journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW Vol. 12(5), October, 2025

THE ROLE OF ARBITRATION IN RESOLVING COMMERCIAL DISPUTES: A STUDY OF NIGERIAN COURTS ATTITUDES TOWARDS ARBITRARY AWARDS

Florence NEMI-CLOVER*
Abiodun AMUDA-KANNIKE **

Abstract
Commercial contracts are legally binding agreements defining the expectations, rights, and obligations of parties in business transactions, including remedies for breach. Disputes arising from such contracts may be resolved through litigation, arbitration, or alternative dispute resolution (ADR). Litigation occurs in court, involving lawsuits, evidence presentation, and judicial rulings. Arbitration, by contrast, is a consensual process in which parties submit disputes to an agreed arbitrator or tribunal, and any resulting award is binding once accepted. ADR methods, such as mediation and conciliation, facilitates amicable settlements without legally binding decisions. With globalization and cross-border commercial activities expanding, relationships among businesses, investors, and states have become more complex. This complexity extends to dispute resolution and enforcement of decisions. Although arbitration is widely used for international commercial disputes, its effectiveness often depends on judicial recognition and enforcement of arbitral awards. In other words, award creditors may rely on courts to secure the benefits of arbitration outcomes. This article examines arbitration's role in addressing increasingly intricate, transnational commercial transactions and evaluates how Nigerian courts enforce arbitral awards. It also considers the judiciary's attitude toward arbitration, assessing whether Nigeria provides a supportive environment for enforcing decisions that arise from these alternative dispute processes.

Keywords: Commercial contracts, Arbitration, Litigation, Alternative dispute resolution (ADR), Enforcement of arbitral awards, Nigerian courts

1. Introduction

Arbitration is a form of dispute resolution in which the parties agree to submit their differences to a third party or a tribunal, it is a quick dispensation of justice having been recognised universally as fast settlement of disputes arising from commercial transactions between persons, (legal and physical) domiciled or situated in different countries[1]it is also worth noting that commercial disputes could be settled in many ways including by adjudication but where the parties to any dispute have contracted to settle such disputes by arbitration either by way of Arbitration clause in a contract or by way of an "Arbitration clause in a contract" or by way of an "Arbitration Agreement" relating to commercial contracts, they a bound by the arbitration provisions in the contract.[2]It is differs from litigation in that it is consensual in origin (though once parties have agreed on arbitration, whether in the substantive contract or after the dispute has arisen they are bound by their agreement), the arbitrator is appointed by the parties themselves or by a third party or institution designated by them not by the state. Also, referral of arbitration may be contained in a statute regulating the transaction between the parties. In a case, being a prescription of the statute,

***Florence NEMI-CLOVER, LLM (Exeter U.K), FCIArb, MICMC,** Partner, Nemi & Nemi Barristers and Solicitors, 1 Sir L.O. Nemi Street, Abuloma, Port-Harcourt, Rivers State, Nigeria. Email: florenceclover@yahoo.co.uk Tel: (+234) 08055138592
****Abiodun AMUDA-KANNIKE, Professor, SAN, FCArb, AG, DIRECTOR**, Department Of Legislative Support Services (DLSS), National Institute For Legislative & Democratic Studies, NILDS Abuja, AND Pioneer Dean, Faculty of Law, Kwara State University, Malete, Via Ilorin, Kwara State. He is a fellow of the Nigerian Institute of Chartered Arbitrators (NICARB). He is also an associate Member of the Nigerian Institute of Taxation and at same time Fellow of the Chartered Institute of Economics; Fellow Chartered Institute of Arts, Management Professionals. Email: amudakannikeabiodun@gmail.com; abiodun.kannike@kwasu.edu.ng Tel:08033256756
[1]Minabere Tam -George international commercial Arbitration
[2]ibid

settlement of dispute though arbitration would be mandatory step before resort could be had to other dispute settlement options.[3] The referral may also be deduced from the exchange of letter, text, telegrams, or some other means of communication between the parties which provide a record of agreement to arbitrate.[4] Arbitration presupposes the existence of a dispute, and the arbitrator's role is to determine the right of the parties in a judicial manner in the light of evidence and representations they submit to him, not by use of his own knowledge.

