doctrines of equity became part of our laws. With this Ordinance both common law and doctrines of equity became sources of our laws.Thus, side by side with the customary arbitration we had common law arbitration. Both customary and common law arbitration can be entered into orally or in writing. The defects in these two have been highlighted.The evolution of arbitration generally centered on the common law and trade usages. What remains to be considered here is the relationship between customary arbitration English arbitration law. Although, there is no judicial authority in this regard, the internal conflict of law rules in Nigeria has taken care of these.

4.1 Resolving Conflicts between Customary Law and English Arbitration Law

Generally, the effect of such conflict is dependent on whether the parties to such a transaction or event are both Nigerians or Nigerian and Non-Nigerian. If the parties are both Nigerians, the general rule is that the transaction will be regulated by customary law. However, there are two exceptions to this general rule, namely, where the parties agreed or seem tc have agreed that English Law will regulate the transaction, and where the transaction is unknown to customary law.If it is a transaction involving a Nigerian and a Non-Nigerian, the applicable law is the English Law unless where such application will result in substantial injustice to either of the parties in which case, customary law will apply. Where the parties are non - Nigerians, then English law will apply.

There is no reported Nigerian case based on the UK Arbitration Act 1889. It is also uncertain as to whether it was a statute of general application. It should be noted that there is no official listing of statutes of general application.Unless a matter based on a particular statute went to court, it was not known if such English law was of general application. This is understandablebut it is however humbly submitted that since there was no local legislation on arbitration at that time, the Arbitration Act 1889 could be treated as a statute of general application.

[27] *(1992)5NWLR (pt.243)514*
[28] *Awosile v Sotunbo(1992)5NWLR (pt.243)514*

Nigeria became a united country in 1914. This was when the hitherto Northern and Southern Protectorates were amalgamated to form a country called Nigeria. In the same year, an Arbitration Ordinance 86 came into effect. The provisions of this Ordinance were identical with the English Arbitration Act, 1889. Thus, for the first time in the history of Nigeria, it had a local enactment regulating arbitration. Unfortunately, the provisions of the Act were scanty as they dealt with domestic arbitration only. According to *Amazu*,[29] the Act later proved inadequate for the settlement of commercial disputes in Nigeria thus leading to its repeal. *Akpata observed*[30],as at the time of political independence in 1960, the 1914 Act was the extant Nigerian legislation on arbitration. However, on 10 June, 1958, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the 'Model Law,' came into force.

Nigeria was the first African country to adopt the Model Law. Most of the sections of the extant Arbitration Act are derived from the Model Law. For example, sections 1 to 28 of the Act corresponds with Articles 7 to 33 of the Model Law. Sections 29 to 36 of the Act are purely for domestic arbitration while sections 37 to 42 of the Act deal with conciliation in domestic proceedings. Sections 43 to 55 of the Act are additional provisions on international commercial arbitration. Essentially Sections 48, 51 and 52 of the Act correspond with Articles 34, 35 and 36 of the Model Law respectively.

5. Comparative Analysis of Arbitration and Litigation

The main thrust of this work is that all commercial disputes be resolved by arbitration than by litigation or any other dispute resolution mechanisms. Thus, in all commercial dispute arbitration should be the first and primary method of resolution. Although, arbitration and litigation are adjudicatory processes, adversarial in nature and there is finality in their decisions, they can however, be distinguished in several ways.

Arbitral proceedings are characterized by the principle of party autonomy. Among others, the parties are free to choose not only the tribunal but the venue and the law. In choosing the venue, parties will take their convenience and that of the arbitrators and witnesses into account.[31] Choice of law is a fundamental question in arbitration. Unless the parties choose both the substantive and procedural law, the tribunal may determine this by invoking the conflict of laws rules. Litigants generally have no choice of venue and the law applicable. Submission to any municipal system may imply submission to its legal system. Parties also have the freedom to choose the particular arbitral tribunal. In such

[29]*Amazu, A. 1994. Developing and using commercial arbitration and conciliation in Nigeria. Lawyer B-Annual, Vol. 2, No. 2. Pp.4-8.*
[30]Akpata, Op.cit.
[31]Dias, A.K. 2009. "Justice for the poor" New Delhi: Oxford University Press, pp.15-26

choice, the parties will take into account the personality of the arbitrators, their professional background, experience, availability and cost. However, where the parties fail to agree, there are usually provisions in the agreement between the parties, the arbitral rules or statutes for appointment of a tribunal by an appointing authority or court. In the case of litigation, on the other hand, the parties have no such choice. A Judge who has never been involved in maritime matters may be required to hear a dispute in that area. In third world countries, the court may be congested and there are other difficulties caused by corruptionand the lack of independence of the judiciary.

