



Current Arbitration Landscape in Africa: Through the cases

The Nigerian Position

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The paramount factors influencing the parties' choice of an arbitral seat all relate to the formal legal infrastructure:

Track record of enforcing arbitration agreements & arbitral awards.

65% of respondents to the 2015 QM survey chose arbitration due to the enforceability of Awards

Neutrality & impartiality of the local legal system.

64% of respondents to the 2015 QM survey chose arbitration to avoid specific legal systems/national courts

Modern National Arbitration Law.

Nigeria enacted the Arbitration and Mediation Act on 26 May 2023

Source: Queen Mary University of London, '2015 International Arbitration Survey: Improvements and Innovations in International Arbitration'

*Do Nigerian
Court decisions
align with these
expectations?*



Enforcing Arbitration Agreements



Policy Statement from the Honourable Chief Justice of Nigeria – 26 May 2017.

Criticism of courts accepting cases that ignore existing arbitration agreements.

Instructions for Practice Directions:

- Courts should not entertain actions on contracts with arbitration clauses without enforcing those clauses.
- Courts to decline jurisdiction and impose substantial costs on parties bypassing arbitration agreements.
- Parties initiating court actions without invoking arbitration clauses considered in breach of contract.

Enforcing Arbitration Agreements

Fidelity Bank Plc. v. Jimmy Rose Co. Ltd. (2012) 6 CLRN 82

The essential prerequisite is that the arbitration agreement must be precise and unequivocal.

The court will find the agreement to be unequivocal if the words used are neither permissive nor discretionary.



Frontier Oil Limited v. M.E.M. Oil Nigeria Ltd. (2005) 2 CLRN 148

The Courts have inherent jurisdiction to decide disputes between parties.

But when the parties opt for arbitration, the Courts will always respect such agreements and decline jurisdiction.

Broderick Bozimo & Company Analysis of Arbitration Related Cases

On average, Nigerian courts stayed proceedings in favour of arbitration in 45.5% of cases. [Context: the most common reason for the court refusing stay was that the parties had taken steps in the litigation.]



Enforcing Arbitration Awards

NNPC v. Fung Tai Eng. Co. Ltd. (2023) 15 NWLR (Pt. 1906)
117

It must be remembered that the law is that, save in recognized circumstances, the resolution/decision by an Arbitral Tribunal over a dispute referred to it by the parties, the award made is effectual, complete, conclusive, final and binding on the parties and none of them would be allowed to object to or challenge it subsequently simply on the ground that it was not in its favour.



Enforcing Arbitration Awards

Arbico Nigeria Limited v. Nigeria Machine Tools Limited
(2002) 15 NWLR (Pt. 789) 1



The Court in spite of its wide power [...] has to show reluctance to interfere with the Arbitrator's jurisdiction as the Sole Judge of the Law and Facts [...]

Guinness Nig. Plc. v. NIBOL Properties Ltd (2015) 5 CLRN 65

[...] the evidential burden on Guinness [to have the Award set aside] must necessarily be a strident one [...] it is a high hurdle, indeed, to be scaled, for Guinness to get the regular Court to ignore the contractual, consensual and Arbitral Forum elected by the Parties; elongate the more summary and timely Arbitral experience; and interfere with, subvert and substitute the Arbitrator's Jurisdiction as the Sole Judge of Law or Fact."

Enforcing Arbitration Awards

UBA Plc v. Triident Consulting Ltd. (2023) 14 NWLR (Pt. 1903) 95

An arbitrator or an arbitral panel is not imbued with the powers to answer legal questions. [Context: the court made this statement regarding a claim for common law defamation.]

Broderick Bozimo & Company Analysis of Arbitration Related Cases

Enforcement proceedings take an average of 2 years at the High Court, 3 years and 1 month at the Court of Appeal, and 3 years and 9 months at the Supreme Court.



Enforcing Arbitration Awards

Broderick Bozimo & Company Analysis of Arbitration Related Cases

The average enforcement rate of arbitration awards before Nigerian courts is 83.5%.



Legislation and Proposed Constitutional Amendments

- ▶ The Arbitration and Mediation Act 2023 has introduced the Arbitration Proceedings Rules to fast-track arbitration related cases in the High Court and Appellate Courts.
- ▶ There is a proposed Constitutional amendment to give the Court of Appeal original jurisdiction regarding challenge and enforcement proceedings.

Judicial Non-Interference



Statoil Nigeria Limited v. NNPC (2013) 7 CLRN 72

[...] the issuance of [an] ex parte interim injunction does not fall under the exceptions to Section 34 of the Arbitration [and Conciliation] Act.

[...] Where there is no provision for intervention, this should not be done. The learned trial judge of the lower court acted outside the jurisdiction conferred on him by granting the ex parte interim order."

Nigerian Agip Exploration Limited v. NNPC (2014) 6 CLRN 150

I have scanned the entire pages of the Arbitration and Conciliation Act ... but I am unable to find the Section that [allows the Court to grant] ex parte interim or interlocutory injunctions ... to restrain arbitral proceedings taking place or continuing to finality.

Enforcing Arbitration Awards



SPDCN Ltd. v. CINR Ltd. (2016) 9 NWLR (Pt. 1517) 300 – the Court issued an anti-arbitration injunction regarding a London-seated arbitration.

Section 34 of the Arbitration [and Conciliation] Act is only applicable to matters ‘governed by the Act’ so that if it is found in any proceeding, that the particular facts and circumstances do not come within the purview of the Act, the provisions of Section 34 cannot apply with full force.



Arbitration and Mediation Act 2023

Section 1(7) of the AMA states the extent to which Nigerian courts will intervene to assist a foreign-seated arbitration. The section does not include anti-arbitration injunctions, aligning with the Court of Appeal decisions in ***Statoil Nigeria Limited v. NNPC*** and ***Nigerian Agip Exploration Limited v. NNPC***.

Thank you for listening

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