THE EFFECTS OF INTERNATIONAL COMMERCIAL ARBITRATION ONNIGERIA'S NATIONAL INTEREST: A VIEWPOINT FROM THE CRUDE OIL SECTOR

Kingston, Kato Gogo[1] and Nnadozie, Eric Chi[2]

Abstract

Commerce is the life-blood of a nation. In Nigeria, oil and gas are the oxygen and life-blood that runs through the arteries and veins of the country. They are the mainstay of the economy and are sine-qua-non to the national interest. It is also trite that the bulk of foreign direct investments in Nigeria are within the sphere of oil and gas. Consequently, most of the disputes arising from the crude oil sector of the economy are rarely resolved through international arbitration. In the light of this, and for ease of access, user friendly and cost effective terms for dispute resolution, the international community graciously designated Lagos as the centre for international commercial arbitration for the West African sub-region. Sequel to this, Nigeria accepted, acceded to and or ratified all and every international protocols, conventions and rules pertaining to international commercial arbitration. Judgments from Nigerian courts as well as awards from arbitral tribunals in Nigeria are as good as those of any other civilized anglophone country in the world. Ridiculously, when the comity of nations in their wisdom, gratuitously made Lagos the centre for international commercial arbitration, Nigeria continues to take their international commercial arbitration abroad where the lexfori has absolutely nothing to do with the *lexloci contractus* and the *lex loci* solution is. It becomes more disturbing and worrisome when the key witnesses and the parties will have to be transported from Nigeria to the arbitration foraat huge expenses and logistics. What are the raisonsd'être for this ugly trend? Could it be that Nigerians do not have confidence in the local arbitral tribunals? Or is the country suffering from dearth of internationally qualified and recognized arbitrators? A plausible reason may not be unconnected with the perceived challenges in the recognition and enforcement of foreign arbitral awards in Nigeria. It is against the aforementioned perspectives that we explored in the subject-matter with the sole objective of contributing to knowledge.

Keywords: Arbitration, Oil, Gas, Law, Enforcement, Nigeria.

[1] Associate Professor of Energy & Natural Resources Law (Oil & Gas Laws), Faculty of Law, Rivers State University, Port Harcourt, Nigeria.
[2] Notary Public, Chartered Arbitrator and Lecturer, Nigerian Law School, Yenagoa Campus, Nigeria

1. Introduction

Petroleum extraction is an enterprise involving huge capital investment hence, involving various parties and multifarious contractual relationships. Where business relationships exist, there is the foreseeability of disputes. In many oil and gas contracts, parties often include the arbitration clause as one of the possible means by which disputes can be resolved. To fully appreciate the stream of this article, we wish to present a brief history of crude oil extraction. The world's first oil refinery was built in 1856 by Ignacy Kukasiewicz.[3] The first commercial oil well in Canada became operational in 1858 at Oil Springs, Ontario (then Canada West)[4]. In Nigeria, the first Oil Well was drilled at Iho in the present day Ikeduru Local Government Area of Imo State in1951 by Shell/D'Arcy, although, there is no record as to whether any quantity of oil was extracted at Iho. However, oil was discovered in commercial quantity at Oloibiri in the present day Ogbia Local Government Area of Bayelsa State at the depth of 12, 008 ft. in January 1956[5].Petroleum industry is involved in the global processes of exploration, extraction, refining, transporting (often with oil tankers and pipe lines) and marketing of petroleum products.

Concern over the depletion of the earth's finite reserves of oil and the effect this would have on a society dependent on it, is a concept known as peak oil. The use of fossil fuels such as petroleum will have a negative impact on the earth's biosphere, damaging ecosystems through oil spills, and releasing a large quantum of pollutants into the air including ground-level ozone and sulphur dioxide from sulphur impurities in fossil fuels. The burning of fossil fuels plays a no small major role in the current episode of global warming.

Recent technological developments in the oil and gas industry have provided access to vast new reserves throughout the world and led to significant growth in oil and gas production. The recent expansion in drilling and producing operations has also coincided with an increase in litigation and international arbitration related to oil and gas assets. This is largely because of the capital-intensive, long- term, and multiparty nature of oil and gas development.

Central to much of this litigation are issues affecting these assets' fair market value. Although the valuation methods for other assets are similar, the characteristics of this industry deserve special consideration in a litigation context. Four of these characteristics are worthy of mention:

a) Estimation of cash flows in discounted cash flow (DCF) valuation of oil and gas assets through the use of decline curves;
b) Use of discount rates to address the varying degrees of market risk underlying the types of reserves being valued;
c) Comparable valuation metrics commonly used in oil and gas assets valuation; and

[3] Frank, Allison Fleig (2005) Oil Empire: Visions of Prosperity in Austrian Galicia (Harvard Historical Studies). Harvard University Press. ISBN 0-C74-01887-7.
[4] Oil Museum of Canada, Black Gold: Canada's Oil Heritage, Oil Springs: Boom & Burst)
[5] Steyn, Phia "Oil Exploration in Colonial Nigeria, C. 1903-1958. University of Stirling.

d) The acreage pricing method for valuing assets with undeveloped reserves.

