

UNIVERSITY OF ILORIN



THE ONE HUNDRED AND FIFTY-SECOND (152nd) INAUGURAL LECTURE

“CONTENDING WITHOUT BEING CONTENTIOUS: ARBITRATION, ARBITRATORS AND ARBITRABILITY”

By

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Students of the Better By Far University, in particular students of
law,
Members of the 4th estate of the realm,
Distinguished Ladies and Gentlemen

Preamble

O Allah, the giver of wisdom, without whose
help resolutions are vain, without whose
blessing study is ineffectual; enable me, if it be
thy will, to attain such knowledge as may
qualify me to direct the doubtful, and instruct the
ignorant; to prevent wrongs and terminate
contentions; and grant that I may use that

knowledge which I shall attain to thy glory and my own salvation, for thy sake, Ameen.¹

Mr Vice Chancellor Sir,

Over a decade and a half ago, I joined the University of Ilorin as a lecturer II in the Department of Business Law of the Faculty of Law. Since the inception of the Faculty of Law, five professors have been appointed. Two professors from the Department of Islamic Law, another professor from the Department of Jurisprudence and International Law and two other professors from the Department of Business Law. However, only two out of the five Professors have since delivered inaugural lectures. Professor Abdulqadir Zubair of the Department of Islamic Law blazed the trail on Thursday, 27th March, 2003 when he delivered the 66th inaugural lecture of the university, titled 'Shari'ah in our Citadels of Learning', it took about 10 years for the faculty to present another inaugural lecture, which was done by Professor Wahab Olasupo Egbewole of the Department of Jurisprudence and International Law on Thursday, 28th November, 2013 in the 139th inaugural lecture of the university titled 'Judex: Hope for the Hopeful and the Hopeless'. The first professor from the Department of Business Law, Professor M.T. Abdulrazaq did not deliver his inaugural lecture before he left the university shortly after his appointment as a professor. My presence here today marks the presentation of the first inaugural lecture from the Department of Business Law and the third inaugural lecture from the Faculty of Law of the University of Ilorin. Incidentally, my lecture is also the 2nd inaugural lecture in the field of ADR and Arbitration from a university or law research institute in Nigeria after that of Professor P.O. Idornigie who delivered the 3rd inaugural lecture of the Nigerian Institute of Advanced Legal Studies (NIALS) in October, 2011 titled 'Investment Arbitration and Emerging Markets: Issues, Prospects and Challenges'.

Mr Vice Chancellor sir, the issues contained in this 152nd inaugural lecture of the University of Ilorin represents some of

our modest contributions in the field of arbitration since our sojourn in the ivory tower. However, since the wise man is the one who knows his limits, we have also duly referenced relevant works of scholars in the field where necessary.

Introduction

Mr Vice Chancellor Sir,

Businessmen want to do business and not to argue about it. However, in the world of trade and commerce, disputes are inevitable. This is partly due to the fact that the understanding of contractual rights and obligations differ from one individual to another. In addition, no matter how carefully written a contract is and even with the best of intentions, parties often perform less than they promise. However, these controversies seldom involve contentious legal issues. On the contrary they concern the same evaluation of facts and interpretation of contract terms that businessmen and their lawyers are accustomed to dealing with every day. Consequently, some differences may arise out of day-to-day commercial affairs and parties often prefer to settle them privately or informally and in a manner amenable to further business relations. That is what commercial arbitration is all about.²

Mr Vice-Chancellor sir, it is therefore our contention as depicted by the title of this lecture ‘Contending without being contentious’, that even though disputes are part of human interaction, it is possible to manage or resolve disputes without being unduly legalistic or belligerent.

In the modern societies the courts are the traditional *forum conveniens* for resolving disputes.³ Our research in the field, however, shows that challenges and problems bedeviling litigation including undue congestion of the courts, rigid adherence to technicalities and procedures resulting in delays in the administration of justice, and the hostility sometimes generated which can harm business relationship have inevitably pushed litigants to seek alternatives to litigation.⁴ Accordingly, there has been a marked growth in the preference for alternative

dispute resolution (ADR) procedures rather than the more precise, costly and lethargic method of the courts. The principal advantages in such extra-judicial procedures lie not only in relieving the burden on the judicial system, but also increasing possible choices for the parties to a dispute.⁵ However, the notorious fact is that the potential advantages claimed for these ADR mechanisms in particular arbitration over litigation in Nigeria, as a more expeditious and cost-effective method of resolving disputes, are often not achieved in practice.⁶

Is Arbitration Part of the ADR Procedures?

Arbitration may be defined, as the reference of dispute or difference between not less than two parties, for determination after hearing both parties in a judicial manner by a person or persons other than a court of competent jurisdiction.⁷ For ease of understanding, arbitration may be defined in a less technical term to mean the voluntary submission of a dispute between two or more persons to a neutral, independent and impartial third party, who must decide in a judicial manner.

Clearly, there are basic similarities between arbitration and litigation.⁸ Thus, the adversarial nature of arbitral proceedings and binding nature of arbitral awards have raised debates regarding whether arbitration should be classified as an ADR process or not. For our immediate purpose, arbitration shall simply be viewed from the 'freedom of choice by parties' or 'forum selection' approach. Therefore any reference to arbitration in this lecture should be primarily viewed in the context of an alternative dispute settlement procedure to litigation which is the freedom by parties to include arbitration clauses in their contracts which signifies preference for private settlement of dispute rather than litigation.

Mr Vice-Chancellor sir, for the avoidance of doubt, the subject matter of our discourse today is 'domestic commercial arbitration'. The law regulating 'domestic commercial arbitration' in Nigeria is regulated by the Arbitration and Conciliation Act of 1988 (ACA 1988).⁹ This arbitral law

provides for a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation.¹⁰ The ACA 1988 shall thus be the legal regime upon which our discussion shall be benchmarked.

Even though there is a lot to be said about arbitration under the ACA 1988, however, for reasons of time and space, our discussion shall be circumscribed by the modifiers contained in the topic, to wit: ‘arbitration’, ‘arbitrators’ and ‘arbitrability’.

The discussion of the topic shall be done in three parts. In part 1 of the lecture we shall examine the constitutionality of section 34 of ACA 1988. This section seeks to restrict judicial intervention in arbitral proceedings. In part 2 we shall be examining the gradual legalisation of the arbitral process by the litigious acts of members of the legal profession who serve as arbitrators and counsel in arbitral proceedings. In part 3, we shall examine the concept of arbitrability under the ACA 1988; in particular we shall try to examine the exact scope and intent of section 35(a) and (b) of ACA 1988.

Part 1: Arbitration and the constitutionality of section 34, ACA 1988

We have in our previous works, explained the juridical nature of arbitration¹¹ to be an extension of the judicial process of the State¹² or a contractual arrangement between parties which the courts recognise and enforce because the State so permits.¹³ In an autonomous arbitral regime where parties opt for a private dispute resolution forum and choose their judges, the courts would not readily intervene.¹⁴ In reality, however, arbitration must sometimes necessarily depend on the coercive powers of the court for the legitimate expectations of the parties to be met, despite its contractual nature.¹⁵

In our past research, we observed that under the old arbitration law of 1914,¹⁶ the court frequently intervened in the arbitral process under the guise of judicial control and supervision.¹⁷ However under the ACA 1988, the frequent court intervention has been severely curtailed. Following the trend of

most modern arbitration laws, the ACA 1988 adopts the policy of ‘least judicial interference’.¹⁸

Specifically section 34 of the extant Act provides that ‘*a court shall not intervene in matters governed by this Act except where so provided in this Act*’. Asouzu interprets this clause to mean an exclusion of any inherent and statutory powers of the court to intervene in arbitral matters when such intervention is not anchored on ACA 1988.¹⁹

For us to understand the basis of section 34 of ACA 1988, we must first appreciate the reason behind the provisions of Article 5 of the UNCITRAL Model Law, from which section 34 was adapted. In the Report of the UN Commission (1985) on International trade law, it was observed that the intention of the drafters of the Model Law was not *strictu sensu* the exclusion of court intervention. On the contrary, it was to create a situation where the legislature of different countries adopting the Model Law will make clear and certain in their national arbitration laws, all the situations which allow for judicial intervention. This is in order to prevent any recourse to remedies outside the Act based on the general or residual powers of the courts.²⁰

In compliance, the ACA 1988 provided for seven circumstances which allow for judicial intervention in domestic arbitration in Nigeria.²¹ These situations are as follows:

- (i) Revocation of the arbitration agreement.²²
- (ii) Stay of court proceedings²³.
- (iii) Establishment of an arbitral tribunal.²⁴
- (iv) Compelling the attendance of a witness to testify or produce a document, or producing a prisoner to be examined by an arbitral tribunal.²⁵
- (v) Setting aside of a domestic award.²⁶

- (vi) Setting aside of an award or the removal of an arbitrator for misconduct.²⁷
- (vii) Recognition and enforcement of domestic awards.²⁸

The seven situations enumerated above are the only avenues that allow for judicial intervention under ACA 1988. The clear implication therefore is that section 34 precludes judicial intervention in arbitral proceedings with regards to matters falling outside these areas.

The exercise of judicial power is a constitutional power that can be wielded only by the courts to the exclusion of other resolution bodies,²⁹ and the right of access to court is also a constitutional right that cannot be unduly abridged by another statute.³⁰ In order to fortify the objectives of the provisions of section 6 and 36 of the 1999 constitution, section 4(8) of the constitution prevents the national legislature from enacting laws capable of ousting the jurisdiction of courts.³¹

Consequently a provision of any law other than the Constitution, which purports to exclude the adjudicatory power of the courts and/or the right of access to the courts without providing for alternative remedies, will surely create constitutional tensions and complexities.³² It is in the light of the foregoing that section 34 of ACA 1988 calls for closer scrutiny.

Challenge Procedure under Section 9 of ACA 1988

Mr Vice Chancellor sir, for reason of time and space, we shall only examine the constitutionality of section 34 as relating to the challenge procedure under section 9 of ACA 1988. Section 9 deals with the procedure for challenging the appointment of arbitrators under the ACA 1988. As a prelude to section 9, section 8 of ACA 1988, provides that the appointment of an arbitrator in a domestic arbitration may be challenged if circumstances exist likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator lacks the qualification agreed by parties.³³ When a challenge is

made on these grounds, the tribunal is empowered to decide on the challenge.³⁴ The decision of the tribunal is final³⁵ and the party challenging the appointment has no choice but to submit to the jurisdiction of the arbitral tribunal.³⁶

By virtue of the exclusion clause in section 34 and the finality of the arbitrator's decision, the aggrieved party is presented with a *fait accompli*. He has no other avenue for redress open to him.³⁷ Criticising a similar situation created by the provisions of section 13(3) & (4) of the Indian Arbitration Act of 1996, Gupta contends that 'it is incongruous; if not absurd ... it suffers from injustice and unfairness and violates basic tenets of natural justice'.³⁸

The power of the arbitral tribunal to decide on jurisdiction derives from the principle of 'competence-competence'.³⁹ However unlike the Model Law, the ACA 1988 makes the arbitrator's decision final and precludes a subsequent review by the courts.⁴⁰ Indeed the concept of 'competence-competence' appears to have been unwittingly and unduly promoted at the expense of the needed judicial review of the courts.⁴¹

The logic behind the concept of 'competence – competence' is not to confer finality on the decision of the arbitral tribunal that touches on its jurisdiction to the exclusion of judicial review.⁴² The primary aim of 'competence – competence' is to clothe the tribunal with jurisdiction to determine whether it has jurisdiction over an arbitration agreement.⁴³ Indeed, to see it otherwise would call into question the fairness and integrity of the arbitral process.⁴⁴

Since section 9(3) ACA 1988 precludes judicial review of a decision reached under the challenge procedure, the question thus is whether an aggrieved party can approach the court for the grant of an injunction to restrain the proceedings of an arbitral tribunal whose jurisdiction has been challenged under section 9 particularly, in the light of the possibility of corrupt or biased arbitrators improperly asserting jurisdiction.⁴⁵

Ezejiolor contends that the aggrieved party has two options. According to him, the party may wait till the end of the proceedings and attack the enforcement of the final award or he may immediately seek an order of injunction to restrain the tribunal from proceeding with the arbitration on the basis of the inherent powers of the court.⁴⁶ We have in a previous work respectfully challenged the position of the learned scholar for the following reasons:⁴⁷

1. Bias or lack of qualification are not grounds for setting aside awards of domestic arbitration under the ACA 1988 and can therefore not be a basis for challenging such awards.⁴⁸
2. Unlike the regime under the 1914 Act, wherein the court could rely on its general or residual power to grant an injunction to restrain arbitration, Section 34 ACA 1988 did not give the court such room to manoeuvre.⁴⁹

Judicial powers can only be exercised in so far as they are within the confines of the courts' jurisdiction.⁵⁰ It is therefore incompetent for a court to trespass outside its jurisdiction under the guise of exercise of inherent powers, especially in situations where such powers are glaringly non-existent or expressly denied by legislation.⁵¹ Indeed a key restriction on the application of inherent jurisdiction is that it cannot be used to override an existing statute or rule rather it should be used where it is necessary to promote the objectives of the legislation.⁵² Inherent powers of the courts cannot exist in vacuum but can only help in the grant of an injunction where there exists a valid exercise of jurisdiction and not in situations where the jurisdiction of the court has been expressly constrained by section 34 of ACA 1988.⁵³

We contend that the legislature has no power to enact a statute that purports to extinguish the constitutional right of fair hearing of persons.⁵⁴ Indeed the rule of fair hearing, which is based on the twin pillars of *audi alteram partem* and *nemo iudex in causa sua*, is accepted by every civilised jurisdiction as

fundamental to proper and fair adjudication.⁵⁵ Access to courts is an inviolable right guaranteed by the Constitution and any attempt by the legislature to stifle such a right will not only be anachronistic but amount to an erosion of confidence in the arbitral system.⁵⁶ Indeed it is unreasonable to expect a party with genuine and legitimate objections to the jurisdiction of the tribunal to submit to the arbitral proceedings.

