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The Status and Legality of Recognition and Enforcement of Foreign Arbitral Awards in Nigeria[1]

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Abstract
Arbitral awards are the decisions of an arbitral tribunal. After these awards are made, the unsuccessful party is required to voluntarily and wilfully carry out the requirements of the award. Where he fails or refuses to do so, the successful party now moves to have it recognised and consequently enforced against the unsuccessful party. This process of making binding awards which ought to be recognised and enforced also applies to international commercial arbitration. As such, this work aimed at and analysed the recognition and enforcement of arbitral awards. The work also dealt with and identified the various laws guiding the recognition and enforcement of foreign arbitral awards, among others. The researcher discovered in the course of the work that several international conventions are applicable to Nigeria by virtue of its ratification. However, some of the provisions as domesticated in Nigeria have been misunderstood and consequently misinterpreted due to some perceived mistake in the replication of the original provision. Therefore, the researcher made some recommendations which include the proactive approach by judiciary in the interpretation of these provisions by enquiring into the intendment of the draftsman and eventual amendment of the relevant statutes domesticating these conventions.

Keywords: *Foreign, Arbitral, Awards, Recognition, Enforcement, Legislations*

Introduction
There has been an increase in the development of international transactions. These have also led to disputes at some point between international entities as disputes are an integral part of human interactions. When these disputes arise and parties choose to resolve same via arbitration, they will eventually arrive at the juncture of enforcement of the awards. This can be an issue because ordinarily, the judgment of a court in a particular state is not binding on another state. Thus, the need for this research arises. This chapter shall attempt to explain the laws and institutions involved in the recognition and enforcement of foreign arbitral awards in Nigeria. Compared with the enforcement of domestic arbitral awards, the enforcement of international arbitral awards is much more complex and is commonly regulated by international treaties.[2] In explaining the legal framework for the recognition and enforcement of foreign arbitral awards in Nigeria, four legislations shall be considered viz:

- The International Centre for the Settlement of Investment disputes (ICSID) Convention

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[2]H Li, Enforcement of the International Commercial Arbitration Award 57 (2000)

- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (THE NEW YORK CONVENTION)
- The Arbitration and Conciliation Act, 2004
- The Foreign Judgments (Reciprocal Enforcement) Act Cap F35 LFN, 2004
- Action at Common Law to enforce an International Award.

1.1 Enforcement under the International Centre for the Settlement of Investment disputes (ICSID)

The International Centre for the Settlement of Investment Disputes (ICSID) provides a neutral forum for the resolution of disputes between nations and foreign investors.[3] The ICSID is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID or the Washington Convention) with over 140 member States.[4] The ICSID Convention was ratified by Nigeria on the 23rd of August 1965 and the provisions were domesticated 2 years later, in 1967, through the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act.[5] This Convention derived the name Washington Convention from the fact that it was first convened at Washington, which went on to become the seat of the centre. The Washington Convention was promulgated to attend solely to disputes arising out of investment issues between States and nationals of other States. However, it is possible for a state to participate in ICSID arbitration through the instrumentality of an agency of the State, which is closely identified with the State that it qualifies as a State for the purpose of the Convention. Such agency must be designated to the centre in writing, by the state. Nigeria, for instance, can designate the Nigeria National Petroleum Commission (NNPC) to the centre for ICSID arbitration.

An arbitration exercise can be conducted under the Convention where the following constituents exist:

- The parties to the dispute mutually agree to refer the dispute for resolution under the platform of the International Centre for Settlement of Investment dispute;
- The dispute or controversy between the parties must centre on investment; and
- Only a contracting state and nationals of other contracting states qualify as proper parties under the ICSID.

There is also a special provision known as the ICSID Additional Facility. This is a facility established for parties who do not fall within the ambit of the purpose of ICSID. For instance, Cameroon is not a State party to ICSID but can be a party to an ICSID dispute under additional facility.