Although complete statistics about energy disputes are not readily available, a survey of relevant cases reveal that investors often sue States over measures affecting control or title over their investments, or investment value and profitability[6], including, but not limited to, direct expropriation or nationalization, indirect expropriation, as well as fiscal or regulatory measures such as the imposition of windfall profit taxes or export taxes.

It is a truism that disputes are normal part of existence in life. They are instruments of progress in human relationship. It is inevitable and keeps occurring. It is also settled that life in common: be it marital, family, communal, city, national or business life is a continuous succession of quarrels and disputes. Thus, the society is bound up with disputes. Within the society, we find a mass of struggles and oppositions everywhere and every level. *Ipso facto,* conflicts are inevitable in business relationships. These conflicts may be settled in various ways: litigation in courts, amicably by the parties, or alternative dispute resolution mechanism. Foreign investors are however, reluctant to submit to the jurisdiction of the courts of the host countries. Concerns are raised about the independence of the judiciary, the delays associated with judicial proceedings, unfamiliarity with local laws, and anxiety on how to relate within an unfamiliar legal system and culture. Concerns could also emanate from the effect of the doctrine of sovereign immunity particularly as in most developing countries a large proportion of contracts would be with the States either directly or indirectly.

Also, the inadequacies of the judicial process led to the exploration of new methods of dispute resolution. Such inadequacies include but not limited to congestion, delay, crippling formalism, undue reliance on technicalities over justice, prohibitive costs, and undue political interference. Litigants would prefer a situation where their differences are settled in a friendly, congenial, and business-like atmosphere. It is preferable to have disputes resolved by persons who are experienced and knowledgeable in the particular subject matter in dispute. Some disputes are sensitive and of confidential nature that disputants would want to settle them in private rather than in the glare of public proceedings in the court. Consequently, Arbitration and Alternative Dispute Resolution have grown to be the preferred means of international dispute resolution particularly, in the oil and gas industry.

In the light of this, *inter alia,* and for ease of access, user friendly and cost effective terms for dispute resolution, the international community graciously designated Lagos as the centre for international commercial arbitration for the West African sub-region. Sequel to this, Nigeria accepted, acceded to and or ratified all and every international protocols, conventions and rules pertaining to international commercial arbitration. Judgments from Nigerian courts as well as awards from arbitral tribunals in Nigeria are as good as those of any other civilized anglophone country in the world. Ridiculously, when the comity of nations in their wisdom, gratuitously made Lagos the centre for international commercial arbitration, Nigeria continues to take their international commercial arbitration abroad where the lex fori has absolutely nothing to do with the lex loci contractus and the lex loci solution

[6] See generally, Thomas Walde, *Renegotiating Acquired Rights In The Oil and Gas Industries: Industry and Political Cycles Meet The Law,* I J. World Energy L. Bus 55(2008).

is. It becomes more disturbing and worrisome when the key witnesses and the parties will have to be transported from Nigeria to the arbitration forum at huge expense and logistics.

3. Conceptual Definition of Terms

3.1 National Interest

The crux of national interest presupposes that there is a nation-state which has a distinct and peculiar interest. The interest of the nation has supremacy over and above any other sectional interest. Interest is the object of any human desire; especially advantage or profit of a financial nature. It can also mean a legal share in something; all or part of a legal or equitable claim to or right in property. Collectively, the word includes any aggregation of rights, privileges, power, or immunity[7]. National interest therefore means an interest relating to a nation. In the instant case Nigeria. It is trite that the mainstay of the Nigerian economy is oil and gas. Hence, any change in the global price of the commodity affects the country, positively or negatively as the case may be. Arithmetically, Nigerian economy minus oil and gas is next to nothing. Therefore, oil and gas are *sine qua non* to Nigeria's national interest.

3.2 Arbitration

Arbitration is an ADR mechanism for the resolution of disputes privately, using one or more intermediaries voluntarily agreed upon by the disputing parties, and whose decision called an award is final and enforceable at law. In arbitration, unlike litigation, the parties retain control over the process but they do not determine the outcome. Presently in Nigeria, Arbitration, apart from Conciliation, is the ADR mechanism that is regulated by statute, viz.; the Arbitration and Conciliation Act.[8]Arbitration can be mandatory or consensual. Mandatorily, under the Trade Disputes Act, industrial disputes are required to be referred to, in the first instance, to the Industrial Arbitration Panel (IAP) before the National Industrial Court may be seized of jurisdiction. Consensual arbitration on the other hand arises where the parties to a contract or other transactions draw up an arbitration agreement or include an arbitration clause in their contract to resolve any dispute which may arise there from. There are different types of arbitration, viz;

a) Domestic Arbitration is an arbitration between persons resident or doing business in the same country and where the subject matter of the arbitration is to performed within the same country e.g. Nigeria.