Judicial Attitude to Section 34

Under the rule of jurisdiction, nothing is intended to be out of the jurisdiction of a superior court, but that, which specifically appears to be.⁵⁷ Thus the courts usually guard their jurisdiction jealously and will not readily surrender it unless by express provision, the legislature has manifested a clear intention to take away that jurisdiction. This is based on the principle that any legislative provision, which seeks to deprive a party of his rights, must be interpreted *fortissime contra- preferentes*.⁵⁸

In our previous research,⁵⁹ we observed that the few occasions upon which the effect of section 34 have come before the courts in Nigeria, have been in respect of section 7(4) of the ACA 1988. Under the ACA 1988, when parties reach a deadlock in the appointment of arbitrators, section 7 of the ACA 1988 empowers the court to appoint arbitrators, on the application of one of the parties requesting the court to so appoint. By virtue of section 7(4), the appointment by the court is final and not subject to appeal.⁶⁰

In *Ogunwale v Syria Arab Republic*,⁶¹ it was argued that the right of appeal of the appellant had been extinguished by the effect of the provisions of sections 34 and 7(4) of ACA 1988.⁶² Even though the court did not comment on the constitutional validity of sections 7(4) and 34, nonetheless the court observed that the effect of the provisions of the sections were such as to deprive a party of his constitutional right of appeal. However, the Court of Appeal was reluctant to declare the provisions of section 34 and 7(4), unconstitutional preferring rather to treat the sections as ouster clauses intended to restrict a party's

constitutional right of appeal. Consequently, the application of the provisions of the sections was restricted to the least onerous meanings, i.e. to be applied strictly to the procedure of appointment under section 7.⁶³

Izinyon however argues that the decisions of the courts in *Ogunwale v Syria Arab Republic* and *Bendex Eng. v Efficient Pet. (Nig.)* maintains the inviolability of section 7(4) as relating to the procedure of appointment and appeal on it.⁶⁴ We have in our past research had reason to disagree with this position.⁶⁵ Even though the case of *Ogunwale v Syria Arab Republic* was not determined on the basis of the validity of section 34, the *dictum* of the court was to the effect that the provisions of any law which seek to deny a constitutional right is unconstitutional. According to Chukwuma- Eneh, JCA:

Section 241(1) of the 1999 Constitution has by its provisions unequivocally conferred on any aggrieved party the right to appeal indeed as of right in circumstances covered by section 241(1) (a), (b) & (c) of the 1999 Constitution. The fact that the Arbitration and Conciliation Act 1990 *Cap.19 Laws of the Federation* is an existing law is of no consequence in challenging any of the rights conferred in section 241(1) (a), (b) & (c) of the 1999 Constitution ... without going flat out to declare the provisions of sections 7(4) and 34 unconstitutional, it is enough to say here that they cannot override the clear right of appeal conferred on the appellant by section 241(1) of the Constitution.⁶⁶

Clearly, the provisions of section 7(4) attempt to take away a party's constitutional right of appeal,⁶⁷ thus in conflict with the constitution.⁶⁸ Except sections 7(4) and section 34 are in consonance with the provisions of the constitution, they shall to the extent of their inconsistency be null and void.⁶⁹ For the foregoing reasons, we have advocated that section 7(4) of ACA

1988 be amended along the provisions that a party who desires to appeal under the section should be required to seek the leave of the court before his appeal can be heard at the appellate court.⁷⁰

Let us recall that the ACA 1988 was a decree of the military government⁷¹ and was not subjected to any parliamentary debate.⁷² During the military era, decrees ranked superior.⁷³ However, with the return of civil rule, all laws will derive their force and authority from the constitution. Indeed the provisions of ACA 1988 (including section 34) are now subject to the constitution.⁷⁴

Mr Vice Chancellor sir, we submit that the purpose of the provisions of section 34 of ACA 1988 is not to strip parties of constitutional right of access to the courts. It is also not the intendment of the section to limit the jurisdiction of the courts in determination of matters within their jurisdiction. It is to the effect that no application may be made to the courts in any matter where there is an available process in ACA 1988.⁷⁵ We therefore contend that the provisions of section 34 can only come into play in situations where the Act provides for other remedies, which are available to the concerned party. The ACA 1988 should borrow from the provisions of section 13(4) of the Indian Arbitration Act of 1996 which is similar to section 9(3) of the ACA 1988. Rather than foist a state of hopelessness on an aggrieved party, section 13(5) of the Indian Act allows the party to apply for setting aside the award in accordance with section 34 of the Indian Act.⁷⁶

Part 2: Arbitrators: Legalisation of the Arbitral process

Unlike judges, arbitrators need not be qualified lawyers. However, arbitrators require skill, knowledge and competence in the field of dispute resolution and the field of endeavour from which the dispute arose.⁷⁷ By way of illustration, an arbitrator that is appointed to preside over a dispute arising from a building construction contract would be expected to be trained in the art of dispute resolution and also have a working knowledge of the

building construction industry. However since the ACA 1988 is not an industry-specific arbitration law, it does not provide for particular professional requirements to be met before a person can be appointed an arbitrator. Nevertheless, on the one hand is the argument that arbitrators should be qualified lawyers because the matters of resolving disputes are at best left to the legal fraternity. On the other hand, is the contention that persons who are qualified in the relevant professional disciplines like engineering or architecture albeit with some legal training are better suited to preside over disputes. The protagonists of the latter view believe that technical qualification is more suitable to deal with industry-specific disputes. For example, in financial or partnership disputes, accountants are more suitable to be appointed as arbitrators and should be deployed to resolve financial disputes where sophisticated accounting forensics and high levels of numeracy are required.⁷⁸

In our previous work on the examination of section 7 of ACA 1988, we observed that there are no specific requirements that ought to be possessed by the arbitrators as the parties have the freedom to specify the qualifications of the arbitrators in the arbitration agreement.⁷⁹ The vogue now is to request for the appointment of qualified lawyers. The consequence as observed in our past research is that lawyers and retired judges with little or no training in the field of arbitration now dominate arbitration practice in Nigeria.⁸⁰ The reality however is that the incursion of these categories of persons is fast turning the arbitration fora into alternative courtrooms.

Even though arbitration shares essential features with litigation,⁸¹ arbitral proceedings should not mimic the lengthy, expensive and technical procedures of litigation, but instead provide a more flexible and efficient means of resolving disputes.⁸² In this part of the lecture we shall highlight the effect that the increasing participation of members of the legal profession is having on the arbitral process. It appears that rather than help the smooth practice of arbitration, the development is hindering the potential benefits of the arbitral process.

In the early days, arbitrators were people with technical expertise and were respected by the parties for that expertise.⁸³ Most of the arbitrators were chosen from business associations such as the Lagos Chamber of Commerce or from some other professional bodies regulating the construction and insurance sectors.⁸⁴ The arbitration clauses contained in most contracts involving these professional groups often provided for the appointment of the arbitrators by the presidents of the Associations. Furthermore, some arbitration clauses expressly required that the arbitrators to be appointed must be professionals in the relevant field such as an architect, lawyer or building engineer etc.⁸⁵

As already noted, in recent times, there is a preference for the use of retired judges and practising lawyers as arbitrators in the arbitral process instead of the professionals or technical men who are experts in the field concerning the contract. Having majority of arbitrators as lawyers or retired judges has led to the gradual legalisation of the arbitral process⁸⁶ and in turn adversely affected the way arbitration proceedings are conducted in Nigeria.⁸⁷

The long periods spent in the courtrooms by the retired judges and lawyers have made them to become so ingrained with strict legal principles to the resolution of disputes. They appear to have developed an innate faculty for approaching the exercise of arbitral functions which requires flexibility in procedures and decision-making, from the same adjudicative stance.⁸⁸ Consequently, in practice, when they are appointed as arbitrators, 'they tend to direct proceedings very much as if they are in the courts of law, ignoring the inherent differences between arbitration and the conventional judicial process and thereby forfeiting most of the potential advantages of arbitration'.⁸⁹ The damage done by them to the institution of arbitration has been aptly captured by Butler thus:⁹⁰

When arbitrators are appointed from the ranks of the legal professions, be they attorneys, advocates or retired judges, they almost

invariably ape the Supreme Court procedure in all its detail, and fail to utilise the flexibility of arbitration to achieve cost-effective resolution of issues. They would appear to be oblivious to the fact that the matter can be heard and decided in any way other than that with which they become familiar and comfortable over the years.

Lawyers as counsel in arbitral proceedings:

In the same vein, it must also be pointed out that lawyers acting as counsel in arbitration tend to direct the proceedings like litigation. The counsel in arbitration proceedings see the arbitrator as a judge and the other party as an opponent and as a result, they tend to question opposing witnesses in a confrontational a manner as they would in the courts they are accustomed to.⁹¹

It is unfortunate that these practitioners, whether for tactical purposes, inexperience or for other reasons, seek to raise pedantic procedural points that are inimical to efficient dispute resolution. According to Spigelman, these legal practitioners adopt the full panoply of formal trial procedures for the course of an arbitration, including all of the traditional delaying techniques such as requests for particulars, interrogatories, disputes about disclosure of documents and the formal steps of examination in chief, cross-examination and re-examination, as if conducted under formal rules of evidence.⁹²

Sometimes the lawyers engage in zealous representation of their clients, because they want to show their advocacy skills before their clients, by doing what they believe are necessary to protect their clients' strategic interest or desires.⁹³ We have in the past contended that this negative attitude should not be unexpected in a country like Nigeria for two reasons.⁹⁴ First, there is a strong perception amongst clients that a lawyer who seeks reconciliation has been compromised by the other party. Consequently, in their desire to secure the confidences of their clients, lawyers engage in extreme legalism, refusing to make

concessions where they clearly ought to. Additionally, they will prefer to argue for hours on end even when it is manifestly clear that neither the law nor the justice of the case is on their side. They file all sorts of frivolous and useless applications, by seeking unnecessary adjournments.⁹⁵ The lawyers' ingenuity in filing monotonous and unnecessary applications is endless and arbitrators can be hard pressed to deny such motions outright.⁹⁶ Secondly, a majority of lawyers in Nigeria have little or no training in alternative dispute resolution methods. Until very recently, it was not part of the academic curriculum in their days in the university and at the law school and unless they undergo intensive re-education, the litigious attitude of lawyers can be counter-productive to the arbitral process.⁹⁷ This re-education includes a change in practice mandated by arbitrators themselves. Pro-active, well-trained and experienced arbitrators who have the respect of the parties can do much to mould the arbitral process to the benefit of the parties involved in the dispute. The opposite is also true. Inadequately trained and inexperienced arbitrators reluctant to exercise their powers often preside over clumsy processes.⁹⁸

There are however positive signs that things might soon improve. This is because some lawyers and retired jurists that are interested in the practice of arbitration now join professional arbitration bodies. They also undergo requisite training and sit for professional examinations as a result of which they become qualified arbitrators.⁹⁹ Thus, the requisite training is impacting on the members of the legal profession albeit slowly.

In addition to the effort of the arbitration bodies, there are concerted efforts on the part of the judiciaries of some States towards ensuring flexible and speedy resolution of cases within their jurisdiction. For example in Lagos State, Kwara State and the Federal Capital Territory of Abuja, new civil procedures rules have recently been introduced in the States' High Courts. The high points of these are the encouragement of ADR (including arbitration) for resolving matters and the active participation of judges in pre-trial conferences.¹⁰⁰ It is hoped

that these developments will bear on the attitude of the retired jurists and lawyers towards a more flexible approach when acting as arbitrators.¹⁰¹ Happily also is the fact that alternative dispute resolution (ADR) is now taught in some universities at both undergraduate and postgraduate levels. For the sake of records, the faculty of law of this University is the first law faculty in Nigeria to teach ADR and Arbitration law at the undergraduate level. It might also interest this august audience to know that my humble self started the teaching of the subject.