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[3]McArthur and Ormachea, *International-State Arbitration: An Empirical Analysis of ICSID Decisions on Jurisdiction, 28 Rev. Litig. 5559 (2009); Comment: ICSID's Resurgence in International Investment Arbitration: Can the Momentum Hold?, 23 Penn. St. Int'l L. Rev. 147 (2004); Amerasinghe, The International Centre for Settlement of Investment Disputes and Development Through the Multinational Corporation, 9 Vand. J. Transnat'l L*. 793 (1976). http://icsid.worldbank.org/ICSID/Index.jsp. Cited in ML Moses, *The Principles and Practice of International Commercial Arbitration*, 2nd Edn (Cambridge University Press, USA, 2012).

[4] ML Moses (n.2)

[5] 1967 No 49. This is currently contained in Cap. I 20, Laws of the Federation of Nigeria, 2004.

An ICSID award must, unless the period is extended, be made within 60 days after the closure of the proceedings. It may incorporate any concurring or dissenting opinion of any arbitrator. The award, which is binding on the Parties, is not subject to any appeal or any other remedy except those provided for in the Convention. ICSID awards are not subject to any national laws, and as such, every contracting state to the Convention is enjoined to recognise and enforce awards made pursuant to arbitral processes held under the auspices of the ICSID. Each contracting State undertakes to recognise the award as binding and to enforce the pecuniary obligations imposed by the award within its territory as if it were a final judgment of the State's Court of final resort. It is thus provided under Article 54 of the Convention that:

Each contracting state shall recognise an award rendered pursuant to this Convention as binding and enforce the pecuniary obligation imposed by that award within its territories as if it were a final judgment of a court in that state. A contracting State with a Federal Constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

It follows therefore that an ICSID award cannot be challenged in the courts of the place of arbitration or indeed before any other court. However, it can also be argued that ICSID awards lack finality because of the possibility of annulment by an ad-hoc committee. Thankfully, this has not affected the popularity of the ICSID arbitration.

An ICSID Arbitral Award is a distinct award and usually in a class of its own. One of the reasons is the fact that it is enforced at the apex court of the contracting States. A party seeking to enforce an ICSID award in Nigeria shall file a copy of the award, certified by the Secretary General at the centre, at the Supreme Court of Nigeria, who shall register and deem it as an award contained in its final judgment. The effect of registration of the award is to make the award, from the date of registration, acquire the status of a final judgment. s1(1) of the Act provides:

> *Where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for Settlement of Investment Disputes, a copy of the award duly certified by the Secretary-General of the Centre aforesaid, if filed in the Supreme Court by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were contained in a final judgment of the Supreme Court, and the award shall be enforced accordingly.*[6]

Worthy of mention is the fact that the Chief Justice of Nigeria is empowered to make rules of court or adapt any rules of court that is necessary, to give effect to the Act.[7]

1.2 Enforcement under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention)

Historically, many International Organizations have attempted to ensure the enforceability of arbitral awards by creating International Treaties. Among them, the New York Convention is currently the most important International Treaty concerning the recognition and enforcement of international arbitration awards.[8] To some degree, the enforcement of international arbitration

[6] ICSID Act Cap 120 LFN 2004, S1 (1)
[7] ICSID (Enforcement of Awards) Act, S1 (2)
[8] MJ Mustil, *Arbitration: History and background*, Journal of International Law 41 (1987)

awards means the actual enforcement of the New York Convention.[9] This does not in any way discountenance the other relevant legislations.