b) Institutional Arbitration is a method of conducting arbitration proceedings under the arbitration rules of a permanent or impartial agency either national or international, e.g. ICC, LCIA, RCICA, AAA, ICSID, LMDCH, etc. The institutions may also provide list of arbitrators from which the parties may choose from.

c) International Arbitration involves parties from different countries or the transaction is carried on in different countries.

d) Ad Hoc Arbitration involves an arbitration that is not administered by an institution or other body and which requires parties themselves to

7 Black's Law Dictionary, 9th edition.

8 Laws of the Federation of Nigeria 2004, Cap. A18.

make their own arrangements for selection of arbitrators, and for designation of rules, applicable law, procedures and administrative support.

e) Customary Arbitration is not covered by Arbitration and Conciliation Act. It is usually conducted in accordance with the customs, trade practices and usages of a particular community or group of people. Customary arbitral awards are not enforceable in the same manner like other arbitral awards. A valid customary arbitration shall meet the following requirements;

(i) the parties voluntarily submitted the dispute to arbitration,
(ii) the parties agreed that the award will be accepted as final and binding,
(iii) the arbitration was conducted in accordance with the custom and usage of the parties, trade/business usage,
(iv) the arbitrators reached a decision and published an award,
(v) The parties accepted the award at the time it was made.

Arbitrable matters are disputes that can be settled by arbitration, viz.; contract, matrimonial causes, tort, compensation for acquisition of land. Non arbitrable matters on the other hand are the disputes that cannot be resolved by arbitration. They include crimes, interpretation or construction of statutes. Arbitration may arise in any of the following ways: Court referral; imposed by statute; or by the agreement of the parties. Whilst the arbitrators may be appointed by either of the following: by the parties; an arbitral institution; and by the court.[9]Parties are obliged to stipulate the number of arbitrators, failing which the number shall be three.[10]

Generally Nigeria is replete with qualified internationally recognized arbitrators and has accepted acceded to and or ratified all and every international conventions and rules pertaining to international commercial arbitration. International commercial arbitration is linked to the law of the seat of the arbitration. The UNCITRAL Model Law - an international convention sponsored by the United Nations is a precursor to our Arbitration and Conciliation Act. Nigeria has also adopted and ratified the New York Convention, principally for the enforcement of arbitral awards. The judgments of the Nigerian courts are as good as those of any other Anglo-phone courts in the world such as Britain, United States of America (USA), Canada, India, South Africa, Ghana, Australia, New Zealand, Kenya, to mention but a few.

The case of *IPCO (Nigeria) v. Nigerian National Petroleum Corporation*[11] was an effort to enforce international commercial arbitration award[12]in favour of IPCO (Nigeria) Ltd against Nigerian National Petroleum Corporation (NNPC). IPCO is a Nigerian subsidiary of a Hong Kong company specializing in the construction of oil and gas facilities. It entered into a turn-key contract with NNPC, the State owned Oil Corporation of Nigeria for the design and

9 Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004, section 7.
10 Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004, section 6. See also *Taylor Woodrow Nigeria Limited v. Suddentesche Etnawork GMBH*.
11 (2005) 2 Lloyd's Reports 326.
12 The award was made in Lagos, Nigeria on March 14, 1994.

construction of a petroleum terminal in Port-Harcourt, Nigeria. The contract and the arbitration clause in the contract were governed by the laws of Nigeria, and in the event of disputes which could not otherwise be resolved by the parties within a stipulated time frame, provided Lagos, Nigeria as the seat of the arbitration in accordance with the provisions of the Nigerian Arbitration and Conciliation Act 1990. IPCO applied to Her Majesty's High Court in London to enforce the Lagos arbitral award, which was a net amount of USD 152, 195, 971.55 invoking the New York Convention.[13]

Both the High Court and the Court of Appeal in London held that partial enforcement of an arbitration award is possible. The Court of Appeal held that the judge had been entitled to order part enforcement of the award in the way that he had. It was unlikely that the New York Convention and the 1996 Act prevented part enforcement because the purpose of the convention was to ensure the effective and speedy enforcement of international arbitral awards. An all or nothing approach to the enforcement of an award was inconsistent with that purpose and unnecessarily technical. There was no objection in principle to enforcement of part of an award provided the part to be enforced could be ascertained from the face of the award and judgment could be given in the same terms as those in the award. The word "award" in part II of the Arbitration Act 1996 Act should be construed to mean the award or part of it."