Part 3: Arbitrability: Delimiting the scope of arbitrable disputes

Mr Vice Chancellor sir, the concept of arbitrability determines the point when the exercise of contractual freedom ends and the public mission of adjudication begins.¹⁰² Consequently, in this part of the lecture we shall examine the controversy concerning the type of disputes that may be referred to domestic arbitration under the ACA 1988.

Arbitrability rule preserves the jurisdiction of the courts in certain areas of law that are deemed to deserve a particularly accurate application of the law.¹⁰³ This affects particularly, areas of law with public policy implications, where the public interest is deemed to prevail against the freedom of the parties to regulate their own interest.¹⁰⁴ What constitutes public policy differs from jurisdiction to jurisdiction depending on the level of social, political and economic development of the States.¹⁰⁵ The Court of Appeal in *Macauley v R.Z.B of Austria*¹⁰⁶ described public policy as the principles under which freedom of contract and private dealings is restricted by law for the good of the community. The principal reason is to ensure that parties are not at liberty to settle some disputes differently from the standard prescribed by the State and agreements reached in breach of the prescribed national standard shall be null and void and also unenforceable.¹⁰⁷

The concept of arbitrability curtails the rights of parties to refer some disputes to private tribunals on the basis of

sensitive public policy considerations or as a result of the desire by a country to prefer a standard and uniform method of settlement for some types of disputes, which cannot be compromised, lowered or altered by the agreement of the parties. The concept of absolute party autonomy therefore becomes a fallacy in the face of public policy considerations.¹⁰⁸ It is thus only realistic and necessary that the resolution of such kinds of disputes is done in the national courts or other appropriate tribunals to the exclusion of the arbitration forum.¹⁰⁹

The importance of knowing whether the settlement of a dispute should be made a subject of arbitration under ACA 1988 should not be underestimated. This is because the lack of arbitrability is fatal to the enforcement of the arbitration agreement and the award that may result from the proceedings. No matter how properly an arbitral process was conducted, once the dispute lacks arbitrability, the defect cannot be remedied by the agreement of the parties. Arbitrability is so fundamental to the jurisdiction of the arbitral tribunal that the lack of it can be raised at any stage of the arbitral process: before or during the course of the arbitral proceedings or even at the point of enforcement of the award. Indeed, any of the parties and even the court can raise the lack of arbitrability.¹¹⁰

Every jurisdiction determines the types of disputes that are exclusive to the domains of the national courts. This may be done by the enactment of statutes or by judicial pronouncements of the courts.¹¹¹ There is no universal style regarding the legislative approach. Legislative definitions of what constitute the scope of arbitrability vary from jurisdiction to jurisdiction.¹¹² In addition, within a particular jurisdiction, despite the enactment of specific arbitral statutes, some other laws may still contain arbitrability rules.¹¹³

With respect to case law, national courts have also evolved parameters for determining the arbitrability of disputes. The yardsticks for determining how a particular subject area is integrated into or excluded from the court's domain are usually also based on public interest considerations.¹¹⁴ More often than

not, the courts will only lay down arbitrability rules in situations where the scope of arbitrability is unclear or ambiguous and cannot be easily discerned from the provisions of the relevant arbitral law.¹¹⁵ For example in *United World Ltd. Inc v M.T.S. Ltd*,¹¹⁶ the court in Nigeria relying on *Halsbury's Laws of England*¹¹⁷ held that for a dispute to be arbitrable, 'it must consist of a justifiable issue triable civilly'. According to the court, the dispute submitted to arbitration must be capable of being compromised lawfully by way of accord and satisfaction.¹¹⁸

Arbitrability Under Section 35(1) and (2) the ACA 1988

What constitutes arbitrable disputes is not spelt out under the Model law. It is left for individual states to determine which disputes are arbitrable and which are not.¹¹⁹ Section 35 (1) and (2) regulates the scope of arbitrability under the ACA 1988.¹²⁰ The legislative intent of section 35 of the ACA 1988 is to exclude the settlement of certain disputes under the Act.¹²¹ Section 35 of the ACA 1988 provides as follows:

This Act shall not affect any other law by virtue of which certain disputes: - (a) may not be submitted to arbitration; or (b) may be submitted to arbitration only in accordance with the provisions of that or another law.

Even though the wordings of the law appear seemingly simple and clear, the interpretation and exact scope and intent of its application have continued to generate controversies amongst scholars.¹²² Unfortunately it is yet to be given precise judicial interpretation. For example, Chukwuemerie,¹²³ contends that it is only the Nigerian Copyright Act¹²⁴ that specifically excludes the submission of disputes from arbitration.¹²⁵ His argument is premised on the fact that section 38 of the Copyright Act confers exclusive jurisdiction on the Federal High Court for the trial of offences and disputes under the Copyright Act.

We have had to disagree with this position in our past research¹²⁶. The reason for our dissent being that the exclusive

jurisdiction conferred on the Federal High Court is aimed at excluding the unlimited jurisdiction of the State High Courts to hear and determine disputes arising from copyright matters.¹²⁷ The exclusive jurisdiction conferred on the Federal High Court in respect of certain subject matters¹²⁸ has more to do with the competing jurisdictions of the national courts i.e. as between the courts established under the Nigerian Constitution and has nothing to do with the arbitrability of the subject matters. Asouzu aptly puts this position thus:¹²⁹

As it pertains to section 35(a) of the Act, under the Constitution and certain other statutes in Nigeria, civil jurisdiction with respect to certain subjects is vested in the Federal High Court to the exclusion of any other court, for example, trade mark matters, patents and designs and copyright. The import of such provisions may be that with respect to those subject matters and the courts (i.e. as between the courts), the Federal High Court has exclusive jurisdiction; not necessarily that, in appropriate cases, the relevant subject are incapable of being submitted to arbitration unless the Act is expressly excluded.¹³⁰

Deconstructing Section 35 (a) and (b)

This Act shall not affect any other law by virtue of which certain disputes: - (a) may not be submitted to arbitration; or (b) may be submitted to arbitration only in accordance with the provisions of that or another law.

Section 35(a): *This Act shall not affect any other law by virtue of which certain disputes: - may not be submitted to arbitration*

We have contended in our past work that the subsection prevents the settlement by arbitration of certain disputes because some other law(s) of the country prohibit such disputes from being so settled. Such laws could be contained in case law or statutes.¹³¹

The courts in Nigeria have held some disputes to be incapable of being arbitrated upon by virtue of the fact that they cannot be compromised lawfully by way of accord and satisfaction and that only the courts are in the best position to determine these types of disputes.¹³² Examples of disputes envisaged under the subsection¹³³ are: (a) an indictment for an offence of a public nature; (b) disputes arising out of illegal contracts; (c) disputes arising under agreements void as being by way of gaming or wagering; (d) disputes leading to a change of status, such as divorce petition.

With respect to Acts of parliament, some statutes require some disputes to be resolved by procedural or administrative means. According to Carbonneau and Janson, ‘these regulatory statutes usually contain special safeguards and remedies and prescribe conduct for the good of society’.¹³⁴ Thus the settlement of such types of disputes should not be a matter for private tribunals and adjudicators.

Winding up proceedings under Part XV of CAMA¹³⁵

Winding up proceedings has a public interest element. The proceedings transcend the realm of private dealings. Winding up, involves the appointment of receivers, managers and/or liquidators, who have statutory roles to play in order to protect the interest of certain categories of stakeholders connected with the failed company.

Mr Vice Chancellor sir, it is our contention that since winding up is a class remedy; the issues that necessitated the situation cannot be subjected to arbitration. This is because of the need for centralised proceedings to protect the interests of all the creditors and contributories, and not merely the creditor who actually presents the winding up petition.¹³⁶ As a result of this, the state confers on the court¹³⁷ the jurisdiction of presiding over a winding up proceedings to the exclusion of other dispute resolution fora.¹³⁸

In the United State of America, the Court of Appeals for the Second Circuit ruled in the case of *In Re United States Lines*,

Inc.,¹³⁹ that a Bankruptcy Court was right in refusing to refer a dispute to arbitration, despite the fact that the parties had entered into valid agreements to arbitrate the dispute. The Bankruptcy Court held that there was a need for a centralised proceeding to preserve and equitably distribute the assets, and that allowing individual, decentralised arbitrations would prejudice this need.¹⁴⁰ In upholding the decision of the lower court, the Court of Appeal held that where a bankruptcy proceeding is within the 'core' jurisdiction of a Bankruptcy Court, in that it relates to the restructuring of debtor-creditor relations, the Bankruptcy Court has discretion to adjudicate the proceeding rather than refer it to arbitration.¹⁴¹

We must however warn that a party is not precluded from submitting a disputed debt, which is a subject of an arbitration agreement to an arbitral tribunal. The point being made is that parties cannot by an arbitration agreement clothe a tribunal with jurisdiction to wind up a company. The winding up of a company can only be statutorily done in accordance with the laws of the State. This is because the law has made special provisions which are to be applied during the liquidation of the company so that those who have invested in or had dealings with the company can be protected.¹⁴²

Intellectual Property Rights

The statutes regulating intellectual property rights such as Trademarks,¹⁴³ Patents and Design,¹⁴⁴ Copyrights¹⁴⁵ and decisions on the grant or validity of such rights provide for administrative settlement or litigation to the exclusion of arbitration. However, disputes arising from a relationship between a licensor and licensee of these intellectual property rights or that concerning counterfeiting of licenses can be arbitrated upon under the ACA 1988, since there is nothing in the enabling laws, which precludes them from being referred to arbitration.¹⁴⁶

Admiralty Matters

Mr Vice Chancellor sir, a major area that challenges the concept of arbitrability under the ACA 1988 is the settlement of disputes arising from admiralty matters. In particular section 20 of the Admiralty Jurisdiction Act (AJA)¹⁴⁷ Section 20 AJA provides that:

Any agreement by any person or party to any cause, matter or action, which seeks to oust the jurisdiction of the Court, shall be null and void, if it relates to any admiralty matter falling under this Act and if-

- (a) the place of performance, execution, delivery, act or default is or takes place in Nigeria ; or
- (b) any of the parties resides or has resided in Nigeria ; or
- (c) the payment under the agreement (implied or express) is made or is to be made in Nigeria; or
- (d) in any admiralty action or in the case of a maritime lien, the plaintiff submits to the jurisdiction of the Court and makes a declaration to that effect or the *rem* is within Nigerian jurisdiction ; or
- (e) it is a case in which the Federal Government or the Government of a State of the Federation is involved and the Government or State submits to the jurisdiction of the Court ; or
- (g) under any convention, for the time being, in force to which Nigeria is a party, the national court of a contracting State is either mandated or has a discretion to assume jurisdiction ; or
- (h) in the opinion of the Court, the cause, matter or action adjudicated upon in Nigeria.

It must be pointed out that section 20 AJA applies mostly to international commerce relating to admiralty matters and by extension international arbitration. However, a cursory reading

of the provisions of the section shows an attempt to render ‘null and void’ any agreement, which seeks to oust the jurisdiction of the courts in Nigeria in respect of admiralty matters falling under the Admiralty Jurisdiction Act. In simple terms, the effect of the section is to ensure that only courts established in Nigeria can exercise jurisdiction over disputes arising from admiralty matters which have a substantial and close connection with Nigeria.¹⁴⁸

Interestingly, the courts and scholars¹⁴⁹ have taken conflicting positions regarding the interpretation of these provisions. On the one hand are the judgments of the Court of Appeal in *Onward Enterprises Limited v. MV “Matrix” and Ors*¹⁵⁰ and *The Owners of the M.V. Lupex v Nigerian Overseas Chartering and Shipping Limited*.¹⁵¹ In the latter case, the court rightly rejected the contention that section 20 AJA, nullifies arbitration clauses relating to admiralty matters falling within the Act and held that an arbitration clause was not an ouster of the jurisdiction of the courts within the meaning of section 20 of the AJA. According to Uwaifo JCA, ‘arbitration agreements, as they often do, which merely make a resort to arbitration as a first choice to settle differences arising from an agreement, do not seek to oust the jurisdiction of the courts’.¹⁵²

On the other hand are the cases of *The M.V. Panormos Bay v Olam (Nigeria) Plc*¹⁵³ and *Ligenes Aeriennes Congolaises v Air Atlantic Nigeria Limited*.¹⁵⁴ In these cases the Court of Appeal held that section 20 nullifies arbitration agreements, which have the seat of arbitration outside Nigeria. In *The M.V. Panormos Bay v Olam (Nigeria) Plc*, Galadima JCA held that ‘section 20 of the Admiralty Jurisdiction Act has altered the hitherto existing position in admiralty matters thereby modifying sections 2 and 4 of the Arbitration and Conciliation Act, and limiting enforceable arbitration agreements to those having Nigeria as their forum’.¹⁵⁵

Even though the decisions by the Court of Appeal in the latter cases impact more on international arbitration¹⁵⁶ than on domestic arbitration,¹⁵⁷ nonetheless the decisions have the potential of negatively affecting the general practice of

arbitration in Nigeria, especially as the decisions erroneously equate arbitration agreements regarding admiralty transactions to ouster of the courts' jurisdiction within section 20 of AJA.