Article 1(1) of the New York Convention states:

> *This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic award in the State where their recognition and enforcement are sought.*[10]

The New York Convention came into force to rectify the deficiencies in the Geneva treaties[11] and to further facilitate the enforcement of international arbitral awards. In a United Nations Conference held in New York in 1958, the object of this conference was to promote the recognition and enforcement of foreign awards in each of the contracting states to the Convention. This was necessary in order to curtail the restrictions standing in the way of a successful party who pursues the enforcement of a foreign award in another contracting state to the Convention.[12] According to article III of the Convention:

> *Each contracting State shall recognise awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition and enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.*[13]

This is not to say that contracting states are forever stuck. A contracting State is free to denounce the Convention by a written notification to the Secretary-General of the United Nations and the effective date of the denunciation takes effect one year after the date it was received by the Secretary-General.[14]

Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award, 1958. Hence, the Convention applies in Nigeria. The New York Convention has been incorporated into the second Schedule of the ACA. Enforcement under this Convention is subject to 2 reservations viz, the reciprocal reservation and the commercial reservation.

S54 (1) of the ACA as reproduced hereunder, provides:

54. (1) Without prejudice to s51 and s52 of this Act, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards (hereafter referred to as "the Convention") set

[9] Li (n.1),
[10] New York Convention of 1958, Article III
[11] The Geneva Convention consisted of the 1923 Geneva Protocol on Arbitration Clauses (Geneva Protocol) and the Geneva Convention on the Execution of Foreign Arbitral Awards (Geneva Convention) Although the Geneva Convention was replaced by the New York Convention, it marked the beginning attempt to unify and liberalize international commercial arbitration, and created the "Fundamental Underpinnings" of the New York Convention.
[12] CA Obiozor, "*Nigerian Abitration Jurisprudence*", Allied Press & Co (Onitsha) 2010
[13] Ibid, New York Convention
[14] Ibid, article XII.1

out in the Second Schedule to this Act shall apply to any award made in Nigeria or in any contracting state:

(a) provided that such contracting state has reciprocal legislation recognising the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the Convention;

(b) that the Convention shall apply only to differences arising out of legal relationship which is contractual.

(2) in this part of this Act, " the appointing authority" means the Secretary-General of the Permanent Court of Arbitration at The Hague.

This means that an award enforced under this section is enforced as a convention award. The Supreme Court in *Murmansk State Steamship Line v Kano Oil Millers Ltd* stated that in order to sue on a foreign award in Nigeria, there must be proof that there is a law binding the Nigerian Court to entertain the claim.

The Supreme Court in interpreting **the Limitation Law of Lagos State**[15], held that to enforce arbitral awards, the period of limitation runs from the moment of the occurrence of the breach which gave rise to the arbitration and not from the date of the award except where the arbitration agreement is under seal or made under any other enactment other than the Arbitration Law.[16]

With the decision of the Supreme Court in **Sifax (Nig.) Ltd v. Migfo (Nig.) Ltd**[17]**,** where it was held that time freezes during the pendency of an action, the decision in **City Engineering Nigeria Limited v Federal Housing Authority** may be revisited.

A successful party, who seeks the recognition and enforcement of Convention award in Nigeria, shall file or annex the following documents with the application, viz:

i. The duly authenticated original award, or a duly certified copy thereof; and
ii. The original arbitration agreement, or a duly certified copy thereof;[18]
iii. Where the award or the arbitration agreement has not been made in English- which is the official language of Nigeria- the successful party shall produce a translation of those documents into the English language. Such translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.[19]

The recognition or enforcement of the award made pursuant to this Convention may be refused at the instance of the party against whom it is sought to be enforced if that party is able to furnish sufficient proof satisfactory to the appropriate authority and in this case, the court that;

i. The parties to the agreement referred to in the Article II were under the law applicable to them, under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or failing any indication thereon under the law of the country where the award was made.[20].

Capacity of the parties to enter into the agreement *ab initio* is a very important factor.