In any discussion of arbitration it is important to distinguish the agreement from which the substantive dispute arises (which is for brevity will be called "the primary agreement") from the agreement to arbitrate, which is now recognised as a separate agreement even if not physically distinct but merely an arbitration clause in the primary.[5]

2. The Role of Arbitration in Resolving Commercial Disputes

2.1 Types or Classification of Arbitration

There are two main classifications of arbitration, ad hoc versus institutional arbitration and domestic versus international arbitration.[6]

2.1.1 Ad hoc and Institutional Arbitration

In an ad hoc arbitration the parties themselves prescribed the mode of appointment of the arbitrator, who upon being appointed controls the proceedings himself, within the limits laid down by the parties and the laws.[7] The proceedings not under any arbitral institution except rules chosen with the consent of the parties to the commercial disputes.

Institutional arbitration is administered by Arbitration institutions is the one the arbitrator is appointed, the proceedings conducted, and award issued in accordance with the rules of a national or international arbitral organisation and the arbitration is administered, wholly or in part, by that organisation, among institution like the London court of international Arbitration, Paris international Chambers of commerce (ICC), Court of Cairo Regional centre for international Commercial Arbitration, Lagos Centre for Arbitration and Conciliation, Indian Arbitration Centre, International Centre for the Settlement of Investment Disputes (ICSID) World Intellectual Property Organisation Centre(WIPO Centre) – Geneva.[8]Institution arbitration has the advantage of possessing a clear framework of procedure outside that prescribed by law and, in many cases, of institutional facilities for the conduct of the arbitration as well as an internal appeal system. These advantages necessarily involve some loss of flexibility but contribute greatly to consistency in the conduct of arbitrations within the system of business activity concerned.

An institutional arbitration operates at two levels, contractual and jurisdictional. The parties adoption of institutional rules in their contract binds them inter se to observe the rules but does not in itself bring them into a relationship with the arbitral institution. That occurs only when the institution receives the request for arbitration, thereby generating a separate contract between the institution and the parties by virtue of which the latter submit themselves to the institution's administrative regime and powers. It is possible for the parties to select the rules without the administrative machinery, as where they decide not to refer the arbitration to the institution or where the latter declines to accept.[9]

---

[3]Y Akinseye-George, and Vincent a dodo journal of arbitration vol10. no1. Nov 2015 pg77
[4] Ibid
[5] Roy Goode commercial law pg1177
[6] ibid
[7] ibid
[8]Institutional Arbitration Definition, <https://www.lexisnexis.co.uk/legal/glossary/institutional-arbitration>-accessed 01 September 2025 at 9:54pm
[9] R Goode, *Commercial Law* New Edition. Pg 1180

2.1.2 Domestic and International Arbitration

Arbitration may be domestic or international. Domestic arbitration applies when the parties to the agreement are of the same nationality or resident in the same jurisdiction and have their place of business in the same country, or in the same place of residence, at the time of the agreement and the underlying contract does not extend beyond their contract.[10] It is international if, at the time of the conclusion of the agreementthe parties to the agreement have their places of business in the different state, or if the following is situated outside the state in which the parties have their place of business.[11]

Beyond this there are no universally adopted criteria for defining internationality. The principal tests are the character of the dispute and the relationship of the places of business of the parties with each or with that of the contractual place of arbitration or of the subject matter of the dispute.

2.1.3 Commercial Arbitration

The great many commercial disputes are resolved not by litigation but by arbitration. It role in resolving global dispute is to provide a neural binding, and enforceable mechanism outside of national court, ensuring speed, confidentiality, and specialised expertise. The parties can select an arbitrator or arbitrators in whom they have confidence or have the appointment made for them by a person or bodies whose judgement they respect and who can expect to be familiar with the kind of business in which the dispute arises. The proceedings are less formal and more flexible that litigation, the parties have greater control over them, the venue can be fixed by the agreement with the arbitrator and a matter of considerable importance the hearing is private[12].