The decisions in *The M.V. Panormos Bay v Olam (Nigeria) Plc* and *Ligenes Aeriennes Congolaises v Air Atlantic Nigeria Limited* appear to depart from the settled principle of law that allows parties the freedom to resort to arbitration as a first choice to settle differences arising from an agreement i.e. the freedom to make recourse to arbitration a condition precedent to any right at law.¹⁵⁸

It is not in doubt that the judicial powers of courts cannot be abrogated or abridged by private agreement.¹⁵⁹ However at Common Law, an arbitration clause *per se* has been held not to oust the jurisdiction of the court¹⁶⁰ rather the right of action is only put on hold until after an arbitral award has been given in respect of a dispute.¹⁶¹ This principle has also been codified into the ACA 1988, by virtue of sections 4 and 5 of the ACA 1988; a party to an arbitration agreement may bring an application for a stay of proceedings if the other party decides to boycott the arbitration agreement and instead files a lawsuit.¹⁶²

In *The Owners of the M.V. Lupex v Nigerian Overseas Chartering and Shipping Limited*,¹⁶³ the Supreme Court of Nigeria reiterated the principle that an arbitration agreement merely postpones the right of disputing parties to resort to litigation whenever there is an election to submit the dispute under their contract to arbitration.¹⁶⁴ Even though the court did not comment on the effect of section 20 of the AJA, the court however affirmed the binding nature of the arbitration agreement (which conferred jurisdiction on a foreign arbitral tribunal) concerning matters falling within the Admiralty Act by granting a stay of proceedings instituted in breach of the arbitration agreement.

We agree with the Supreme Court's decision in *The Owners of the M.V. Lupex v Nigerian Overseas Chartering and Shipping Limited*. We further submit that the decision of the apex court has settled the controversy regarding the arbitrability

of admiralty matters, which fall within the purview of the Admiralty Jurisdiction Act of 1991.

Scholars have also contributed opinions on whether a foreign arbitral clause in an admiralty transaction amounts to an ouster clause and in breach of the provisions of section 20 AJA. In particular Olawoyin views foreign arbitration clauses and foreign jurisdiction clauses in the context of forum selection clauses. He therefore argues that the conceptual distinction between foreign arbitration clauses and foreign jurisdiction clauses, if any, is one without a difference in the context of appropriate fora for the adjudication of international commercial contracts. He contended strongly that the clear intention behind Section 20 is to render forum selection clauses invalid and ineffective.¹⁶⁵

Consequently, Olawoyin argued that the congressional policy against the enforcement of foreign jurisdiction clauses should affect foreign arbitration clauses as well. According to him, to require otherwise would result in ship owners and shipping lines plying Nigerian routes on a regular basis to develop a country-specific bill of lading that requires disputes to be resolved through arbitration in foreign lands in order to render the legislative intent expressed in the AJA sterile.¹⁶⁶

With respect, we disagree with the position of the learned scholar especially in the face of the existence of the provisions of section 10(1) of the AJA which specifically affirms the binding nature of an arbitration agreement.¹⁶⁷

Section 10(1) of the AJA provides as follows:

- (1) Without prejudice to any other power of the court-
 - (a) where it appears to the court in which a proceeding commenced under this Act is pending that the proceeding should be stayed or dismissed on the ground that the claim concerned should be determined by**

arbitration (whether in Nigeria or elsewhere)¹⁶⁸ or by the court of a foreign country; and

(b) where a ship or other property is under arrest in the proceeding, **the Court may order that the proceeding be stayed¹⁶⁹** on condition that the arrest and detention of the ship or property shall stay (sic) or satisfactory security for their release be given as security for the satisfaction of any award or judgment that may be made in the arbitration or in the proceeding in the court of the foreign country.

The provisions of section 10(1)(a) & (b) clearly show that it is within the discretionary powers of the courts to stay proceedings pending reference in a foreign country.¹⁷⁰ Olawoyin contends that an internal illogic exists between sections 10(1) and 20 of AJA and because of this perceived inconsistency, the provisions of section 20 must override section 10(1).¹⁷¹ With respect, we again, do not agree that there is a conflict. The provisions of section 10(1) AJA are clear and unambiguous they are not in conflict with the provisions of section 20 AJA. We submit that the object of the provisions of section 20 AJA is to nullify agreements, containing foreign jurisdiction clauses (to the exclusion of Nigeria courts) concerning admiralty matters. It will be wrong to include arbitration clauses (whether international or domestic) in this exclusion.¹⁷²

Moreover, if an arbitration agreement purports to preclude or oust the jurisdiction of the court or seeks to extinguish the right of the parties to legal remedies such an arbitration agreement will be unenforceable as being contrary to public policy irrespective of whether section 20 of the Admiralty Act is invoked or not.

In our modest contribution to the debate on the arbitrability of admiralty matters vis-a-vis, section 20 AJA, we have argued strongly that the exclusive jurisdiction given to the

Federal High Court over admiralty matters should be seen within the context of the desire of the Nigerian Government to end the automatic adoption of English admiralty practice with respect to admiralty transactions which usually contained clauses reserving jurisdiction on any dispute arising from such contracts to a court of foreign jurisdiction.¹⁷³ This position was considered absurd especially in situations where a matter had originally been commenced in a Nigerian court and all the factors relevant to the contract pointed to Nigeria.¹⁷⁴

The position did not only bring considerable hardship to Nigerian businessmen, who often had to abandon their legal claims abroad (as their capacity to institute an action outside Nigeria was limited by their inability to meet the attendant costs) but also hampered the growth of judicial activism on this issue, as there was a dearth of domestic case law.¹⁷⁵

Section 35(b): *This Act shall not affect any other law by virtue of which certain disputes: may be submitted to arbitration only in accordance with the provisions of that or another law.*

Our understanding of this subsection is that unlike the position under section 35(a) that is in respect of inarbitrable disputes, section 35(b) relates to categories of disputes that are not arbitrable under the ACA 1988, but may be submitted to arbitration under another law. These types of disputes are submitted to arbitrations under other laws different from the ACA 1988. An example of such law is the Trade Disputes Act,¹⁷⁶ which provides for the reference of trade disputes to a statutory arbitration tribunal.¹⁷⁷

Recommendations

1. Need to amend section 34 ACA 1988 to conform with the Constitution

Section 34 ACA 1988, appears fraught with some constitutional challenges. The provisions of the section attempts to fetter the right of an aggrieved party to access the courts in situation where no remedy is provided in the Act. This is inconsistent with the

provisions of the 1999 Constitution (as amended). Issues concerning access to courts and jurisdictions of superior courts to hear and determine appeals are constitutional matters, which cannot be overridden by provisions of other statutes such as the ACA 1988. We therefore recommend an amendment of the provisions of section 34 in line with the supremacy of the 1999 Constitution.¹⁷⁸

2. Need for a separate Domestic Arbitration Act

The UNCITRAL Model Law, from which the ACA 1988 is derived, is mainly intended for international commercial arbitration. It is therefore recommended that a separate domestic arbitration law be enacted taking into consideration the peculiarities of the country's domestic market and the existing case laws of the courts on domestic arbitration in Nigeria.

3. Need to consult stakeholder in the making of new domestic arbitration statute:

The Arbitration Act of 1988 was enacted by military fiat and did not have the advantage of going through the necessary legislative process. There was lack of consultation with stakeholders in the field of commercial arbitration in Nigeria. To this end, it is recommended that in the making of the proposed domestic arbitration statute, extensive consultation must be done with relevant stakeholders.

4. Need to Institutionalise Arbitration:

Arbitral institutions are the engines of arbitration reforms and developments. They lay the foundation that kindles enthusiasm in the process by government, private parties and users of the arbitration processes.¹⁷⁹ Essentially arbitral institutions play the following roles by:

- Raising awareness of the arbitral process and its benefits.

- Providing the necessary training and continuing professional education for arbitration practitioners and counsel.
- Providing facilities and arbitral rules to parties wishing to conduct arbitration under their auspices.
- Lobbying government to put in place vibrant legal regimes regulating arbitration in the country.
- Regulating the practice of arbitration within a jurisdiction by providing standards and ethics.

Unfortunately, most commercial arbitration proceedings in Nigeria are conducted privately on an ad hoc basis.¹⁸⁰ The aforementioned advantages cannot be easily achieved if most arbitral practices remain at ad hoc level. The promotion and establishment of arbitral institutions in Nigeria is thus recommended.

5. Need to encourage more professionals who are non-lawyers to engage in arbitration.

Nigeria is currently undergoing significant development in various infrastructural sectors and the technical know-how of engineers, surveyors, architects, accountants and others cannot be over emphasised. The contribution of these professionals and their expertise are critical when matters turn on expert evidence in arbitration.¹⁸¹ Other professionals (whether lawyers or not) should be encouraged to engage in arbitration practice in Nigeria.

6. Need to Incorporate Arbitration/ADR in the Curriculum of Law students:

We suggest that the subject of arbitration and other ADR forms should be incorporated in the curriculum of law students as a

core subject to be taught at the undergraduate level of the faculties of law in Nigeria.

7. Comprehensive reform of the civil justice system in Nigeria:

For arbitration to be effective, the courts still have a fundamental role to play. However the delay in case resolution in the Nigerian courts causes considerable waste of time and resources of the parties.¹⁸² There is therefore an urgent need to reform the civil justice system in Nigeria. The court procedures should be streamlined to facilitate early resolution of cases.¹⁸³ The benefits of a reformed civil justice system on arbitration practice in Nigeria include the following:-

- Introduction of an effective case management system which prescribes reasonable and specific time frame for disposing applications concerning arbitral matters.
- Education of Judges in the basic knowledge, philosophy and benefits of the arbitration process.
- Serving as a confidence booster to an arbitration agreement because parties will be secured in the knowledge that the judicial intervention will not be used to frustrate the arbitration agreement.

8. Need for courts to give functional interpretation to the arbitrability clause in section 35 of the ACA 1988

We recommend that the courts should read the provisions of section 35 of the ACA 1988 within the context of the balance needed for the benefit created by the Act, which is a concession to another statute which prohibits the submission of certain disputes to arbitration or permits a resort to arbitration only in accordance with the provision of that or other statutes excluding the ACA 1988.¹⁸⁴

Conclusion

Considering the poor state of our court system in Nigeria today, it is all the more vital that we resolve disputes in a better way. We must have a justice system that is flexible and accessible and that delivers timely, effective and affordable outcomes. Arbitration is a key to achieving this.

The undoubted potentials that arbitration can offer in the quest for justice indicate that the process has a glowing future in Nigeria. That future will be assured if we are conscious of the abiding need for effective courts, and the concurrent provision of alternative means of settling disputes that help parties to a just ending, more promptly, more economically, by their own empowerment and without some of the drawbacks that litigation can entail.

In commercial transaction, conflict will always be inevitable, however since commercial pragmatism and not legal accuracy is the preference of men of commerce.¹⁸⁵ Parties must learn to contend without being contentious. What is needed however is not an idealistic embrace of a novel fad that will replace the courts, but the best utilisation of appropriate procedures that will facilitate the fair and efficient settlement of commercial disputes in Nigeria.

Motivation for Going into Academics

Mr Vice Chancellor Sir, I must confess that as a young person I never dreamt of going into academics until I became an undergraduate at the Obafemi Awolowo University, Ile Ife. My ambition since childhood was to become a practising lawyer, and like the great Gani Fawehinmi to traverse the length and breadth of this country fighting the cause of the common man. It was when I entered the university that my ambition changed. Don't get me wrong sir! What has changed is not my desire to fight for the common man but the approach to be adopted.

In great Ife I saw my mentor and role model, the redoubtable Professor Ademola Popoola in action; influencing young minds and modelling us for the future. And I said to

myself what a wonderful world it is that lecturers live in. Immediately I knew that I needed a job that encouraged a life of learning and service and most importantly, I knew I wanted to influence young people. I wanted to shape their perception of life and to push them towards expanding their horizon. I therefore came to see teaching as a calling.