As regards the respect due to the Nigerian courts, the High Court in England put it thus,[14], with regard to section 30 and misconduct, for my part, I would venture the following working summary (which is in no way intended to be exhaustive): The Nigerian court is here exercising a limited supervisory rather than appellate jurisdiction; The rationale was, with respect, engagingly expressed by Oguntade, JCA, in Baker Marina (supra), at page 355, as follows: When parties make a submission to arbitration, they do so for a number of reasons. These include simplicity of the arbitral process, the speed, and sometimes an understanding or technical knowledge of the subject-matter. It is usually not because it was believed the arbitrator could not make an error of law. The parties' submission is, therefore, for better or for worse as in the marriage vow.

An award cannot be set aside for misconduct simply because the arbitrators have made an error of fact or law. An error of law on the face of the award will be such that can be found in the award or in a document actually incorporated with it, or in some legal proposition which is the basis of the award and which is erroneous.[15] Plainly, the jurisdiction is not intended to permit a disappointed party to re-run the arbitration. On questions of construction, an arbitral award cannot be set aside for misconduct simply because the court would have come to a different view.

While, as foreshadowed, to the eyes of English lawyers, much of this is familiar territory from the "old" English law on arbitration, the application of these principles in a Nigerian setting is a matter on which a decision of the Nigerian court would inevitably be

[13] For more information on the post award London proceedings, see IPCO (Nigeria) Ltd. v. NNPC (2005) 2 Lloyd's Report 326; IPCO (Nigeria) Ltd. v. NNPC (2008) 2 Lloyd's Report 59; and NNPC v. IPCO (2009) 1 Lloyd's Report 89.

[14] Ibid at 331.

[15] See also Taylor Woodrow v. Etina-Werk (1993) 1 NSCC 415

valuable. Moreover, questions of degree may arise, for example, as to the detail of reasoning to be expected of an essentially domestic Nigerian award; on matters such as this, nuanced decisions, founded in experience of Nigerian practice may well be desirable - thus again emphasizing the respect due to any consideration of the dispute by the Nigerian court.

Since our judiciary enjoys such excellent reputation abroad in dispute resolution, why then that in very many matters relating to oil and gas, power sector, and the construction industry, the parties, consciously or unconsciously, take such matters to foreign countries for dispute resolution at foreign venue, governed by foreign law and by foreign court, when the matters do not relate to arbitral award enforcement under the New York Convention? It is a very serious matter touching on our sovereignty, national interests and self-esteem. There are many examples of arbitral disputes involving Nigerian oil and gas matter or Nigerian oil blocks disputes where the arbitral clause unbelievably states: Applicable law - English (England); Applicable Rules - ICC Paris (France); Venue - Geneva (Switzerland); whereas all these could be done appropriately and economically in Nigeria. Sadly, even if the law of the main contract is the Nigerian law, because the English law governs the arbitration clause, the dispute resolutions touching on our crucial economic and national interests are taken overseas for resolution. Why? These are bizarre and absurd, if not crazy. I am not aware of any other nation that accepts such bizarre situation in matters of national interest. All these make our shame more glaring. Lord Justice Kerr[16]put the matter succinctly when the English judge said that English law does not recognize the concept of a 'delocalized' arbitratioor of 'arbitral procedures in the transnational firmament unconnected with any municipal system of law.[17] Accordingly, every arbitration must have a 'seat' or locus arbitri or forum which subjects its procedural rules to the municipal law there in force. This is what I have termed law. Where the parties have failed to choose the law governing the arbitration proceedings, those proceedings must be considered, at any rate *prima facie*, as being governed by the law of the country in which the arbitration is held, on the ground that it is the country most closely connected with the proceedings[18] and references to the approval of this classic statement by the House of Lords[19]. Or, to quote the words of Mustill J., where he characterized law as 'The law of the place where the reference is conducted: the *lexfori'*.[20] Although Mr. Milligan contested this, I cannot see any reason for doubting that the converse is equally true. Prima facie, that is, in the absence of some express and clear provision to the contrary, it must follow that an agreement that the curial or procedural law of an arbitration is to be the law of X has the consequence that X is also to be the 'seat' of the arbitration. The *lexfori* is then the law of X, and accordingly X is the agreed forum of the arbitration.

4. The Challenges in the Recognition and Enforcement of Foreign Arbitral Awards in Nigeria

16 Naviera Amazonica Peruana SA v Cia International De Seguros Del Peru (1988) 1 Lloyd's Rep. 116, 119 - 120

17 Bank Mellat v Helliniki Techniki SA (1984) QB 291, 301 (Court of Appeal).

18 See, Dicey and Morris, Conflict of Laws, 11th ed., 1987.

19 Whitworth Street Estates (Manchester) Limited v. James Miller limited (1970) AC 583, 607, 612, and 616.

20 Black Clawson International Limited v. Papierwerke Waldhof-Aschaffenburg AG (1981) 2 Lloyd's Rep. 446, 453.

Where an unsuccessful party complies with the terms of the arbitral award, the question of recognition or enforcement of the award does not arise. More often than not, especially in relation to foreign arbitral awards, the unsuccessful party may be unwilling to comply with the terms of the award or may even seek to challenge it. Unfortunately, the arbitral process cannot by itself enforce its own award because an award *simplicita* lacks the force of a judgment of court. As such, the successful party may have won the battle but is yet to win the war. Both words, "recognition'' and "enforcement'' although distinct concepts are concerned with having the award carried into effect. Thus, an award can be recognized without being enforced, and when it is enforced it is deemed to have been also recognized[21]. Therefore, in order to secure the enforcement of the award, the successful party must take steps after obtaining the award in a foreign jurisdiction to have the award recognized by a Nigerian Court so that the machinery of the court process can be used to enforce it.