2.2Key Role and Function/Benefit

2.2.1 Neutrality

Commercial arbitration provides autonomy to choose neutral forum for the resolution of disputes avoiding the potential home field advantage of one party. Parties in international transactions may not feel comfortable having their disputes resolved by their opponent's National court or even in their opponent's jurisdiction[13]. Arbitration provides the way out of the issue.

2.2.2 Party Autonomy

Parties to commercial arbitration have the right to choose the seat of arbitration. For example, Section 3 of the English Arbitration Act, 1996 provides thus:

> *In this part "In this part "the seat of the arbitration" means the Judicial seat of the arbitration designated:[14]*
> *a. By the parties to the arbitration agreement, or*
> *b. By any arbitral or other institution or person vested by the parties with powers in that regard, or*
> *c. By the arbitral tribunal if so, authorised by the parties.[15]*

In this regard the parties have the autonomy to choose seats favourable to the and given the importance of the venue of arbitration, a seat suitable to the arbitration should be chosen depending on what the parties want. It is, therefore, advisable that an arbitration clause state the seat of the

[10]J N M Mbadugha, 'Principles and Practice of Commercial Arbitration, (Lagos: University of Lagos Press, 2015) <https://mccarthymbadugha.com/joseph-n-mccarthy-mbadugha-san/> accessed 01 September 2025 at 10pm.
[11]ibid
[12]ibid
[13]ibid
[14]C.O Ugwor, 'International Arbitration Practice Choice of the Seat in International Arbitration, Pg 8
[15]Section 3 of the English Arbitration Act 1996

arbitration rather than leaving this for the arbitral tribunal as it will be less controversial and would save time and costs. A simple phrase such as "Arbitration seat in Nigeria" will suffice[16].

By the party autonomy rule the parties have the autonomy to choose one or two arbitrations: The parties can choose the arbitrators either by themselves or through an institution designated by them to administer the arbitration or whose rules they have chosen.[17]The parties may set out the requisite skills, experience and qualification of the arbitrators to be appointed or they may themselves appoint arbitrators with their desired skills, experience and qualifications. Thus, in the *Tirana LTD v U.T.B*,[18] the court of appeal held that in arbitration proceedings the general rule is that the parties to the agreement choose their arbitrator or arbitrators, as the case may be, to decision of the law and of facts in the dispute between them.[19]

By the autonomy the parties also have the right to choose procedural law: This is the law of the arbitration or the law that governs the arbitration proceedings. The law governing arbitration is relevant for the ascertaining matters affecting the Jurisdiction of the arbitration i.e. the power of the tribunal to rule on its own Jurisdiction, the conduct of the references, the form and the finality of the ward.

Parties are to agree on the law of the arbitration, and it could be found in the arbitration clause. If it is agreed on at time of drafting, or in a provisional order if it is agreed on at the preliminary meeting. Where the parties choose the law of arbitration it would be so applied by the tribunal. In W.A. Engineering Co. Ltd v Brifina Nig. Ltd,[20] the arbitral tribunal applied Nigeria arbitration law because a clause in the agreement state that: *any dispute or difference arising out of this Agreement shall be …. In accordance the Arbitration and Conciliation Act, Law of the federal Republic of Nigeria, 1990.*[21]

An arbitral tribunal would determine the law of the arbitration if the parties fail to choose the law. The tribunal could imply the law governing the arbitration from the arbitration clause. In the case of American Diagnostic Inc. V Gradiopre Ltd.,[22]the us court held that where the parties have failed to choose the law governing the conduct of the arbitration, it would prima facie be the law of the county where the arbitration is held since it is the law most closely connected with the proceedings. Considering this, it is beyond dispute that leaving the choice off the law of the arbitration to be determined by the tribunal or court may conflict with what the parties aim to achieve. Consequently, a simple phase such as …. In accordance with laws of Nigeria and the arbitration shall be administered by the chartered institute of Arbitrators. Uk(Nigeria Branch) is sufficient to make the arbitration law of Nigeria applicable, and arbitration administered by the named institution.[23]