Interestingly, I remember years back when I made up my mind to disengage from active legal practice to pursue a career in the academics, relatives and concerned friends thought I was suffering from ‘insane delusion’ they couldn’t understand why despite my rich pedigree in law, I would leave a future assured in the practice of law for the seemingly ‘poverty ridden’ profession of academics. The fact is that industrious academics may not be millionaires, but they are certainly not lacking in resources and prestige. In any case, contentment is not measured in Naira or dollar but by the currency of happiness and satisfaction. Once I set my hands on the plough, I was never deterred, moved or shaken. Of course, the ‘rest as they say is history’.

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Mr Vice Chancellor sir, permit me to look far into the past to thank all the benevolent persons that have directly or remotely contributed to who I am today. Truth is that there are many people in my life who deserved to be thanked, in fact too numerous to mention. However for reason of time and space I can only mention a few. In this wise I thank my teachers and principals under whose wings I trained: Prof Ademola Popoola, Mr Wole Bamgbala, Prof G. A. Olawoyin SAN and Hon. Justice Mahmoud Gafar. I am grateful to all my Ph.d supervisors at the

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I thank the past and present leadership of the University of Ilorin that provided the enabling environment and opportunity for me to reach the peak of my career. Specifically, I am grateful to Professor S.O. Abdulraheem, Professor S.O.O. Amali, Professor I.O. Oloyede and Prof Abdulganiyu Ambali. I must not forget Prof M.T. Abdulrazaq, the amiable and charismatic dean who brought me into the faculty of law.

I sincerely thank the entire staff (academic and non-academic) and students of the Faculty of Law, University of Ilorin for their support, in particular; the current Dean of the faculty, my brother, good friend and comrade, Dr I.O. Yusuf. I also thank all the Professors and former Deans of the faculty of Law, all Heads of Departments in the faculty, in particular, the Head of the Business Law department, my friend and big brother, Dr K.I. Adam.

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I thank the current chairman of the NBA Ilorin branch; Mobolaji Idris Ojibara Esq and the entire members of the NBA Ilorin branch for their attendance here today.¹⁸⁶ I thank the Chairperson FIDA Kwara; Mrs Ronke Adeyemi and all my sisters in the distinguished association for today's attendance.¹⁸⁷ I thank all the learned Senior Advocates of Nigeria present here today. I thank my Lord the former President of the Court of Appeal; Hon. Justice Isa Ayo Salami (PCA, Rtd.) and his wife. I thank the Chief Judge of Kwara State; Hon. Justice O. A. Gbambola and all past Chief Judges of Kwara State. I am grateful to all the Honourable Justices of the Court of Appeal, Federal and State High Courts here present. I thank the Grand

Khadi; Hon. Justice S.O. Mohammed, past Grand Khadis and all Honourable Khadis of the Kwara State Shariah Court of Appeal. I thank Professor Y.A. Quadri, Hajia F.F. Abdulrazaq and Dr (Mrs) Azeezat Amoloye-Adebayo for their invaluable inputs in the lecture.

I thank all my friends and colleagues from the days of Federal Government College Okigwe, Imo State (especially members of the 'All for one' forum), Obafemi Awolowo University, Ile-Ife (especially members of the 'Just Lawyers' forum), Nigerian Law School, Lagos, University of Lagos, Akoka and Kings College, University of London.

My heartfelt gratitude goes to my people from Gambari quarters of Ilorin, UNIFEMGA, UNILORIN Muslim community, UNILORIN Emirate community, the Mayor- Dr Muftau Ijaiya and residents of UNILORIN Senior Staff Quarters (Fate-Tanke), Chairman, Imams and congregation of the mosque of UNILORIN Senior Staff Quarters (Fate-Tanke), staff of Mustapha Akanbi Foundation (MAF), Staff and students of Nana Aishat Academy. Members of the following groups: Ma'asalam Islamic Prayer group, Mustapha Akanbi Youth Forum, Integrity Forum, Balogun Gambari Youth Movement and the AMICUS International Club.

I thank the following friends of mine who have over time closed the divide between friendship and family: Messrs Lukman Alimi, Remigius Ibukun Akinbinu, Adimabua Udeh, Binga Paninga Shintema, Hassan Amida Sulaiman, Emmanuel Olali and Yahaya Obalofin Ibrahim to mention but a few.

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I must also express special thanks to my siblings Bros. Rufai, Hakeem, Ladipo, Ahmed, Kabir and her worship, Hajia Asmau Tanwa Ojuolape Adunni aka Magajiya 1 (*Iya kuu, Iya ku*) and all the members of the greater Bello Akanbi Oniyo family of *Ile Magaji Kemberi, Awodi*, Ilorin. In the same vein, I extend my deep appreciation to my mother's family and all other members of *ile elere* compound of *Alanamu* quarters, Ilorin. Thanks for the prayers and support. May Almighty Allah continue to protect you and your respective families. Amen.

I am most honoured and indeed grateful to our royal father, His Royal Highness, the Emir of Ilorin, Alhaji Ibrahim Sulu Gambari (CFR) for his esteemed presence. May your reign be long and prosperous. *Ameen*.

Special thanks to my wonderful father, Honourable Justice Muhammed Mustapha Adebayo Akanbi (PCA, Rtd. CFR) upon whose enormous goodwill I have always found favour. Despite his lean resources, he provided a solid educational foundation for me by sending me to the best schools (in Nigeria and abroad). I thank you for the guidance, prayers, companionship and more importantly, for believing in me. Though your words may be blunt, but your intentions are always genuine. Indeed your timely counsel has helped me climbed mountains and walked on the stormy seas of life. I hope I have met your twin aspiration for your children which are to be products of a religious and scholarly home. May Allah (SWT) keep you longer and in good health.

I thank my good in-laws, the Abdulrahman Oredola family. I am particularly grateful to my mother-in-law; Hajia Musliamat Abdulrahman Oredola. It was in your family that I have found the fulfilment of a destiny. You brought forth my life partner.

From the depth of my heart, I thank my beautiful and devoted wife, Hajia Shakirat Folake Amope Akanbi. I thank you for your love, loyalty, patience and steadfastness. In particular, I thank you for providing the enabling environment that has facilitated my quick rise to the apex of my profession Even

though your birthday was yesterday, this moment is however fitting and auspicious to specially wish you a happy birthday and more prosperous years to come. I rejoice with our lovely children and pray that the family flag shall never be too heavy for them to carry aloft. May Allah the Almighty, keep our family together till very ripe old age in love, happiness, good health and prosperity.

Mr Vice Chancellor Sir, in the instrument appointing me a professor, I was mandated to present an inaugural lecture within two years from the date of appointment (12th of October, 2012). In my heart I resolved to do the presentation within a year from the date of appointment. I started to gather the relevant materials for the lecture and also prepare myself mentally and psychologically for the preparation and presentation. Unfortunately like the proverb goes: ‘man proposes, God disposes’. Fate dealt a cruel blow, as I was to lose my beloved mum during the period. The family’s rock of Gibraltar fell to the cold hands of death. The period of her illness, her passage and post demise was traumatic and harrowing. Life practically stopped for our family. The year 2013 was a trying and traumatic one. In the year, our resilience and resolve as a family was stretched to the limits. For me personally, it was a big hit! I was the first among my siblings to apprehend the severity and terminal nature of her illness and had the unenviable role of breaking same to the others. As a family, we ran around to the best of our ability to save her from the illness. But Allah had a better and permanent plan for her. He stopped her pains and gave her eternal peace. He also took away our anxiety and gave us rest. (*‘fa inna ma’al usri, yusra, inna ma’ al usri yusra’* - ‘so verily, with the pain, comes ease, verily, with the pain, comes ease’). If mama was still on the hospital bed, Allah knows that I might not have had the proper mind frame to prepare and deliver this lecture. (*‘Allahu A’lam’* - ‘Allah knows best’).

I dedicate this lecture to the loving memory of my mother: Hajia Munfa’atu Aduke (1st May 1945 – 15th November 2013). That virtuous woman of substance and valour: who gave

her all in the service of God and humanity. Saturday the 15th of November, 2014 shall mark exactly one year of her demise on earth.



Late Hajia Munfa'atu Aduke Akanbi (1945 - 2013)

Mama

You meant so much to all of us
You were special and that is no lie
You brightened up the darkest day
And the cloudiest sky
In our hearts your memory lingers
Sweetly tender, fond and true
There is not a day dear Mother
That we do not think of you.
Not a second passes
When you are not on our minds
I would give absolutely anything
To have you well and standing near
Because in life you were saintly

Because in your heart you were pure
Always willing to help others
When yourself should be at rest
You were the kindest of all Mothers
You were there for your family
And all who came your way individually and collectively
Your love we will never forget
And our grief we must try to endure
May Allah SWT reward you with Aljanah firduas.
(Please recite surah Iklas 3 times in her memory)

I sincerely thank all those who stood by us in our moment of grief. I thank you for your counsel, love and prayers that has sustained us to this day. I give Allah SWT all the glory for giving me the strength and will-power to carry on. As a family, our faith and devotion in Allah even though tested remains unshaken and unwavering.

I shall not be doing justice to my feelings if I close this lecture without having expressed my heartfelt appreciation to the Vice chancellor; Prof Abdulganiyu Ambali for the important role that he played in making today a reality.

Mr Vice Chancellor, sir, I specially thank you for conceding this day and moment to me against the usual practice. At the time I indicated my desire to present this lecture I was informed by the authority that today's date; Thursday, 13th of November, had already been booked by Professor Mojeed Alabi for the presentation of his inaugural lecture. I was really downcast because this period is very auspicious to me and my family. It falls within the one year anniversary of my mum's death. The family has lined up memorial activities to mark the anniversary and having the inaugural lecture come up today will not only be convenient for our guests but will be a fitting tribute to the loving memory of our mother. I approached the vice chancellor and pleaded with him to kindly accommodate my lecture on the same day with the other inaugural lecture and that mine should be taken in the morning. In his usual trademark

calmness and smiling mien, he said 'please remind me tomorrow to discuss it with the Registrar'. I reminded him and here we are today. Sir, you have honoured me, you have honoured the memory of my late mum and indeed you have honoured the entire Mustapha Akanbi family. Mr Vice Chancellor sir, I do not know beneath what sky or on what seas shall be thy fate. But *insha Allahu*, I know that it shall be high and it shall be great. Ameen.

I thank everybody, friends and well wishers who have come from far and near to attend this lecture and wish you all Allah's blessing and protection back to your destination. Ameen.

ENDNOTES

- ¹ Adapted from Samuel Johnson, 'Prayer before the study of Law' in Eugene C. Gerhart (ed), *The Lawyer's Treasury* (The Bobbs-Merrill Company, USA 1963) 5.
- ² See *Businessmen's Guide to Commercial Arbitration* (AAA, New York 1964) 3.
- ³ Silungwe, 'Alternative Dispute Resolution' (Paper presented at the 9th Commonwealth Law Conference, Auckland 1990) 205.
- ⁴ See **M.M. Akanbi**, 'Domestic Commercial Arbitration in Nigeria: Problems and Challenges' (LAP Lambert Academic Publishing, Germany 2012) 32; Ephraim Akpata, *The Nigerian Arbitration Law in Focus* (West African Books Pub. Ltd., Lagos 1997) 11; Tinuade Oyekunle, 'New Options in Dispute Management' (1991) 4(15) GRBPL 104.
- ⁵ Elema Nosyрева, 'ADR as a Means of Access to Justice in the Russian Federation' (2003) 12(3) Pac. Rim L. & Pol'y J. 709.
- ⁶ In *A.Savoia Limited v A.O. Sonubi* [2000] 12 NWLR (Pt. 682) 539, 544, the enforcement of an arbitral award was not made possible until 15 years after delivery by the tribunal. In the case, Ogundare JSC, while lamenting the inadequacies of arbitration as a dispute resolution mechanism over litigation observed thus: '*it has always been thought that proceedings by way of arbitration is a quick way to resolution of dispute between contracting parties, when compared with the tardy proceedings of a law court. This case appears to cast doubt on the truism of this belief.*'
- ⁷ A.O. Sambo & **M.M. Akanbi**, 'Sulh as a form of Dispute Resolution' in Adnan Trakic (eds), *Islamic Banking & Finance: Principles, Instruments & Operations* (The Malaysian Current Law Journal Sdn Bhd, Malaysia 2012) 375. See *MISR Nigeria Ltd v Oyedele* (1966) NCLR 191, 194.
- ⁸ Because of its court like feature, arbitration is seen as the closest ADR to litigation.
- ⁹ The Law was enacted on March 14, 1988. See *Cap.19, LFN 2004*; Part 1 of the Act which contains Sections 1 to 36 covers domestic arbitration. Section 15(1) restricts the operation of Part 1 to the Arbitration Rules set out in the First Schedule to the Act; see Orojo and Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates, Lagos 1999) 166; Idornigie, 'Anchoring Commercial Arbitration on Fundamental Principles'

(2004) 23(1) Arbitrator and Mediator 65; Part 2, which contains sections 37 to 42, deals with conciliation in domestic proceedings.