In doing so, the first thing a successful party at the arbitration has to do is to decide which of the different enforcement regimes he wishes to adopt in having the award enforced. In Nigeria, an arbitral award may be enforced through any of the following enforcement systems: court action upon the Award; under the Reciprocal Enforcement of Judgment Ordinance 1958; under the Arbitration and Conciliation Act, Cap A18, LFN 2004;under the New York Convention on Recognition and Enforcement of Arbitral Awards 1958; or under the International Centre for the Settlement of Investment Disputes(ICSID) Convention. The peculiarities and challenges of each of these enforcement mechanisms and the attitude of the courts thereto are highlighted here under.

4.1 Enforcement by action upon the Award

In Nigeria, foreign arbitral awards can be enforced by suing upon the award even where there is no reciprocal treatment in the country where the award was obtained. This rule is based on the doctrine of the obligation which prescribes that where a foreign court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, the liability to pay the same becomes a legal obligation that may be enforced by an action of debt. The Claimant must however establish the following essential ingredients:

(i) the existence of the arbitration agreement;
(ii) the proper conduct of the arbitration in accordance with the agreement; and
(iii) the validity of the award.

In *TopherInc of New York v Edokpolor (Trading as John Edokpolor& Sons),*[22] the Plaintiffs sued for the sum of £2,142 awarded in its favour by arbitrators in New York, and the Defendant moved the High Court to set aside the award on the ground that it was "founded on a Foreign Arbitration governed by the laws of the State of New York, United States of America". The trial judge, whilst noting that in Nigeria, there was no statute similar to the Arbitrations (Foreign Awards) Act, 1930, of England held, as submitted by the Defendant, that "for a foreign arbitral award to be recognized here, there must be a treaty

[21] Ezejiofor G, The Law of Arbitration in Nigeria (Longman) 1997 at page 174
[22] (1965) All NLR 307

guaranteeing reciprocal treatment or an order in Council to that effect".On appeal, the Supreme Court held that:

> (i) a party is not prevented from suing upon a foreign judgment regardless of whether there is a reciprocal treatment in the country where it is obtained, if no order is made under section 12[23]to modify that position.
> (ii) A suit brought upon a foreign award ought not to be struck out merely on the ground that there must be a treaty guaranteeing reciprocal treatment in the country where it was made or an Order in Council to that effect.

It is however submitted, that this is a rather cumbersome procedure, which enables the losing party in arbitration to reopen, by way of defence, the issues already determined by the arbitral tribunal. It should be avoided, unless the other systems of enforcement are not available. An application challenging the action may take up to a year or more, but if unchallenged, the action can be determined within six months.

4.2 Enforcement under the Reciprocal Enforcement of Judgment Ordinance 1958

Foreign arbitral awards can also be enforced under the relevant reciprocal enforcement statutes. Generally under this heading, two statutes are in force. They are:(i) The Reciprocal Enforcement of Foreign Judgments Ordinance, Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 ("the 1958 Ordinance") [This Ordinance was enacted in 1922 as L.N.8, 1922] and; (ii) The Foreign Judgments (Reciprocal Enforcement) Act, Cap 152, Laws of the Federation of Nigeria, 1990 ("the 1990 Act") [Enacted in 1961 as L.N.56, 1961].

Until recently, there has been intense intellectual polemics as to which of these legal regimes govern the enforcement of foreign judgments in Nigeria. The confusion crystallized into divergent schools of thought and conflicting decisions of Nigerian courts. In *Dale Power Systems Plc v Witt & Busch Ltd,*[24] the Appellant obtained a pecuniary judgment from the Queen's Bench Division of the High Court of Justice in England. In order to enforce the judgment in Nigeria against the Respondent, the Appellant applied to the High Court to have it registered. The Respondent filed an objection to the registration. In determining the objection, the trial court applied the provisions of the Foreign Judgments (Reciprocal Enforcement) Act. Dissatisfied, the Appellant appealed to the Court of Appeal contending that 1958 Ordinance was the applicable statute. Honourable Justice Oguntade, JCA (as he then was) held that the lower court was in error in applying the 1990 Act and that the applicable legislation was 1958 Ordinance. This judgment was delivered on 30th May 2000.