3. Confidentiality in the Arbitration Proceedings

Arbitration proceedings and award are typically private, protecting sensitive commercial information from public disclosure, because the parties generally choose the place of arbitration and the proceedings are not held in public, it is a private mechanism of disputes resolution, which is derives from parties agreement to submit their dispute to arbitration presupposes private of the proceedings, information and discoveries therein unlike the court. Implicit in this is that strangers shall be excluded from its conduct and hearing. This also presupposes confidentiality on the parties and the tribunal of the tribunal proceedings, discovery, pleading, submission, informs disclosed

[16]Mbadugha, (n 10).
[17]ibid
[18] ibid
[19] ibid
[20]*W.A. Engineering Co. Ltd v Brifina Nig. Ltd.* Suit No: LD/75/2003 & O/ICJ/2004
[21] Ibid
[22] *American Diagnostic Incv. Gradiopre Ltd* (1998); N.S.W. Lexis 1051
[23] ibid

therein and the tribunal's award.[24] In Nigeria and Bermuda the case of *ABC Insurance Company v XYZ Insurance Company*,[25]the Bermuda Supreme Court, the judgement of 2 February, 2006, held that on the grounds of confidentiality, award or materials used arbitration A)cannot be tendered in evidence or used for estoppel in arbitration B) when the parties to two different arbitration are not the same although the facts of the two dispute are the same.[26]

However, the expansion of arbitration proceedings is private and confidential. While privacy and confidentiality feature strongly international commercials in adjacent fields of investment and sports arbitration have opened the doors of arbitration proceedings to the public to increase transparency, and to safeguard public interest and the right to fair trial of athletics, respectively.

Public courts and the publicity of trials and judgments are at opposite ends of spectrum of international commercial arbitration and the privacy and confidentiality of its proceedings and awards. Just as privacy and confidentiality are an inherent feature of arbitration, publicity is a hallmark of litigation. It is "very soul of justice."[27]The right to a public trial and the public pronouncement of judgements is protected in national constitutions and is enshrined in the right to a fair trial in international treaties[28]. Apart from contributing to a fair hearing for the involved parties, the publicity of the court trials has a broader public function. The access of the public to court enables public scrutiny of the judiciary and the stimulate debate about legal rules. Nevertheless, mounting pressure to improve the efficiency of court proceedings or court settlements and therefore gives substance to the claim that just as privacy and confidentiality in arbitration is gradually fading, publicity in court is declining.[29]

Confidentiality is seen as one of the main advantages of arbitration as a dispute resolution system, yet different jurisdictions recognise confidentiality to vary extent. This arises from the notion that private arbitration derives simply from the fact that the parties have agreed to submit any dispute between them to arbitration. It is implicit from this that strangers shall be excluded from the hearing and neither the tribunal nor any of the parties can insists that the dispute shall be excluded from the hearing and neither the tribunal nor any of the parties can insist that the dispute shall be heard or determined concurrently with, or even in consonance with another dispute. The requirement that arbitration is held in private extends to the document and any award rendered in the process of the hearing.

In international disputes, Arbitration involving a state and foreign investor raise different questions. The public interest in such arbitration means that confidentiality cannot apply in the same way as it does to arbitration means that confidentiality cannot apply in the same way as it does to arbitration between two companies it istrite that democratically elected government must be accountable and open. Keeping proceedings and ward secret does not enhance that openness. However, on appeal the confidentiality is lost but a very insignificant number of cases go on appeal, and even this is risk can be eliminated by inserting into the agreement a clause excluding the right of appeal.