[15]**The Limitation Law of Lagos State, S8(1) (d)**
[16]**City Engineering Nigeria Limited v Federal Housing Authority, Ibid**
[17]**(2018) 9 NWLR (Pt.1623) 138**
[18] New York Convention, Article IV.1 (a) & (b)
[19] Ibid., article IV.2
[20] New York Convention Art. Iv (1) (a)

i. The award will not be enforced if the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceeding or was otherwise unable to present his case.[21]

In this regard, the party against whom the award is sought to be enforced will be raising a defence under fair hearing. Parties to the proceedings are entitled to be notified in writing of the appointment of the arbitrator(s) and this must be done within a reasonable time in order to enable the parties raise objection against the appointment if they have any and also to make them prepare for the proceedings of the arbitration within a good time.[22]

i. It will also be a ground for refusal of enforcement if the award deals with matters not contemplated by, or falling within the terms of the submission to arbitration, or that it contains decision beyond the scope of the submission made to the arbitration tribunal provided always that where the decisions on what is submitted could be severed from what is not submitted, the court will severe the "baptized" portion of the decision from what was submitted.[23]

ii. The composition of the arbitral tribunal was not in accordance with the agreement of the parties, or was not in accordance with the law of the country where the arbitration took place.

iii. The parties to the arbitration agreement have the right to stipulate in their agreement the qualification for anybody to serve on the arbitral tribunal, the number of arbitrators, and the procedure for appointing them.[24] Where the parties failed to agree as to these facts, the law of the place of arbitration shall be followed in appointing the arbitrators.

iv. The award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which or under the law of which that award was made.[25]

The implication is that where the award has been annulled in the country in which it was made, invariably it shall not be enforced by the courts in Nigeria.

i. The subject matter of the difference is not capable of settlement by arbitration under the law of that country.[26]

It is not all subject matters that can be subject to arbitration proceedings. Only matters which can be settled by accord and satisfaction can be subject matter of arbitration. Criminal matters, for example, cannot be subject matter of arbitration as they are subject matter of litigation before a competent court and also as criminal matters are expected to be prosecuted by the state for the common good of the public.

[21] New York Convention Art. Iv (1) (b)
[22] G C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (2nd Ed, Enugu: Snaap Press Ltd, 2004).
[23] New York Convention Art. Iv (1) (c)
[24] New York Convention, Art. Iv (1) (d)
[25]New York Convention , Art. Iv (1) (e)
[26] New York Convention, Art. Iv (2) (a)

i. The recognition of the award would be contrary to the public policy of that country.[27] We have both domestic and international public policies and any of them could be a ground for this purpose.

1.3 Arbitration and Conciliation Act, 2004

The ACA is the law governing Arbitration in Nigeria. The court held in **Onuselogu Enterprises Ltd** *v. Afribank (Nigeria) Plc*[28] *that it "was enacted* to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation, and to make applicable the New York Convention to any award made in Nigeria or any contracting State arising out of international commercial arbitration." Foreign arbitral awards are regarded as valid in Nigeria. However, such awards can only be enforced in Nigeria when made enforceable by a Nigerian court (High Court).

The ACA provides in s51 as follows:

A. An arbitral award shall, irrespective of the country in which it is made, be recognised as binding and subject to this s32 of this Act, shall, upon application in writing to the court, be enforced by the court.

B. The party relying on an award or applying for its enforcement shall supply

   (a) the duly authenticated original award or a duly certified copy thereof;

   (b) The original arbitration agreement or a duly certified copy thereof; and

   (c) Where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

Under s51 of the ACA, an arbitral award will be recognised as binding in Nigeria, irrespective of the country it was made, once the award meets the requirements provided in s26 of the Act. Same is reproduced hereunder for ease of reference:

i. any award made by the arbitral tribunal shall be in writing and signed by the arbitrator or arbitrators.

ii. where the arbitral tribunal comprises of more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice if the reason for the absence of any signature is stated.

iii. the arbitral tribunal shall state on the award-

   (a) the reasons upon which it is based, unless the parties have agreed that no reason are to be given or the award is an award on agreed terms under s25 of this Act;

   (b) the date it was made; and

   (c) the place of the arbitration as agreed or determined under s16(1) of this Act which place shall be deemed to be the place where the award was made.

i. A copy of the award, made and signed by the arbitrators in accordance with and signed by the arbitrators in accordance with subsections (1) and (2) of this section, shall be delivered to each party.