Surprisingly, in a period less than two years after the above decision, a similar scenario came up for determination by the same Court of Appeal in *Halaoui v Grosvenor Casinos Ltd*.[25]In this case, the Respondent having obtained judgment at the High Court of England applied *exparte* to have it registered in the High Court of Oyo State, Nigeria under section 4(1) of the Foreign Judgments (Reciprocal Enforcement) Act for the purpose of

[23] Foreign Judgment (Reciprocal Enforcement) Act, 1990
[24] (2001) 8 NWLR (pt. 716)
[25] (2002) 17 NWLR (pt. 795)

enforcement against the Respondent who was resident in Oyo State. The Appellant applied to set aside the registration for non- compliance with section 6(2) of the Foreign Judgments (Reciprocal Enforcement) Act. The lower court declined jurisdiction relying on sections 73, 74(1)(m) and 135(2) of the Evidence Act.[26]On appeal, the Court of Appeal set aside the lower court's judgment and held that the relevant statute was the 1990 Act and that the Evidence Act and the common law were inapplicable for the enforcement of foreign judgments in Nigeria. The Court of Appeal was silent on the 1958 Ordinance as it was not canvassed by either of the parties.

However, the Supreme Court of Nigeria has endorsed the 1958 Ordinance as the relevant legislation dealing with reciprocity of judgments and foreign arbitral awards between Nigerian and the United Kingdom in the cases of *Marine and General Assurance Co Plc v Overseas Union & 7 Others*[27]and *Andrew Mark Macaulay v Raiffeisen Zentral Bank (RZB) Austria*.[28]

The Supreme Court held that the Reciprocal Enforcement of Judgments Act 1922, Cap 175 Laws of the Federation and Lagos 1958 which was promulgated to deal with issues of registration of judgments obtained in Nigeria and the United Kingdom and other parts of Her Majesty's dominions and territories was not specifically repealed by the Foreign Judgments (Reciprocal Enforcement) Act 1961, Cap 1522 Laws of the Federation of Nigeria 1990 and so it still applies to the United Kingdom and to parts of Her Majesty's dominions to which it was extended by proclamation under section 5 of the ordinance before the coming into force of the 1990 Act[29]. Particularly, Justice Kalgo JSC (as he then was) stated that the 1958 ordinance was promulgated as No 8 of 1922 to facilitate the reciprocal enforcement of judgments obtained in Nigeria and in the United Kingdom and other parts of Her Majesty's protection. It came into operation on the 19th of January 1922. There is no doubt therefore that it applies to all judgments of the superior courts obtained in the United Kingdom and its application can be extended to other territory administered by the United Kingdom and any other foreign country. This can be done by proclamations pursuant to section 5 of the Ordinance. Therefore, the 1958 ordinance having not been repealed by the 1990 Act still applies to the United Kingdom. There is no doubt that the judgment in question was given by the High Court in the United Kingdom. Therefore the provisions of the 1958 Ordinance fully apply to it.[30]

The necessary implication of the Supreme Court's decision in Macaulay's case is that a foreign judgment must be registered within 12 months as against the 6 years provided under the 1990 Act. More so, until the Minister makes an order in pursuance of Section 3(1) of the 1990 Act, all judgments and awards obtained from Commonwealth countries except England,

[26] Then Cap 112 LFN 1990
[27] (2006) 4 NWLR (pt. 971) 622
[28] (2003) 18 NWLR (pt. 852) 282
[29] Ibid, page 296, para. E-G

[30] Ibid, page 297, para. G-H; page 298, para. A-B

Ireland, Scotland, Wales and other countries[31], which the 1958 Ordinance extended by proclamation, cannot enforce their judgments in Nigeria by registration.

With regards to the enforcement mechanism established by the Act, it is to be noted that it is limited in scope. Firstly, it is only pecuniary award that is qualified to be registered and enforced. Secondly, the award, according to the *lexfori*, must have become enforceable as a judgment of a court and must be capable of enforcement by execution, and all these have to be proved by the Applicant[32]. Thirdly, having regard to the fact that the applicable law will determine the local requirements as well as the procedure for registration, enforcement and setting aside of a foreign judgment registered in Nigeria, these procedural matters will be regulated by rules and the ordinance made in 1922 which are out of tune with the current realities[33]. Ordinarily, this is a fast process but if the registration is challenged, it may become prolonged for up to a year or even more.

4.3 Enforcement under the Arbitration and Conciliation Act (ACA), 1988

The earliest attempt at consolidating the laws on arbitration in Nigeria was in 1914 when the first statute was enacted - the Arbitration Ordinance of 1914[34] which applied to all the parts of the country. Expectedly, the Nigerian Arbitration Ordinance was modeled after the English Arbitration Act 1889 in view of its colonial history. Later that year, the ordinance was replaced by an Act and became Arbitration Ordinance Act, 1914. In 1954[35], the Act applied to all the regions in the country[36]It is interesting to note that the application of the Act relates to both domestic and international arbitration.