4. Arbitration Processes

Below we chronicle though the processes which makes up the processing of arbitration from the agreement, arbitral award to enforcement.

---

[24]ibid
[25] *ABC Insurance Company v XYZ Insurance Company* (2006) BDA LR 8
[26]ibid
[27] George Antonopoulos, The 'Arbitralization' of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts. *Journal of International Dispute Settlement*, Volume 14, Issue 3, September 2023, Pages 328–349,< https://doi.org/10.1093/jnlids/idad007> accessed 01 September 2025 at 10:10pm
[28] ibid
[29] ibid

4.1 The Arbitration Agreement

Parties typically agree to arbitrate through arbitration clause in their commercials contract Arbitration is a contract-based form of binding dispute resolution. In other words, arbitration agreement is really the basis of arbitration. A comprehensive definition is provided by article 7(1) and (2) of the model law[30]which provides that an arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. It further states that the arbitration agreement may be in the form of an arbitration clause in the contract or in the form of a separate agreement and that the arbitration agreement shall be in writing. As arbitration is a contract – based dispute mechanism the drafter of the agreement must ensure that the arbitration agreement is:

a. Unambiguous and clear as to the dispute resolution method being chosen;
b. Clearly specifies the seat of arbitration;
c. Clearly states the governing substantive law;
d. Specifies the law governing the arbitration agreement;
e. Specifies the number of arbitration to be appointed, the mechanism for the appointment and their qualifications if needs be;
f. State the language of the arbitration;
g. State whether institution rules apply;
h. State any obligation of confidentiality; and
i. Be factored to the needs of the client.[31]

It noted that the existence of an arbitration agreement does not oust the court's jurisdiction. If parties seek by agreement to take the law out of the hands of the courts and into the hands of private tribunals, except as permitted by the law, the agreement to the extent that it deprives recourse to the courts is contrary to the public policy,[32] and at common law, the existence of an arbitration agreement per se does not oust the jurisdiction of the court.[33]

Even within the limits permitted by the law, the existence of an arbitration agreement per se does not ipso June oust the jurisdiction of the court, given that a party to an arbitration agreement may choose to litigate the contemplated dispute in the breach of the agreement.

4.2 Conduct of the Arbitration

4.2.1The Arbitration Proceedings/ Appointments

The arbitration is usually initiated by one party writing to the other requested him to concur in the appointment of an arbitrator or arbitrators. Depending on the terms of the arbitration agreement of the parties, by each party appointing an arbitrator Depending on the terms of the arbitration agreement of the parties, by each party appointing an arbitrator (and in the case of a panel of three the two arbitrators appointing a neutral third person as chairman),[34] by arbitral institution in accordance with the rules or by a third party designated in the arbitration agreement.[35] The parties can choose a specific arbitrator or agree on the method for their selection. Arbitrators are typically experts in the relevant field of the dispute. The appointment of the arbitrator creates a contract between him and the parties, and except as subsequently agreed by the parties the arbitrator must work within the confines of that contract. This applies not only to the extent of his remit but also to the procedure to be adopted.

[30]Ibid
[31]Ibid
[32]Ibid
[33] Ibid
[34] Roy Goode commercial law page 11912
[35] Ibid

4.2.2 Presentation of the Case

Once the arbitrator has been appointed it is the usual practice to hold preliminary meetings with the parties to discuss the procedural steps and a timetable and to agree on the direction as to pleadings, etc. A practice unique to icc arbitrations is the settlement of terms of reference by the arbitrations in conjunction with the parties. The issues are then defined in pleading- points of claim, points of defence, reply -in much the same way as in litigation, and discovery and inspection of documents usually follow the exchange of pleading. Except where the arbitration is on the basis of documents alone, a hearing is then fixed at which the parties and their witnesses give evidence and submissions are made by the lawyers. The final stage is the drawing up and the issues of the award. Each party presents their case to the arbitrator, submitting evidence and making arguments to support their position. This process is more flexible than the court proceedings and can be tailored to the specific needs of the case.