[27] New York Convention, Art. Iv (2) (b)
[28] (**2005) 1 NWLR Part 940 577**

A party seeking to enforce an award under the Arbitration and Conciliation Act, can apply to the court to enforce the award as a judgment of the court.[29] The application must set out the grounds based on which the award is sought to be enforced. The application must be filed along with a supporting affidavit exhibiting the:

(a) Duly authenticated original award or duly certified copy.

(b) Original arbitration agreement or a duly certified copy.

There are categories of awards that are unenforceable, that is, the court can refuse to enforce such awards. These are provided for in the s52 of the Arbitration and Conciliation Act. These grounds where the enforcement of a foreign arbitral award will be refused include:

A. Incapacity of a party.

B. Invalidity of the arbitration agreement.

C. Lack of proper notice or opportunity to present case.

D. The award contains matters beyond the submission to arbitration.

E. The award contains matters beyond the scope of arbitration or incapable of settlement by arbitration under Nigerian law.

F. The arbitration procedure or tribunal was not in line with the parties' agreement.

G. The award has not yet become binding or has been set aside or suspended.

H. The award was not made in compliance with the applicable law.

I. The award is against Nigerian public policy.[30]

1.4 Enforcement under the Foreign Judgments (Reciprocal Enforcement) Act Cap F35 LFN, 2004

The Foreign Judgments Act was enacted in 1960 to create a provision for enforcement in Nigeria, of judgments given in foreign countries, which accord reciprocal treatment to judgments given in Nigeria. Thus, for this legislation to apply, the doctrine of reciprocity is very essential to the enforcement of foreign judgments in Nigeria.

An arbitral award is considered a judgment in Nigeria. According to **s2(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1960** (Foreign Judgments Act), a Judgment means a judgment or order given or made by a court in any civil proceedings and shall include an *award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place*, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.[31] (Emphasis added). Nnaemeka Agu, JSC, defined judgment debt in *Ekwunife v Wayne W/A Ltd* as "debt or damage or

[29]M Mordi et al, "Enforcement of Arbitral Awards in Nigeria: Overview", © 2022 Thomson Reuters. Accessed on 12/12/2022
[30] Ibid.
[31]**Foreign Judgments (Reciprocal Enforcement) Act 1960**, **Section 2(1)**

other monetary award which has been pronounced upon by a court of competent jurisdiction…"[32] However, for a foreign award to qualify for enforcement under the Act, it must be an award relating to money. This is in view of the fact that the Act only makes provision for judgment debts in monetary terms. [33]

According to **S4 of the Foreign Judgments Act,** a judgment creditor, may apply to a superior court in Nigeria at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in such court. However, in **Marine and General Assurance v. Overseas Union & 7 Ors,**[34]the Supreme Court held that **s3(1) of the Foreign Judgments Act** had subjected the coming into force of the provisions of Part 1 of the Act which contains **s4(1) of the Foreign Judgments Act** extending the period of registration to six years, to an Order to be made by the Minister of Justice directing the extension of Part 1 of the Act to relevant foreign countries. **The Foreign Judgments Act under s9** had also unequivocally preserved the effect of the Ordinance pending the promulgation of the Order envisaged under **s3(1) of the Foreign Judgments Act** by the Minister of Justice. Therefore, time is limited to twelve months.[35] Foreign judgments which qualify for enforcement under this Act are in three categories:

a. Judgments made in the courts of any part of the Commonwealth other than Nigeria or in relation to those parts of Her Majesty's Dominions.[36] In *Mercantile Group (Europe) A.G. v Victor Aiyela*[37], the Court of Appeal confirmed the position of such judgments upon an interpretation of s 9(1) of the Foreign Judgment (Reciprocal Enforcement) Act.