The extant law on arbitration in Nigeria is the Arbitration and Conciliation Act 1988.[37]The aim of the Act is to provide a unified legal framework for the fair and efficient settlement of commercial[38] disputes by arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting State arising out of international commercial arbitration.[39]The Act gives blanket recognition to foreign arbitral

---

31 Gold Coast (Ghana), Sierra Leone, Gambia, Newfoundland, New South Wales, The State of Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Island, St. Lucia, St. Vincent, Trinidad and Tobago, and Falkland Island.

32 Tulip Nigeria Limited V Noleggioe Transport Maritime S.A.S (2011) 4 NWLR (Pt1237)254

33 Wilson I, Supreme Court creates pitfalls in the Enforcement of Foreign Judgments in Nigeria (6th April 2005)

34 1914 Nigeria Ordinance, Orders and Regulations, 199. This was issued as Chapter 9 of the 1923 edition of the Laws of Nigeria and later as Chapter 13 of both 1948 and 1958 editions of the Laws of the federation of Nigeria{ Ch. 9, 92 (1923);Ch. 13, 204(1948);Ch.13, 204(1958)} see further Charles Mwalimu, Peter Lang, The Nigerian Legal System, 2009, 646,658).

35 This Act was later to be incorporated into the Laws of the Federation of Nigeria, 1958 as this was the year Nigeria had the first set of organized laws.

36 The regions then in existence in Nigeria were Northern, Western, Eastern, Mid-Western Regions, the Federal Territory of Lagos, and the then Southern Cameroon.

37 The Act was enacted by a military decree in 1988 and came into effect on 13th March, 1988.

38 commercial' as defined under section 57 (1) includes "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, constructing, 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."

39 See the recital to the Act.

awards[40] and provides a simple procedure a party wishing to oppose the application may adopt[41]. The section provide as follows:

> (a) An arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to this section 32 of this Act, shall, upon application in writing to the court, be enforced by the court.
> (b) The party relying on an award or applying for its enforcement shall supply
> (c) The duly authenticated original award or a duly certified copy thereof;
> (d) The original arbitration agreement or a duly certified copy thereof; and
> (e) Where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

The procedural requirements[42] mentioned in the second ambit of the section indicates that, by using the word 'shall' which is a legal imperative, compliance must be followed vigorously, otherwise there could be refusal to enforce the foreign award. In *Imani & Sons Ltd. v. BIL Construction Co. Limited*[43] the Court of Appeal held that in addition to the Motion on Notice expected to be filed by the party seeking enforcement, the party also needs to adhere to the following simple requirements:

> a) The Arbitration Agreement;
> b) The Original Award;
> c) The name and last place of business of the person against whom it is intended to be
> d) enforced;
> e) Statement that the award has not been complied with, or complied with only in part.

We are of the view that the Nigerian courts added items c and d above to the requirements as contained under ACA, since nothing in ACA says the last two items should be added. Reasons for these are not farfetched. Courts guard their jurisdiction jealously and would not want their judgments to be given without any effect; hence, they want to verify whether the party against whom the award is to be enforced, if a company for instance, is still a going concern.[44]

As can be seen above, registration of an award is not a pre-requisite for its recognition and enforcement under the Arbitration and Conciliation Act. However, a party seeking the enforcement of a foreign arbitral award at the Federal High Court is confronted with Order 52

---

40 Section 51 of the Act
41 Ibid section 52
42 An originating application by way of motion on notice is brought before the requisite high court (federal or state).
43 (1999) 12 NWLR (Pt. 630) 253, 263
44 See also Emilia Onyema,(2010). Enforcement of Arbitral Awards in Sub-Sahara Africa, LCIA, .26, (1), 2010.

rule 17[45]which, sadly, introduced the registration of foreign awards into the enforcement process. The rule provides that:

> "Where an award is made in proceedings on an arbitration in a foreign territory to which the foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made; it shall become enforceable in the same manner as a Judgment given by a court in the place and the proceedings of the Foreign Judgments (reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a Judgment given by that court."

The pertinent questions that arise are, does Order 52 rule 17 apply to all foreign arbitral awards or it applies only to non - New York Convention countries? Does an applicant seeking to enforce an Award made under the New York Convention need to submit itself to the provision of the rules of court and go through the process of registration? To our knowledge, this point has not come up for decision by any court.