4.2.3 Resolution and Award

The arbitrator or arbitrators reviews the evidence and arguments presented, then issues a decision know as Award, the award set out the decision the tribunal has reached in all issues submitted, it must be in writing, signed and provided reasons unless the parties agree otherwise. The understanding with parties is that their dispute will be resolved and, subject to any right of appeal, a binding and final award rendered therein, except if the dispute is settled amicably with a resultant consent award if the parties so wish.[36] This understanding finds support in National Laws and institutional Rules of Arbitration. In Nigeria, for example, article 32(2) of the First Schedule, Arbitration Rules of the Arbitration and Conciliation Act, CAP A18 Laws of the Federation of Nigeria 2004 provides thus "*The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry the award without delay"*:[37]

4.2.4 Enforcement of Arbitration Awards

An arbitration award can be enforced in the same as a court judgement. Ultimately, if the losing party will not comply with the terms of an award made against him, the 'winner' will need to enforce the award. In the absence of an available right of set- off, or other direct means of enforcement, a successful party will usually seek to enforce the award against the losing party's assets through the national court of the jurisdiction in which the assets are situated. There is a distinction between where a party will produce the award to the court and ask the court to recognise it as valid and binding upon the parties in respect of the issues with which it dealt, and enforcement, where the court is requested to enforce compliance with the terms of the award.

Nigerian court can, and do, recognise as well as enforce both domestic and foreign awards by virtue of the UNCITRAL Model Law on international Commercial Arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, which Nigeria is signatory to and has incorporated through her Arbitration and Conciliation Act, CAP A.18 2004.[38]

5. The Attitude of Nigerian Court towards Arbitration Awards

As stated above arbitral award is very much likened to a court judgement in the sense that both are meant to be conclusive and binding on the parties. The Nigerian court attitudes toward arbitral award have often been upholding the principles of finality and party autonomy, and often unwilling to set aside a well-reasoned arbitral award except there exceptional reasons for doing so such a violation of public policy, fraud, lack of jurisdiction or lack of due process as provided for in Section

[36]Ibid
[37] Article 32(2) of the First Schedule, Arbitration Rules of the Arbitration and Conciliation Act, CAP A18 Laws of the Federation of Nigeria 2004.
[38] Arbitration and Conciliation Act, CAP A.18 2004

55of the arbitration and conciliation Act (ACA).[39] The thinking of the Nigerian court is reflection of the Arbitration and Conciliation Act the recognition of the authority of the arbitral process and seek to restrict intervention by the courts to measures necessary to support and give effect to such process. The relationship which exists between the Nigerian courts and arbitral tribunal is one of constant shifts and changes and has been described as one of partnership.[40]

5.1 Finality

The Nigerian court adoption of the principle that arbitral awards are considered final and binding on the parties. Section 31 of the ACA[41] made this clear under the old law and section 57(1) of the AMA reaffirms this status as binding and finality to arbitral awards on the parties. It provides that: "An arbitral award shall, irrespective of the country or state in which it is made, be recognised as binding and on an application in writing to the court, be enforced by the court.[42]

Thus, in Nigerian National Petroleum corporation v Total E &P Nigeria Limited and 3 ords the court declined jurisdiction to entertain NNPC's challenge application on the grounds that the ACA has vested the Arbitration tribunal with the jurisdiction to determine arbitrator challenge in circumstances where, as in this case, the arbitration agreement did not contain a procedure for challenging the appointment of an arbitrator and has not given the court the jurisdiction to review or second guess the tribunal decision on that issue. The Federal High court held that:

> *the position that the decision of the arbitral tribunal on a challenge to its authority on is final is a deliberate policy choice and indeed done to demonstrate the wider policy of zero or minimal judicial intervention in arbitration, and to deny parties the utilisation of the court to scuttle the arbitration contract which they have freely entered*

In the case of *Aye Fenus Ent. Ltd v Saipem (Nig.)*[43]it was held inter alia:

> *The general rule regarding arbitration is that the parties to a transaction choose their arbitrator for better or worse to be the judge both as to decision of law and decision of fact in the disputes between them. Thus, none of these can when the award is prima facie good on the face of it object to the decision upon the law or facts simply because the award is not in his favour. In the instant case, the award of the arbitration was prima facie good on the face of it. The respondent having failed to establish any of the grounds for setting aside the award, the trial court was therefore in error in setting aside the award"*

5.2 Supervisory

The role of the court is primarily supervisory rather than appellate and it does not re- evaluate the factual or legal findings of the tribunal the court further pointed out in the case of Aye-Fenus Ent. Saipem (Nig) Ltd[44] it held that,

> *in arbitration proceedings when an issue is raised for the decision and has been decided, that makes it final. The parties cannot be allowed thereafter to reopen it. The reason is that just as the parties would not be allowed to do so in the case of a judgement not appealed from, the point so decided is res Judicata. The only jurisdiction conferred on the court is to give leave to enforce the ward as judgment unless there is a real ground for doubting the validity of the award"*

[39]Ibid
[40] Prince Adesegun Ajibola enforcement of arbitral Awards: Attitudes of Nigerian Court Journal of Arbitration Vol. 10, November 2015. Pp.102
[41] Arbitration and Conciliation Act CAP.A18 Laws of federation of Nigeria 2004
[42]Ibid
[43] *Aye Fenus Ent. Ltd v Saipem (Nig.) Ltd* (2009) 2 NWLR (part 1126) at pg 483
[44] Ibid

5.3. The Grounds for the Court's Intervention in Nigeria

The court will set aside an award only on specific grounds, insection 29(2) "the court may set aside an arbitral award if the party making the application furnishes proof that the ward contains decisions on the matters which are beyond the scope of the submission to arbitration".

Where the award touches on matters not submitted to arbitration, it will be set aside, provided that in the event that the decision on matters submitted can be separated from those not submitted in the award only the latter may be set aside.

The provisions of section 29 of the act were firmly stated by the court of appeal case of R.M.A&FC v U.E.S. LTD[45] where it was held that:

> *by virtue of section 29(2) of the arbitration and Conciliation Act, the court may set aside an arbitral award, if the party making the application furnish proof that the award contain decision on the matters which are beyond the scope of the submission to arbitration so however that if the decision on matters submitted… the point emphasised under the section is that an arbitral award has to contain decision on the matter covered by the submission to arbitration. And that once arbitration makes an award based on a matter which parties have not asked him to arbitrate upon, he has exceeded the scope of his power, and the decision may be set aside.*[46]

5.3.1 Misconduct and Irregularities

Serious irregularities or misconduct by the arbitrator that can lead to injustice to a party can also lead to an award being set aside. The Act does not define "misconduct" neither does it list conduct that will amount to misconduct. It is safe to say here that misconduct is used in a very wide sense and covers conduct which may not amount to misconduct in the ordinary use of the word.[47] The Supreme Court in the case of *Taylor Woodrow Nig Ltd v S.E. GMBH,*[48] and in the case of *R.M.A & FC v U.E.S Ltd,*[49]made the same pronouncement on act which shall amount to misconduct in arbitration. It held that:

> *What amount to misconduct in arbitral proceedings is not specifically defined under. The arbitration and conciliation Act,1988. However, some of the acts which the Courts have held as amount to misconduct under the common law are set out in Section 48(a) of the act as circumstances when an arbitral award be set aside to wit…. The circumstances set out under section 48(a), arbitration and conciliation Act, 1988 are not conclusive as recourse may be held to common law and case law to determine acts not covered under the section to determine what constitutes Misconduct.*

The court further state that:

> *Where there is an error of law on the face of an arbitral award, it may amount to Misconduct, that is, where there is error of law which appears on the face of award on a point not specifically referred to arbitration for decision that is misconduct.*[50]