b. Foreign Judgments of a Superior Court given by an original court in a country, which the minister of Justice in Nigeria recognizes pursuant to an order under s3 of the Act, if the minister is satisfied that substantial reciprocity of treatment will be accorded to the enforcement of judgments of superior courts in Nigeria in such foreign country.

c. Foreign judgments which had hitherto been registered under the Reciprocal enforcement of Judgments Ordinance of 1958[38] at the time of the coming into operation of any powers vested by s3 of the act. Such judgments are to be treated as if they were registered under the Act and once compliance with the provisions of the Ordinance had already been met; the judgment(s) shall be taken to have satisfied the requirements of the Foreign Judgments (Reciprocal Enforcement) Act by operation of law.

In *Macaulay v R.Z.B. of Austria*[39], counsel had argued that the Ordinance of 1958 had become extinct and has no place in the enforcement of foreign judgments in Nigeria anymore. The court rejected that argument and held that the Foreign Judgment (Reciprocal Enforcement) Act, under

[32] (1989) 5 NWLR (Pt. 122) 422, 446
[33] Obiozor (n.11)
[34]**(2006) 4 NWLR (Pt. 971) 641**,
[35]F Obisanya, *Enforcement of Foreign Arbitral Awards in Nigeria: An Overview*, Enforcement of Foreign Arbitral Awards in Nigeria: An Overview – Rouk & Co (roukco.com) accessed on 13th March, 2018
[36] S9 of the Act
[37]Suit No. CA/L/348/92 of the Lagos Division of the Court of Appeal delivered on the 1st of July 196, cited in Obiozor (n.11)
[38] Cap 175
[39] (1999) 4 NWLR (Pt. 600) 599.

review, saves the Reciprocal Enforcement of Judgments from extinction. Equally, judgments made in a foreign country before the commencement of any order by the minister of justice under section 3 of the Foreign Judgments Act maybe registered within twelve months from the date of the judgment or such longer period as may be allowed by a superior court in Nigeria.[40] In essence, a foreign judgment can be made unenforceable in Nigeria by the minister of justice in Nigeria, where there is no reciprocal gesture from the country in which the award was delivered, towards judgments of the superior courts in Nigeria.

1.5 Action at Common Law to Enforce an International Award

The common law of England is a component of the Nigerian jurisprudence by virtue of colonisation. s32 (1) of the Interpretation Act[41] provides that:

> *Subject to the provisions of this section and except in so far as other provisions is made by any federal, the common law of England… shall, in so far as they relate to any matter within the legislative competence of the federal legislature, be in force in Nigeria.*

The execution of foreign judgments falls under item 57 of the Exclusive Legislative List[42] of the Constitution of the Federal Republic of Nigeria 1999. The action for enforcement is based on the fact that international arbitration agreement, just like any other contract, is recognized in law and is enforceable.[43] For a court to enforce an international arbitration award, he successful party must adduce credible evidence of the following facts:

- That there exists a written agreement between parties to arbitrate. This can be done successfully by the plaintiff or the successful party at arbitration proceedings if he can produce a duly authenticated original agreement or a duly certified copy thereof;
- That a dispute arose within the terms of the arbitration agreement and that an award was properly made by arbitrators appointed in accordance with the agreement of the parties and that the award as final and conclusive in respect of the matter referred to the arbitrators. The plaintiff can conveniently do this by tendering the duly authenticated original copy of the award or a duly certified copy thereof. The successful party in the arbitration proceedings who intends to enforce the award must tender the translated versions of the documents mentioned above in English language if the award and the agreement were made in language which is not English.

A successful party will not need to obtain the leave of court before instituting an action in court for recognition or enforcement of foreign awards. The need for inviting of witnesses to testify in order to prove the case in court equally does not arise. The procedure simply requires an application to enforce the award by way of undefended list or summary judgment by the party seeking to enforce the award. Judgment will be entered in his favour once the application succeeds. This is only possible if the award falls within the class of claims that could be made pursuant to the said rule of court, which must be a final and conclusive award; the claim must also be for a

[40] Foreign Judgments (Reciprocal Enforcements) Act, CAP 152, Laws of the Federation of Nigeria, S10.
[41] Cap I 23, Laws of the Federation of Nigeria, 2004
[42] See Second Schedule, Part 1
[43] Nwakoby (n.21).

liquidated sum. The award must not have been conditional or contingent to the happening of an event.