¹⁰ The 1988 Arbitration Act derives from the following sources: (a) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (also known as the New York Convention) - Nigeria ratified the Convention on 17 March, 1970. The Convention constitutes the second schedule to the Arbitration Act.(b) The UNCITRAL Arbitration Rules - The Rules contained in the First Schedule to the Act, which applies to both domestic and international arbitration are by and large *ipsissima verba* of the UNCITRAL Arbitration Rules; See Akpata, *The Nigerian Arbitration Law in Focus* 6. (c) The UNCITRAL Model Law - The draft was finalised and adopted at the 18th session of UNCITRAL in June, 1985. Shortly after, a resolution of the General Assembly of the United Nations recommending the Model Law, to member states was adopted on December 11, 1985. the Model Law was drafted because of the need to liberalize international commercial arbitration by limiting the role of the national courts and allowing parties freedom to choose how their disputes should be determined.

¹¹ See generally, Julian D.M. Lew, Loukas A. Mistelis, Stefan M. Kröll, *Comparative International Commercial Arbitration* (Kluwer Law Int., Hague 2003) 71- 98.

¹² Kenneth Carlson, 'Theory of the Arbitration Process' (1952) 17 Law & Contemporary Problems 631,635.

¹³ **M.M. Akanbi**, 'Examining the effect of section 34 of the Arbitration and Conciliation Act of 1988 on the Jurisdiction of Courts in Nigeria', (2009) 2 NJPL 298; Horacio A. Grigera Naon, *Choice-Of-Law Problems in International Commercial Arbitration* (J.C.B. Mohr, Tübingen 1992)15; Amissah, 'Judicial Aspects of the Arbitral Process' (Paper presented at the Biennial IFCAI Conference, Geneva 1997) <<http://arbiter.wipo.int/events/conferences/1997/october/amissah.html>> accessed 10/10/14.

¹⁴ *Ogunwale v Syria Arab Republic* [2002] 19 WRN 149,162.

¹⁵ See South African Law Commission, 'Report on Domestic Arbitration' (Project 94, May 2001) 2; see also Chukwumerije, 'Judicial Supervision of Commercial Arbitration: The English Arbitration Act of 1966' (1999) 15(2) Arb Inter 171-173; Hunter, 'Judicial Assistance for the Arbitrator', in Lew (ed.)

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- Contemporary Problems in International Arbitration* (Queen Mary College, Centre for Commercial Law Studies, London 1986) 195; Asouzu, 'Arbitration and Judicial Power' in C.C. Nweze (ed), *Justice in the Judicial Process* 341, 368, 371; Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (4th ed., Sweet & Maxwell, London 2004) 328; Chukwudi Nwakoby Greg, 'The Courts and Arbitral Process in Nigeria' (2004) 4(1) *Unizik Law Journal* 20.
- ¹⁶ Arbitration (ordinance) Act 1914, *Cap. 13, LFN 1958*.
- ¹⁷ **M.M. Akanbi**, 'A Critical Assessment of the History and Law of Domestic Arbitration in Nigeria', in Oluduro (eds.) *Trends in Nigerian Law* (Constellation (Nig.) Pub., Ibadan 2007) 475; The high point was the case-stated procedure. See section 15 of the Arbitral (ordinance) Act, *Cap. 13, LFN 1958*, the section provides that 'any arbitrator or umpire may at any stage of the proceedings under reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the cause of the reference'; See Ajibola Bola, 'Nigeria' in Cotran and Amisssah (eds), *Arbitration in Africa* (Kluwer Law International, Hague 1996) 94.
- ¹⁸ See Asouzu, 'The Arbitration and Conciliation Decree (Cap 19) as a Legal Framework for Institutional Arbitration: Strengths and Pitfalls', (1995) 2 *Lawyers' Bi- Annual* 1.
- ¹⁹ *ibid*; see also Hermann, 'The UNCITRAL MODEL Law -Its Background, Salient Features and Purpose' (1985) 1 *Arb Int.* 15.
- ²⁰ See paras 62 and 63 of the UN Commission's Report (1985) on International Trade Law on the work of its 18th session' (1985) XVI UNCITRAL Yearbook 11; Law Commission of India, '176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001' (D.O. No. 6(3)(69)/ 2001 -LC(LS) <<http://lawcommissionofindia.nic.in/arb.pdf>> accessed 10/10/14; G. Herrmann, 'The UNCITRAL Model Law -Its Background, Salient Features and Purposes' 15.
- ²¹ See **M.M. Akanbi**, 'Domestic Commercial Arbitration in Nigeria: Problems and Challenges' 251; Asouzu, 'Arbitration and Judicial Power' in C.C. Nweze (ed), *Justice in the Judicial Process* 371, 372; Chukwudi Nwakoby Greg, 'The Courts and Arbitral Process in Nigeria' 20; Orojo and Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* 315.

22 Section 2.
23 Sections 4 and 5.
24 Section 7.
25 Section 23.
26 Section 29(1), (2) and (3).
27 Section 30.
28 Section 31(1).
29 Section 6 of the 1999 Constitution (as amended)
30 Section 36 of the 1999 Constitution (as amended)
31 Section 4(8) of the 1999 Constitution provides that: ‘Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law; see *Adigun v A.G. Oyo State* [1987] 1 NWLR 742.
32 The UN Commission in its Report acknowledged that a limitation of the authority of the courts in the arbitral proceedings might constitute an unwarranted interference in the prerogative of the judicial power, and might even be contrary to the Constitution in some States. See ‘Report of the United Nations Commission on International Trade Law on the work of its 18th session’, p. 11; see also Asouzu, ‘Arbitration and Judicial Power’ in C.C. Nweze (ed), *Justice in the Judicial Process*, p.375; Chukwumerije, ‘Judicial Supervision of Commercial Arbitration: The English Arbitration Act of 1966’ (1999) 15(2) Arb Int 174.
33 See section 8(3)(a) & (b).
34 Section 9(3) provides that ‘unless the arbitrator who has been challenged withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge’.
35 This is a deviation from Article 13 of the Model Law, which allows an aggrieved party the right to refer the decision of the tribunal to the court. See Art. 13(3) of the Model Law.
36 Commenting on a similar provision in the Indian Arbitration Act of 1996, the Report on the working of the Arbitration and Conciliation Act, 1996 No. 2 noted that the lack of a right of appeal may involve parties in waste of money by way of fees to

arbitrators and lawyers. See Law Commission of India, '176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001'.

37 He cannot seek relief under arbitration rules contained in Art 12 of the First schedule to the Act, because the provisions of the rules vest the decision on the challenge in the courts in the first instance contrary to the provisions of the Act and where any of the rules is in conflict with the provision of the Act, the provision of the Act prevails; see Art 1 of the First schedule to the 1988 Act; see also Orojo and Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* 137.

38 See Sunil Gupta, 'No Power to Remove a Biased Arbitrator under the New Arbitration Act of India' (2000) 17(4) JIA 127.

39 It is the legal fiction which empowers the arbitral tribunal to rule on its jurisdiction without necessarily waiting for a court to do so.

40 See Art. 13(3) and Art. 16(3) of the Model Law; Art. 13(3) provides for an immediate right of appeal against an interlocutory order of the arbitral tribunal. On the other hand, the purview of section 29(2) & (3) of the 1988 Arbitration Act, which deals with recourse against a domestic award is very restricted and does not admit of an appeal against the decision of the tribunal on jurisdiction to the courts.

41 See section 12; under the section the 1988 Arbitration Act makes the decision of a tribunal on jurisdiction final and binding on the parties without given the parties the opportunity to appeal the decision in court. Incidentally, Art.16 of the Model Law upon which the section is based makes the court the final decider on the issue of jurisdiction.

42 Alan Scott Rau, 'The Arbitrability Question Itself', (1999) 10 Am Rev. Int Arb 287, 370.

43 Akpata, *The Nigerian Arbitration Law in Focus*, 42; Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (4th ed, Sweet & Maxwell, London 2004) 252.

44 Steven C. Barnett, 'The Developing American Approach to Arbitrability' (2003) 58 (1) Dispute Resolution Journal 15.

45 *ibid*; See South African Law Commission, 'Report on Domestic Arbitration' (Project 94, May 2001) 16.

46 Ezejiolor Gaius, 'Appointment of an Arbitrator under the Nigerian Law: The Procedure and Power of an Appointing Authority –

Nigerian Paper Mills Ltd. v Pithawalla Engineering GMBH (1995) 7 RADIC 668; Asouzu (relying on *Adigun v A.G. Oyo State* (1987] 2 NWLR (Pt. 50) 197, 235), also argues that the inherent powers of the court cannot be taken away by the provisions of section 34 of the 1988 Arbitration Act and that such provisions conflicts with the exercise of the judicial power of the court. See Asouzu, 'Arbitration and Judicial Power' in C.C. Nweze (ed), *Justice in the Judicial Process* 375; see also Ezike Edwin Obimma, 'The Validity of Section 34 of the Nigerian Arbitration and Conciliation Act' (2000- 2001) 8 Nig.J.R. 148.

⁴⁷ **M.M. Akanbi**, 'Domestic Commercial Arbitration in Nigeria: Problems and Challenges' (PhD Thesis, Kings College London 2006) 238 – 239.

⁴⁸ See sections 29 and 30; see also *Punjab Elect. Board v Indane Ltd.* 2000 (1) Pun L.R.4 , wherein the court in Punjab, reacting to a similar situation under the Indian Arbitration Act, held that a writ of petition challenging the appointment of an arbitrator was not maintainable in view of the procedure under the Act.

⁴⁹ Chukwumerije, 'Judicial Supervision of Commercial Arbitration: The English Arbitration Act of 1966' (1999) 15 (2) Arb Intl 176; Lew *et al* also notes that once an issue is governed by the relevant arbitration law, it is no longer possible to rely on general residual powers claimed by the courts. See Lew *et al*, *Comparative International Commercial Arbitration* (Kluwer Law Int., Hague 2003) 359; see *Channel Tunnel Group Ltd v Balfour Beatty* [1993] AC 334.

⁵⁰ *Anaekwe v C.O.P* [1995] 6 NWLR (Pt. 403) 564, 578; *Tukur v Government of Gongola State* [1989] 4 NWLR (Pt. 117) 517, 554.

⁵¹ *ibid*; **M.M. Akanbi**, 'Examining the effect of section 34 of the Arbitration and Conciliation Act of 1988 on the Jurisdiction of Courts in Nigeria' 305 - 306; see also the cases of *A.G.Bendel State v Aideyan* [1989] 4 NWLR (Pt. 118) 646; *Bronik Motors Ltd v Wema Bank Ltd* (1983) 6 S.C 158.

⁵² Scott Bomhof, 'The Court's Inherent Jurisdiction- What are the Limits?' (2003) 15(5) Commercial Insolvency Reporter 2.

⁵³ See *Odofin v Agu* [1992] 3 NWLR (Pt. 229) 350; see also Chukwumerije, 'Judicial Supervision of Commercial Arbitration: The English Arbitration Act of 1966', p.176; Under the old 1914 Act, the intervention of the court was not expressly circumscribed,

thus where an issue is not covered by the law, the court could intervene by virtue of its residual power.

54 *Iffie v A.G. Bendel* [1987] 4 NWLR (Pt. 67) 972, 993; see section 36 of the 1999 Constitution.

55 See section 36(1), which is a restatement of the rule of natural justice; see also *Kalu v Odili* [1992] 5 NWLR (Pt. 240) 188.

56 See section 6(6)(b) of the Constitution; *Anaekwe v C.O.P* [1995] 6 NWLR (Pt. 403) 564, 576.

57 *Lekwot v Judicial Tribunal* [1993] 2 NWLR (Pt. 276) 447.

58 Strict construction against the person relying on the power of deprivation; see generally the cases of *Bello v The Diocesan Synod of Lagos* (1973) 3 SC 103; *Bendex Eng. v Efficient Pet. (Nig.)* [2001] 8 NWLR (Pt.715) 333, 349; *Ereku v Military Gov. Mid-Western State* (1974) 10 SC 59; *Peenok Investments Ltd v Hotel Presidential Ltd* (1982) 12 SC 1, 25-26; *Din v A.G. Fed.* [1988] 4 NWLR (Pt.87) 147, 184- 185.

59 **M.M. Akanbi**, ‘Examining the effect of section 34 of the Arbitration and Conciliation Act of 1988 on the Jurisdiction of Courts in Nigeria’ 306 – 307.

60 The situations under which the courts can appoint arbitrators are: (a) where no procedure for appointing an arbitrator is specified in the parties’ agreement and the parties and /or arbitrators fail to reach a consensus in the choice of the arbitrators; or (b) where a procedure is specified in the parties’ agreement but there is a default on the part of one of the parties or a third party to act or the parties and/or the arbitrators fail to reach a consensus under the procedure See sections 7 (2),(3) & (4) and 57(1); see also *Bendex Eng. v Efficient Pet. (Nig.)* [2001] 8 NWLR (Pt.715) 358.