Apart from choice of tribunal, parties to an arbitral agreement have to decide on the composition of the tribunal. It could be made up of arbitrators from various disciplines. In other words, it will be a mixed tribunal made up of lawyers, accountants, surveyors and the like. It is conceded however that in practice the parties may not choose the tribunal due to disagreement. All the same, it is the parties' reluctance to resort to litigation that drives them to other processes including arbitration. The right to choose a tribunal and its composition is an advantage in favour of arbitration.Some businessmen have trade secrets and confidential information that should not be known publicly. Arbitration readily comes to their aid. This is so because as a private sector judicial proceeding, the tribunal sits in private. The arbitrators, the parties and representatives are the only parties allowed to participate unless the parties and the tribunal agree otherwise.The public have no right to attend a hearing before an arbitral tribunal. In the case of litigation, proceedings are usually conducted in public except in few cases.

Arising from the choice of the arbitrators and composition of the tribunal is the advantage that evidence before an expert on a technical matter is usually shorter than evidence before a non-expert like a Judge. For instance, in commercial law, until lately, "merchantable quality" had no statutory definition. This was left to the courts to decide. However, if the good is a machine and a member of the tribunal is an expert in such machines, less time will be wasted in determining merchantability.In proceedings before the court, either the parties represent themselves or they seek the services of only legal practitioners of their choice. In arbitration, there are no restrictions upon a party's choice of representation.As private sector judicial proceedings, arbitral proceedings are informal and quite flexible. Thus, instead of queuing in court for resolution of their dispute, parties can choose a tribunal that will act promptly. As arbitration is consensual the parties can choose the most suitable procedures. The parties and the tribunal are not tied to the inflexible rules of courts. For instance, a hearing can be on basis of documents only or the guillotine system can be adopted. All these will lead to speed in decision making which is not an attribute of litigation.

Where the parties come from different jurisdictions, arbitration may be preferable to litigation because quite often neither party is willing to submit to the jurisdiction of the national court of the other. This is so because arbitration offers them neutrality in choice

of law, procedure and tribunal. They can appoint an arbitrator from a third country or request an international arbitral institution (an appointing authority) to make such appointment. In so doing, the parties may be more confident that there will be equality of treatment. Disputes involving states are also in this category. For reasons of national sovereignty and prestige, such states will be unwilling to submit to the jurisdiction of a foreign court.It is easier to enforce an arbitral award in a foreign country than judgment of a court where the foreign country is a party to the New York Convention of 1958. Enforcement of court judgment in foreign countries is dependent on the nature of the reciprocal conventions or treaties or disposition of the courts. However, Articles 35 and 36 of the Model Law apply irrespective of the country in which an award is made

One area where litigation has an advantage over arbitration is costs. The parties to an arbitral proceeding have to pay for the services of the arbitrators, the venue and other administrative charges which are provided by the state in litigation. Indeed, where arbitration is "over-lawyered" and "over-legalistic", it becomes more expensive. However, if the other advantages are properly utilized, arbitration should ordinarily be cheaper than litigation.It is settled law that litigation ends up in a "win/lose" situation and arbitration may end up the same way. When it is remembered that arbitration is consensual in nature like the other alternative dispute resolution processes this may not be the case. One reason for resorting to arbitration is that the parties are businessmen who have established personal and good friendly relationship over the years. They therefore do not want to jeopardize this relation. Arbitration, helps to preserve the relationship. Indeed, some provide for successive arbitration arising from a contract while the performance of the contract continues. Litigation is generally confrontational and sometimes uncompromising.

6. Conclusion

Justice imparted by legal courts has legal and rational elements but that dispensed by informal institutions includes a third element, that of emotions. *Baxi*[32]asserted in his opinion that while verdicts of formal courts are impersonal, those of informal institutions take into account personal wants and needs in the larger context of societal harmony. Since society is both social and moral, maintaining the moral society is both the responsibility of every member residing in it. The 'sine qua non' of maintaining order requires rectifying both social and moral misbehavior.

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[32]Baxi, U. 1982. The crisis of the legal system. New Delhi. Vikas Publishing House, pp.1-14

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In conclusion, commercial transaction and dispute settlement can be resolved through negotiations and out of court adjudication. It is not all commercial dispute that must pass through the court processes, even when the parties are willing to do it with less cost implication. The essence of Lagos state Multi door court is to bring litigants and commercial business men, corporate entities to arbitration panel were arbitrators are appointed as a recognised and legal form of resolving commercial transaction disputes. This may take the form of awards and compensation being given to the other party who an award has been awarded. This award serves as a final settlement which is recognised by our legal system and enforceable in our courts are alternative means of settlement than long litigation processes. This is in harmony of business, friendly commercial transactions and encourages investors to use arbitration as a means of settlement of their business or commercial disputes when the need arises.