"The court will not enforce an international arbitration award if defendant against whom it is sought to be enforced is able to adduce credible defence satisfactory to the court particularly if he is able to show that the judgment was obtained by fraud. He will also succeed if u is shown that it was obtained in breach of the principles and rules of natural justice, or that enforcing the award would be contrary to the public policy of the people of Nigeria,"[44]

Institutional Framework for the Recognition and Enforcement of Foreign Arbitral Awards

Arbitration is built on law and is necessarily dependent upon the law and the judicial system. This is so even though arbitration is considered separate, or an alternative to litigation. Though there is autonomy of arbitration, it is dependent on the underlying support of the courts who exercise the power to rescue the system when one party seeks to sabotage the arbitral process. The court may be the place which decides whether particular disputes are to be arbitrated. Also, court assistance may be sought if one of the parties seeks to frustrate the arbitration process. The courts are also handy where there is a hitch during the arbitration, for instance, where there is need to order a stay of court proceedings or to compel attendance of a witness. The enforcement machinery of the court is available where parties fail to comply with arbitral awards.[45] The Courts also intervene to set aside awards in several circumstances.

The interpretation section of the ACA states that "court" means the High Court of a State, the High Court of the Federal Capital Territory Abuja or the Federal High Court.[46] This is of course without prejudice to the right to entertain appeals reserved for the Court of Appeal and the Supreme Court.[47] It is to be noted that the jurisdiction of these courts to entertain arbitration matters is subject to the constitutionally granted jurisdiction of the courts.[48] Thus a court which has no jurisdiction to entertain the matters in respect of the subject matter of the arbitration cannot have jurisdiction to entertain the matter

2.1 The High Court

The application for the recognition and enforcement of an arbitral award is made to a court. The jurisdiction of a court is a very important factor. A court can only decide on a matter if it has jurisdiction to handle that matter, ab initio. In line with this, it is very necessary to ascertain the court with the jurisdiction to handle the dispute that led to the arbitration. That court ordinarily, would have decided on the matter was it to be litigated upon. Some scholars are of the opinion that such a court should be responsible for the recognition and enforcement of the arbitral award. In **FUTA v BMA Ventures (Nig.) Ltd.**,[49] the Court of Appeal after a microscopic examination of the suit held that the heart of the relief of the suit is for recovery of debt which emanated from a simple contract for which the Federal High Court was not clad with the garment of jurisdiction to entertain and grant the application for the recognition and enforcement of an arbitral award.

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[44] Ibid

[45] J Sweet, *Legal Aspects of Architecture, Engineering and the Construction Process,* (St. Paul West 1 Publishing Co., 1977), 563.

[46] Section 57 (1). See *Magbegbeola v. Sanni* [2005] 11 NWLR (Pt. 936) 239, where the Supreme Court re- echoed the definition of "Court" and "Judge" under section 57 of ACA.

[47] For the establishment of the Federal and State Courts, see Section 6 (3) (a), 1999 Constitution of the Federal Republic of Nigeria, Promulgation Act, 1999, Cap. C 23 Laws o f the Federation of Nigeria, 2004.

[48] G Nwakoby, *The Courts and the Arbitral Process in Nigeria*, note 5, p. 23. 4

[49] **(2018) 17 NWLR (Pt. 1649) 477**

Consequently, the court held that the order recognising the award for enforcement was null and void.[50]

On the effect of arbitral awards, the Supreme Court has held that "It is very clear and without any iota of doubt that an arbitral award made by an arbitrator to whom a voluntary submission was made by the parties to the arbitration, is binding between the parties". **Ras Pal Gazi Construction Co. Ltd v F.C.D.A**.[51]

S57 (1) of the ACA provides that:
In this Act, unless the context otherwise requires-
"Court" means the High Court of a State, the High Court of a Federal Capital Territory, Abuja or the Federal High Court;

"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.