61 [2002] 19 W.R.N 149; see also *Bendex Eng. v Efficient Pet. (Nig.)* [2001] 8 NWLR (Pt.715) 333.

62 See section 241(1)(d) of the 1999 Constitution , which allows parties to appeal as of right from the final decision of the Federal High Court or a State High Court sitting at first instance to the Court of Appeal.

63 See *Yusuf v Egbe* [1987] 2 NWLR (Pt. 56) 341.

64 Alex Izinyon, ‘The Law and Practice of Arbitration and Conciliation in Nigeria –An Assessment’ (Ph.D. Thesis, University of Uyo 2003) 145.

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- ⁶⁵ **M.M. Akanbi**, ‘Examining the effect of section 34 of the Arbitration and Conciliation Act of 1988 on the Jurisdiction of Courts in Nigeria’ 308.
- ⁶⁶ [2002] 19 W.R.N 164; see also *Nigeria Agip & Co. Ltd v Kemmar & Sons* [2001] 8 NWLR (Pt. 716) 506, wherein the Port Harcourt division of the Court of Appeal, also noted that on the basis of section 241 of the 1999 Constitution, which provides for appeals as of right from the decisions of the High Courts to the Court of Appeal, the decision of a High Court appointing an arbitrator is appealable.
- ⁶⁷ Chukwudi Nwakoby Greg, ‘The Courts and Arbitral Process in Nigeria’ 31.
- ⁶⁸ Section 1(3) of the 1999 Constitution of Nigeria.
- ⁶⁹ See section 1(3) of the 1999 Constitution, which provides that ‘if any other law is inconsistent with the provisions of this Constitution. This Constitution shall prevail, and that other law shall to the extent of the inconsistency be void’. See *Barclays Bank of Nigeria Ltd v Central Bank of Nigeria* (1976) 6 S.C.175; *F.C.D.A v Sule* (1994) 3 NWLR (Pt.332) 257; *Garba v F.C.S.C* (1988) 1 NWLR (Pt.71) 449; *The Miscellaneous Offences Tribunal v Okoroafor* [2001] 18 NWLR (Pt.745) 328,329; *University of Ibadan v Adamolekun* (1967) 1 ALL NLR (Pt.1) 213.
- ⁷⁰ See section 17(4) & 18(5) of the English Arbitration Act 1996; see Idornigie, ‘The Legal Regime of International Commercial Arbitration’ (PhD Thesis, University of Jos 2002) 167; Idornigie, ‘The Default Procedure in the Appointment of Arbitrators: is the Decision of the Court Appealable?’ (2002) 68(4) Arbitration 402; **M.M. Akanbi**, ‘Examining the effect of section 34 of the Arbitration and Conciliation Act of 1988 on the Jurisdiction of Courts in Nigeria’ 308.
- ⁷¹ See the Constitution (Suspension and Modification) Decree No. 1 of 1984, *Cap. 64 LFN 1990* and Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984, *Cap. 37, LFN 1990*.
- ⁷² **M.M. Akanbi**, ‘Nigeria’s Commercial History – Quo Vadis Domestic Commercial Arbitration?’ in Kupolati (ed.), *Current Issues in Nigerian Jurisprudence* (Renaissance Law Pub. Ltd., Lagos 2007) 44.

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- ⁷² In 1990, the Military government changed the decrees into Acts which were collated as the Laws of the Federation 1990. As a result, it was argued without success that the military laws being Acts and no longer Decrees could not be superior to the Constitution. See generally the case of *Lekwot v Judicial Tribunal* [1993] 2 NWLR (Pt. 276) 410.
- ⁷⁴ See section 1(1) of the 1999 Constitution; see also *Adediran v Interland Transport Ltd* [1991] 9 NWLR (Pt. 214) 155, 179; *Kalu v Odili* [1992] 5 NWLR (Pt. 240) 130,188.
- ⁷⁵ Chukwudi Nwakoby Greg, 'The Courts and Arbitral Process in Nigeria' (2004) 4(1) *Unizik Law Journal* 20.
- ⁷⁶ Most countries that have adopted the Model Law have been careful not to allow Article 5 (section 34 of the 1988 Arbitration Act) work injustice. This has been achieved by ensuring that the courts have the last say regarding the decisions of the arbitral tribunal concerning the challenge of arbitrators. See section 1037(3) of German Code of Civil Procedure.
- ⁷⁷ A.I. Chukwuemerie, *Studies and Materials in International Commercial Arbitration* (Lawhouse Books, Portharcourt, 2002) 139.
- ⁷⁸ Kim Lovegrove, 'Arbitration Explained Along with its Strengths & Weaknesses', (2012) LovegroveSolicitors, <http://www.lsclawyers.com.au/elibrary/arbitration> accessed 10/10/14.
- ⁷⁹ **M.M. Akanbi**, 'Appointment of Arbitrators: Law and Practice' (2001) 5 (1) *NLPJ* 26.
- ⁸⁰ **M.M. Akanbi**, 'Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations' (2012) 78 (4) *Arbitration* 329.
- ⁸¹ See Justice Lander, 'The Perception of the Courts to the Role of Arbitration in Dispute Resolution Process' [1995] 11 *The Arbitrator* 167
- ⁸² Peter Megens and Beth Cubitt, 'Meeting Disputants' Needs in the Current Climate: What Has Gone Wrong With Arbitration and How Can We Repair it?' (2009) 28 (1) *The Arbitrator & Mediator* 115.
- ⁸³ *ibid.*

⁸⁴ **M.M. Akanbi**, ‘Domestic Commercial Arbitration in Nigeria: Problems and Challenges’ 306.

⁸⁵ David W. Butler & Eyvind Finsen, ‘South Africa’, in Cotran and Amisshah (eds.), *Arbitration in Africa* 215.

⁸⁶ Charles S. Haight, Jr, ‘Arbitration and the Courts: Some Recent American Cases’, <<http://www.smany.org/congress/haight.html>> accessed 10/10/14.

⁸⁷ Peter Megens and Beth Cubitt, ‘Meeting Disputants’ Needs in the Current Climate: What Has Gone Wrong With Arbitration and How Can We Repair it?’ 120.

⁸⁸ Austin Amisshah, ‘Judicial Aspects of the Arbitral Process’.

⁸⁹ David W. Butler & Eyvind Finsen, ‘South Africa’, in Cotran and Amisshah (eds.), *Arbitration in Africa* 215.

⁹⁰ *ibid* 218.

⁹¹ Austin Amisshah, ‘Judicial Aspect of the Arbitral Process’.

⁹² Chief Justice Spigelman, ‘Commercial Litigation and Arbitration: New Challenges’ (Paper presented at the First Indo– Australian Legal Forum, New Delhi, 9 October 2007).

⁹³ Alain Frécon, ‘Delaying Tactics in Arbitration’, (2004/2005) 59(4) *Dispute Resolution Journal* 46.

⁹⁴ **M.M. Akanbi**, ‘Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations’ 330.

⁹⁵ **M.M. Akanbi**, ‘The Role Performance of the Lawyer and the Judge in the Administration of Justice in the Society’ in Akanbi (ed), *The Judiciary and the Challenges of Justice* (Patroni Books, Lagos 1996) 132.

⁹⁶ Alain Frécon, ‘Delaying Tactics in Arbitration’ 46.

⁹⁷ **M.M. Akanbi**, ‘Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations’ 331; Justice Mason, ‘Changing Attitudes in the Common Law’s Response to International Commercial Arbitration’ (Paper presented at the International Conference on International Commercial Arbitration, Sydney, 9 March 1999).

⁹⁸ Peter Megens and Beth Cubitt, ‘Meeting Disputants’ Needs in the Current Climate: What Has Gone Wrong With Arbitration and How Can We Repair it?’ 134.

⁹⁹ Currently there are over 1739 trained arbitrators registered with the Nigerian Branch of the Chartered Institute of Arbitrators. The

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- membership ranges from Associate membership to Fellowship. See <http://www.ciarbnigeria.org/pages/about-ciarb.php> accessed on 10/10/14. Some other dispute resolution bodies have also sprung up to offer training in ADR.
- ¹⁰⁰ See Order 25 of the High Court of Lagos State (Civil Procedure) Rules 2004; Order 33 of the High Court of Kwara State (Civil Procedure) Rules 2005; Order 33 of High Court of FCT Abuja (Civil Procedure) Rules 2004; see also Ajie Carol, 'Nigeria: Comparing the Lagos, Abuja and Kwara State Civil Procedure Rules (II)', *Thisday Newspaper (Nigerian 10 October 2005)* < <http://allafrica.com/stories/200510110785.html>> accessed on 10/10/14; Lagos State has even gone further by introducing commercial divisions in the courts and also establishing a Court connected ADR centre in order to ensure the speedy resolution of matters.
- ¹⁰¹ David W. Butler & Eyvind Finsen, 'South Africa' in Cotran and Amisshah (eds), *Arbitration in Africa* 219.
- ¹⁰² **M.M. Akanbi**, 'Examining the concept of Arbitrability under Nigerian Domestic Arbitration Laws' (2005) 3 (1) *Nigerian Bar Journal* 109; Carbonneau & Janson, 'Cartesian Logic and Frontier Politics: French and American Concepts of Arbitrability Essay' (1994) 2 *Tul J Int'l & Comp L*. 194.
- ¹⁰³ See G.C. Moss; "Arbitrability of Disputes Regarding Petroleum Investments in Russia and the Validity of an International Arbitral Award" *TDM* 1 (2005), www.transnational-dispute-management.com URL: www.transnational-dispute-management.com/article.asp?key=353 accessed 10/10/14
- ¹⁰⁴ *ibid.*
- ¹⁰⁵ Asouzu, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (PhD Thesis, LSE, University of London 1996)198; Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' in Chukwuemerie (ed), *Studies & Materials in International Commercial Arbitration* 114; O.P. Malhotra, 'The Scope of Public Policy under the Indian Arbitration and Conciliation Act 1996' 36, 37.
- ¹⁰⁶ [1999] 4NWLR (Pt.600) 611.

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- ¹⁰⁷ Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' in Chukwuemerie (ed), *Studies & Materials in International Commercial Arbitration* in Chukwuemerie (ed), *Studies & Materials in International Commercial Arbitration* (Lawhouse Books, Port Harcourt 2002) 120.
- ¹⁰⁸ O.P. Malhotra, 'The Scope of Public Policy under the Indian Arbitration and Conciliation Act 1996' 36; Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' 120.
- ¹⁰⁹ See Lew *et al*, *Comparative International Commercial Arbitration* 188; Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' 120.
- ¹¹⁰ O.P. Malhotra, 'The Scope of Public Policy under the Indian Arbitration and Conciliation Act 1996' (2005) 71(1) *Arbitration* 36.
- ¹¹¹ Lew *et al*, *Comparative International Commercial Arbitration* 199; Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' in Chukwuemerie (ed), *Studies & Materials in International Commercial Arbitration* 115.
- ¹¹² On the different formulations used by the legislature of various countries to delimit the field of arbitration see generally, Lew *et al*, *Comparative International Commercial Arbitration* 187-221; Mauro Robino- Sammartano, *International Arbitration Law and Practice* (2nd Ed, Kluwer Law Int., Hague 2001) 173.
- ¹¹³ See for example, the Nigerian Trade Dispute Act, *Cap. 432, LFN 2004*.
- ¹¹⁴ Carbonneau & Janson, 'Cartesian Logic and Frontier Politics: French and American Concepts of Arbitrability Essay' 195, 196.
- ¹¹⁵ See **M.M. Akanbi**, 'Examining the concept of Arbitrability under Nigerian Domestic Arbitration Laws' 112; Sornarajah, 'The UNCITRAL Model Law: A Third World Viewpoint' (1989) *JIA* 7,16; it is should be pointed out that the courts in the United States of America have been very liberal on the kind of disputes that may be referred to arbitration, an example is the case of *Moses H. Cone Memorial Hospital v Mercury Construction. Corp.* 460,U.S. 24, 25 (1983), therein the Supreme Court held that any doubts concerning the scope of arbitrable issues should be resolved in favour of arbitration.