6. Conclusion and Recommendations

6.1 Conclusion

In the age of global trade and transaction, many commercial disputes are resolved not by litigation but by arbitration. Lawyers prefer litigation and businesses arbitration. One of the advantages of arbitration is the confidentiality it offers the parties over litigation, its flexibility and the parties' ability to appoint specialists' arbitration and those looking to the tailor the dispute resolution process. Arbitration provides

[45]*R.M.A & FC v U.E.S. LTD* (2011) 9 NWLR (Pt. 1252) 379
[46]Section 29(2) of Nigeria's Arbitration and Conciliation Act (ACA)
[47]P A Ajibola, 'Enforcement of Arbitration Awards in Nigeria vis-à-vis the Limitation Period under the Limitation Laws' <https://spaajibade.com/enforcement-of-arbitration-awards-in-nigeria-vis-a-vis-the-limitation-period-under-the-limitation-laws/>01 September 2025 at 10:20pm
[48] (1993) 4NWLR (part 285) at p.127
[49]ibid
[50]Section 48(a) of the Nigerian Arbitration and Conciliation Act (ACA)

its own challenges to the parties, if arbitration is mandatory by the contract, then the parties have no flexibility to choose, one party can force the other party to go to arbitration. Also, the finality of arbitration while this may be a positive is worth noting that if the arbitration is binding both sides give up their right to appeal if one party feels the decision is erroneous, there is limited opportunity to correct it.

Nigerian court reception of arbitration is broadly supportive and positive. The court is respective of parties' agreement to arbitrate and the courts willingness to enforcement arbitral award rather than undermine the parties' desires. The court recognises the finality of arbitral award and the court reluctant to wade into the process and only interning in exceptional circumstances. The strong emphasis on upholding arbitral award ensures that parties can have confidence in the enforceability of their agreement.

Nigerian courts are moving away from the era of setting aside awards on the grounds of technicality and ensuring that award is not set aside at the instantaneous of parties who only protest because the award is not favourable to them.

The decision of the court as regards the above cases reaffirmed policy of the court to minimal judicial interference in arbitration matter as state in Section 34 ACA[51] which provides that a court shall not intervene in any matter governed by ACA[52] except where so provided in the Act.

6.2 Recommendations

A. Strengthen Legislative Framework: Nigeria should periodically review and update its Arbitration and Mediation Act (AMA) to reflect evolving global standards and emerging dispute resolution practices. Clearer statutory guidance on issues such as confidentiality, costs, and virtual proceedings will minimize uncertainty and limit grounds for judicial intervention.

B. Capacity Building for Judges and Arbitrators: Continuous training for judges on arbitration principles is critical to sustaining a pro-arbitration judiciary. Similarly, arbitrators should undergo regular capacity development to ensure awards meet international best practices and avoid being set aside on procedural grounds.

C.Institutional Support and Awareness: Arbitration institutions in Nigeria (e.g., Lagos Court of Arbitration, NICARB) should invest in robust administrative structures, technology adoption (e.g., online case management), and public education campaigns to encourage businesses to adopt arbitration clauses in commercial contracts.

D. Encourage Express Drafting of Arbitration Clauses: Parties should be advised to draft clear, unambiguous arbitration agreements specifying the seat, governing law, rules, confidentiality obligations, and appointment procedure. This will prevent disputes over jurisdiction and reduce the risk of awards being invalidated.

E. Promote Enforcement Efficiency: Nigerian courts should develop specialized arbitration divisions or designate judges with arbitration expertise to fast-track recognition and enforcement of awards. This would improve investor confidence and align Nigeria with jurisdictions known for arbitration-friendliness.

F. Limit Court Intervention to Exceptional Circumstances: The judiciary should continue to maintain its supervisory not appellate role in arbitration matters, intervening only where issues of fraud, excess of jurisdiction, or violation of public policy arise, as provided by the ACA/AMA.

[51]Section 34 of the Arbitration and Conciliation Act (ACA)
[52] ibid