2.2 The Supreme Court

This is the highest appellate court in Nigeria. It is empowered to handle certain categories of disputes. Disputes between the Federal Government and a State go straight to the Supreme Court; so also disputes between different states and disputes between the President and the National Assembly. It also entertains disputes from those not satisfied with the decision by the Court of Appeal. It is usually constituted by a Bench of five (5) judges.

The ICSID Convention provides for the enforcement of ICSID awards at the apex court of the State. Article 54(1) of the Convention, which was ratified by Nigeria on 23rd August, 1965, stipulates that**:**

> *Each contracting state shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state.*
>
> *A Contracting State with a Federal Constitution may enforce such an award, in or through its Federal Courts, and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.*[52]

The same was domesticated in Nigeria by virtue of Cap 120 Laws of the Federation of Nigeria, 2004[53], and it provides thus**:**

> *"where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for Settlement of Investment Disputes, a copy of the award duly certified by the Secretary General of the Centre aforesaid, if filed in the Supreme Court, by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were an award contained in a final judgment of the Supreme Court, and the award shall be enforced accordingly."*

[50] Obisanya (n.34)
[51] **(2001) LPELR-SC.45/96**
[52] ICSID Act, Ibid.
[53] ICSID Act, Ibid.

S1 (2) provides that the Chief Justice of Nigeria may make or adopt any rule of court necessary to give effect to that section. In essence, the competent court for the recognition and enforcement of ICSID awards in Nigeria is the Supreme Court.

Conclusion/ Recommendations

This research has discussed some of the legislations applicable to the recognition and enforcement of foreign arbitral awards. Some of these provisions have been in place over the years and are due for amendment to be tailored in order to suit the needs of the disputants. The Arbitration and Conciliation Act which domesticated the New York Convention made an error in the process. S54(1) (b) provides that

(1) Without prejudice to s51 and s52 of this Act, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards (hereafter referred to as "the Convention") set out in the Second Schedule to this Act shall apply to any award made in Nigeria or in any contracting state:

- provided that such contracting state has reciprocal legislation recognising the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the Convention;
- that the Convention shall apply only to differences arising out of legal relationship which is contractual.

This section is an obvious deviation from the provision of Article 1 (3) of the New York Convention which it had ratified. Nigeria had made a declaration deposited with the United Nations Secretary General which provides that:

> *In accordance with paragraph 3 of Article 1 of the (New York) Convention (already set out), the Federal Military Government of the Federal Republic of Nigeria declares that it will apply the Convention on the basis of reciprocity to the recognition and enforcement of awards only in the territory of a state party to this Convention and to differences arising out of legal relationships, whether contractual or not which are considered as commercial under the laws of the federal republic of Nigeria.*[54]

Nigeria declared that it will accord reciprocity to other states on awards arising out of legal relationships, whether contractual or not but in ratifying the convention, the issue of reciprocity was limited to contractual relationships. Whether this is an error or as intended by the draftsman, there is an urgent need to amend the provision to reflect the original provision of the Convention.

Thus, the key recommendation of this research is an amendment of the Arbitration and Conciliation Act. It is also the writer's recommendation that the courts ought to adopt a proactive approach in the interpretation of these provisions to reflect the actual intendment of the draftsman, pending the amendment of the Act.

[54] AA Asouzu, *African States and the Enforcemetn of Arbitral Awards: Some Key Issues*, Arbitration International (LCIA), Vol. 15, No 1, 1999. Berg, The New York Convention 0f 1958: Towards a Uniform Interpretation, 1981. Cited in Nwakoby (n.21)