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- ¹¹⁶ [1998] 10 NWLR (Pt. 568) 116; see also *Kano State Urban Development Board v Fanz Construction Ltd.* [1990] 4 NWLR (Pt. 142) 32, 33.
- ¹¹⁷ *2 Halsbury's Laws of England* (4th ed., Butterworths, London) 503.
- ¹¹⁸ [1998] 10 NWLR (Pt. 568) 116; see Idornigie, 'Nigerian Telecommunications Plc v Pentascope International BV Private Lad: Separability circumscribed by Arbitrability' (2005) 71(4) Arbitration 373.
- ¹¹⁹ See Article 1(5) of the Model Law; Lew *et al*, *Comparative International Commercial Arbitration* 200.
- ¹²⁰ It is important to point out that the ACA 1988 applies only to disputes arising from commercial transactions only. See section 57: under the Interpretation clause, the Act delimits the definition of arbitration to mean a commercial arbitration whether or not administered by a permanent arbitral institution. In addition the term 'commercial' has also been limited to mean all relationships of a commercial nature including any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail, or road. By simple logic therefore, disputes arising from non-commercial transactions cannot be matters for arbitration under the ACA 1988.
- ¹²¹ **M.M. Akanbi**, 'The Nigerian Arbitration Act 1988 s.58 and the Doctrine of covering the Field: *C.G. de Geophysique v Etuk*' (2006) 72 (3) Arbitration 286;
- ¹²² See Asouzu, 'Arbitration and Judicial Power' in C.C. Nweze (ed), *Justice in the Judicial Process* 356; Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' 114; Idornigie, 'The Principle of Arbitrability in Nigeria Revisited' (2004) 21(3) JIA 279.
- ¹²³ Chukwuemerie, 'Public Policy and Arbitrability under the UNCITRAL Model Law' 124.
- ¹²⁴ Copyrights Act 1988, *Cap.68, LFN 2004*.

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- ¹²⁵ Chukwuemerie, ‘Public Policy and Arbitrability under the UNCITRAL Model Law’ 124.
- ¹²⁶ **M.M. Akanbi**, ‘Examining the concept of Arbitrability under Nigerian Domestic Arbitration Laws’ 118.
- ¹²⁷ Under the then 1979 Constitution, section 236(1), granted the State High Courts unlimited jurisdiction in respect of all civil and criminal proceedings. At the same time section 230, which conferred jurisdiction on the Federal High Court did not grant exclusive jurisdiction to the court in matter within its jurisdiction, instead the law granting exclusive jurisdiction to the Federal High Court was contained in sections 7 and 8 of the Federal High Court Act 1973. This situation generated lot of problems regarding whether the provisions of the Federal High Court Act could override a constitutional provision. See generally the cases of *Bronik Motors Ltd & Anor. v Wema Bank Ltd* (1983) 6 S.C 158; *Jammal Steel Structures Ltd v ACB Ltd* (1973) 1 All N.L.R. (Pt II) 208; *Mokelu v Federal Commissioner for Works & Housing* (1976) 3 S.C. 35; *Savannah Bank of Nigeria Ltd v Pan Atlantic and Transport Agencies Ltd* [1987] 1 NWLR (Pt. 49) 212; *Skenconsult (Nig) Ltd & Anor v Godwin Sekondy Ukey* (1981) 1S.C. 1. As a result of these problems, the then military regime by virtue of the Constitution (Suspension and Modification) Decree and Federal Military Government (Supremacy and Enforcement of Powers) Decree Nos. 1 and 13 of 1984 (now Caps. 64 and 137 of the *Laws of the Federation of Nigeria 1990*), enacted various decrees (now Acts) granting exclusive jurisdiction to the Federal High Court in respect of certain subject matters like copyrights, trademarks, patents etc. It is worth noting that the 1999 Constitution, has resolved this problem by delimiting the jurisdiction of the State High which was hitherto unlimited. See sections 272 and 251 of the 1999 Constitution.
- ¹²⁸ See section 251 of the 1999 Constitution.
- ¹²⁹ Asouzu, *and African States: Practice, Participation and Institutional Development* 155.
- ¹³⁰ See also Idornigie, ‘The Principle of Arbitrability in Nigeria Revisited’ 283.
- ¹³¹ **M.M. Akanbi**, ‘Examining the concept of Arbitrability under Nigerian Domestic Arbitration Laws’ 125.

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- 132 See *United World Ltd. Inc v M.T.S. Ltd* [1998] 10 NWLR (Pt. 568) 116; *Kano State Urban Development Board v Fanz Construction Co.* [1990] 4 NWLR (Pt. 142) 32, 33.
- 133 *ibid.*
- 134 Carbonneau & Janson, 'Cartesian Logic and Frontier Politics: French and American Concepts of Arbitrability Essay' 196.
- 135 Companies and Allied Matters Act, 1990, *Cap.59, LFN 2004.*
- 136 *Re Sky Datamann (Hong Kong) Ltd.* [2002] 1 HKLRD A1, A8.
- 137 In Nigeria, the relevant court is the Federal High Court.
- 138 See section 407(1) of the Companies and Allied Matters Act 1990, *Cap. 59, LFN 2004*; See *Joe Jakpa v City Commercial and Industrial Enterprise Ltd* [Suit No. FHC/L/M10/91, July 7, 1992, (unreported)], therein the Federal High Court noted that by virtue of section 407 of the Companies and Allied Matters Act and Rule 3 of the Winding up Procedure Rules made under the Act, winding up proceedings was no longer an issue for arbitration.
- 139 (2d Cir. 11/1/99).
- 140 *ibid.*
- 141 Sidley & Austin, 'Alternative Dispute Resolution Developments' (ADR Newsletter 1999) <<http://www.sidley.com/news/pub.asp?PubID=1159174212000>> accessed on 21/12/05.
- 142 Rodzi Harun, 'Winding up a Company' in Malaysian Company Law for Everyone, <<http://members.tripod.com/~syarikat/essential11.html>> 10/10/14.
- 143 See Sections 50 -56, 67(1) of the Trademark Act 1965, *Cap. 436, LFN 2004.*
- 144 See section 26 of the Patent and Designs Act 1970, *Cap. 344, LFN 2004.*
- 145 Copyrights Act 1988, *Cap.68, LFN 2004.*
- 146 Redfern and Hunter, *Law and Practice of International Commercial Arbitration* 139; Pieter Sanders, *Quo Vadis Arbitration?* p.165.
- 147 Act No. 59 of 1991, *Cap.59 LFN 2004.*
- 148 Adewale Olawoyin, 'Form Selection Disputes under Bills of Lading in Nigeria: a Historical and Contemporary Perspective (2004- 2005) 29 (1) Tul. Mar. L.J. 282.
- 149 See generally **M.M. Akanbi**, 'Examining the concept of Arbitrability under Nigerian Domestic Arbitration Laws' 122 -

125; A. A. Olawoyin, 'Forum Selection Disputes under Bills of Lading in Nigeria: a Historical and Contemporary Perspective (2004- 2005) 29 (1) Tul. Mar. L.J. 282; A. A. Olawoyin, Safeguarding Arbitral Integrity in Nigeria: Potential conflict between Legislative Policies and Foreign Arbitration clauses in Bills of Lading, *The American Review of International Arbitration*, 2006 Vol. 17 No. 2, 239; C. A Obiozor, 'Does an Arbitration clause or Agreement oust the Jurisdiction of the Courts? A Review of the case of the *M.V. Panormos Bay v. Olam (NIG) PLC*. Nigerian Bar Journal vol. 6, No. 1 July 2010, 165; A. A. Taiwo, 'The Effect of Section 20 of the Admiralty Jurisdiction Act No. 59 of 1991 on International Arbitration Clauses', (2006) 1 UILJ 1.

150 [2010] 2 NWLR (Part 1179) 531.

151 (1993 – 1995) NSSC 182.

152 *ibid* 200.

153 [2004] 5 NWLR (Pt. 865) 1

154 [2006] 2 NWLR (Pt. 963) 49, 73 & 74.

155 *ibid* 13.

156 International arbitration is not the focus of this work

157 Even then it should not be forgotten that Nigeria being a signatory to the New York convention is under an international obligation to recognise and enforce such an agreement to submit to arbitration; see section 54 and Art 11 of the second schedule to the 1988 Arbitration Act. Art. V of the schedule provides for situations where recognition and enforcement of the award may be refused. See particularly Art. V (2) (a) & (b).

158 C. A. Obiozor, 'Does an Arbitration clause or Agreement oust the Jurisdiction of the Courts? A Review of the case of the *M.V. Panormos Bay v. Olam (NIG) PLC*. 167.

159 See Adesegun Akin- Olugbade, 'Nigerian Courts and Forum Selection Clauses in Private International Contracts' (1990) 5 J. Int'L Banking L. 159,166; Adewale Olawoyin, 'Forum Selection Disputes under Bills of Lading in Nigeria: a Historical and Contemporary Perspective 280.

160 *Scott v Avery* (1856) 5 H.L.C.811.

161 This principle has also been upheld in a long line of cases in Nigeria which includes *Confidence Insurance Ltd v Trustees of O.S.C.E* [1999] 2NWLR (Pt. 591) 386; *O.S.H.C. v Ogunsola* [2000] 14 NWLR (Pt. 687) 444; *Oyedele v New India Assurance*

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- 162 *Co. Ltd* (1969) (3) A.L.R. Comm. 200; *BSG Energy Ltd. v. Spears*
[2013] All FWLR (Pt. 694), 105 @ 127- 130.
- 163 See sections 4 and 5 of the Act.
- 164 [2003] 15 NWLR (Pt. 844) 469.
- 165 While commenting on a similar situation a High Court of Tanzania
in *Motokov v Auto Garage Ltd & Ors* (1969) 1 ALR 401, 404, held
inter alia, that even if there has been a submission to a foreign
arbitrator, that could not of itself constitute an ouster of the
jurisdiction of the court to make the clause invalid.
- 166 A. A. Olawoyin, 'Safeguarding Arbitral Integrity in Nigeria:
Potential conflict between Legislative Policies and Foreign
Arbitration clauses in Bills of Lading' 255
- 167 *ibid.* 246
- 168 See *Onward Enterprises Limited v. MV "Matrix" and Ors* [2010]
2 NWLR (Part 1179) 531 @ 556.
- 169 Fonts in bold for emphasis.
- 170 *ibid.*
- 171 Interestingly the provisions of section 10(1)(a) also allows for the
enforcement of a foreign jurisdiction clause in deserving cases.
- 172 A. A. Olawoyin, 'Safeguarding Arbitral Integrity in Nigeria:
Potential conflict between Legislative Policies and Foreign
Arbitration clauses in Bills of Lading' 256
- 173 **M.M. Akanbi**, 'Examining the concept of Arbitrability under
Nigerian Domestic Arbitration Laws' 125.
- 174 *ibid.*
- 175 **Matrix Solicitors**, 'Admiralty Jurisdiction, Beneficial Ownership of
Vessels, Arrest of Vessels & Cabotage Act' (Legal Newsletter,
August 2003)
<<http://www.internationallawoffice.com/Newsletters/Detail.aspx?r=7197>> accessed on 10/10/14.
- 176 *ibid*; Aluko & Oyeboode, 'Are "Foreign" Maritime Arbitration
Clauses Valid in Nigiera?' (Newsletter 1(2) 2004) <
<http://www.alukooyebode.com/shipping-revJul04.asp#casereview>>
accessed on 19/12/05; Adewale Olawoyin, 'Form Selection
Disputes under Bills of Lading in Nigeria: A Historical and
Contemporary Perspective' 279.
- 177 *Cap. 432, LFN 2004*. See **M.M. Akanbi**, 'Trade Dispute Laws in
Nigeria' in Egbewole (ed.) *Readings in Jurisprudence &*

International Law (Department of Juris & International Law, Ilorin 2004) 122.

¹⁷⁷ Note that section 11 of the Trade Disputes Act expressly prohibits the application of the ACA 1988 to any proceedings of an arbitral tribunal constituted under the Act.

¹⁷⁸ See Orojo and Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* 121.

¹⁷⁹ Nwakoby & Anyogu, 'Institutionalising Alternative Dispute Resolution Mechanism in the Nigerian Legal System' (2004) 4(1) *Unizik Law Journal* 155.

¹⁸⁰ Adebajo, I.A, 'Alternative Dispute Resolution: Its Meaning, Development Abroad and Prospect in Nigeria' (1993) 4(1-2) *NBLJ* 32.

¹⁸¹ See **M.M. Akanbi** et al, 'Public-Private Partnership Initiative in Nigeria and Its Dispute Resolution Mechanism: An Appraisal', (2013) 40 *Journal of Malaysian and Comparative Law* 80.

¹⁸² Happily some States within the federation including Lagos, Kwara and Abuja have made substantial improvements in their High Court Civil Procedure Rules.

¹⁸³ Idornigie, 'The Doctrine of Case Management: Lessons from other Jurisdictions' (2001) 6(2) *MILBQ* 1

¹⁸⁴ *C.G. de Geophysique v. Etuk* [2004] 1 *NWLR* (Pt. 853) 20, 54.

¹⁸⁵ Leggat, J in *Arab African Energy Corp Ltd v Olieprodukten Nederland B.V.* [1983] 2 *Lloyd's Rep.*419, 423.

¹⁸⁶ The branch unanimously elected me their chairman between the period of 2007 and 2009.

¹⁸⁷ Upon my appointment as professor, the FIDA Kwara branch appointed me as one of their patrons.