It is submitted that an applicant seeking enforcement only needs to apply to the court for the award to be recognized under section 51(1) of the Arbitration and Conciliation Act or Article IV of the New York Convention. The further requirement for registration provided by the rules of court cannot be sustained. It is quite trite that the provisions of rules of court cannot override that of a statute on a subject matter or an issue. Invariably, where there is a conflict between the provisions of a statute and that of rules of court, the provisions of the statute shall prevail being superior in status.[46]

4.4 Enforcement under the New York Convention on Recognition and Enforcement of Arbitral Awards 1958

No effective discourse on International Commercial Arbitration and the enforcement of foreign arbitral award can be made without an effective analysis of our reception of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the Convention). Despite its brevity, the Convention is now widely regarded as "the cornerstone of current international commercial arbitration."[47] The Convention provides certain rules as a matter of uniform applicability for national courts to adhere to. These rules require national courts to recognize and enforce foreign arbitral awards, subject to specified exceptions;[48] recognize the validity of arbitration agreements, subject to specified exceptions;[49] and refer parties to arbitration when they have entered into a valid agreement to

---

45 Federal High Court (Civil Procedure) Rules 2009

46 See Nwanezie V. Idris (1999) 3 N.W.L.R. (pt.279) 1 at 16 paras B-C." Per Okoro, J.C.A. (P. 17, paras. E-G)

47 A. van den Berg, The New York Arbitration Convention of 1958 1 (1981).A. Redfern & M. Hunter (eds.), Law and Practice of International Commercial Arbitration 3-04 (4th ed. 2004) ("most important convention in the field of international commercial arbitration").

48 See Articles III and V. "Recognition" of an arbitral award refers to giving preclusive effect to the award, usually to bar re-litigation of the claims that were arbitrated; "enforcement" refers to the invocation of coercive judicial remedies to fulfill the arbitral award.

49 Article II (1) of the New York Convention.

50 Article II (3) of the New York Convention.

arbitrate under the Convention.[50]The Convention applies to Nigeria by virtue of Section 54 of the Arbitration and Conciliation Act. The section provides that:

> (a) Without prejudice to section 51 and 52 of this Act, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards (hereafter referred to as "the Convention") set out in the Second Schedule to this Act shall apply to any award made in Nigeria or in any contracting state:
> (b) provided that such contracting state has reciprocal legislation recognizing the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the Convention;
> (c) that the Convention shall apply only to differences arising out of legal relationship which is contractual.

Nigeria has ratified the New York Convention[51] but no legislative action was taken to make the provisions of the Convention operational in the country, until the promulgation of the Arbitration and Conciliation Act in 1988. The Convention provides that its provisions apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought. They also apply to awards not considered as domestic awards in the State where their recognition and enforcement are sought. Article III of the Convention provides that there shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which the Convention applies than are imposed on the recognition or enforcement of domestic arbitral award. However, in *Ebokam v. Ekwenibe & Sons Trading Company*[52] the Nigerian Court of Appeal listed additional requirements needed for a party seeking recognition and enforcement under the Convention. These requirements are as follows:

(a) the arbitration agreement;
(b) that the dispute arose within the terms of the submission;
(c) that arbitrators were appointed in accordance with the clause which contains the submission;
(d) the making of the award; and
(e) That the amount awarded has not been paid.

It would appear that these requirements are a further elongation of those requirements under Article III of the Convention which Nigeria acceded to. This decision was given by an appellate court and at best could form a judicial precedent, at least, until a proclamation varying or nullifying those requirements come from the Supreme Court, the highest court in Nigeria. A party could innocently pursue those requirements in a bid to seek enforcement of their arbitral award. It is however suggested that such onerous responsibilities as those placed on the party seeking enforcement should be discouraged so that the Nigerian jurisdiction will

51 March 17, 1970.
52 (2001) 2 NWLR (Pt. 696) 32.

be seen as being arbitration - friendly. All said, as a contracting state, Nigeria undertakes to respect the binding effect of awards to which the convention applies.

4.5 Enforcement under the International Centre for the Settlement of Investment Disputes (ICSID) Convention

ICSID is an autonomous international institution established under the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States"(the Convention).[53] The Convention came into force on October 14, 1966, when it had been ratified by 20 countries.[54] The Convention regulates the conciliation and arbitration of investment(legal)disputes between contracting States and nationals of other Contracting States in accordance with the provisions of the constitution[55]. Thus, only such disputes which have been submitted to ICSID by the mutual consent of the parties will be settled under the Convention.[56]ICSID also regulates its arbitral proceedings through the ICSID Arbitration Rules.[57]

The Act provides that an ICSID award shall be enforced in Nigeria as if it were an award contained in a final judgment of the Supreme Court if a copy of such an award, duly certified by the Secretary General of the Centre is filed in the Supreme Court by the party seeking its recognition and enforcement.[58]In Guadalupe Gas Products Corporation v. Nigeria[59], which deals with the production and marketing of liquefied natural gas, settlement was agreed by the parties and settlement recorded at their request in the form of an award.

A curious observation from the Convention is that it makes the award rendered under ICSID Convention directly enforceable in signatory states without any standard of review to be applied in national courts[60]. Failure to comply with the terms of the award could have serious implications on the investment climate of Nigeria. Nigeria could also risk facing the International Court of Justice at The Hague, if a party seeking to enforce an ICSID award feels that the Nigerian government is uncooperative in enforcing the award. Thus, awards rendered in the United States for instance, are directly enforceable in Nigeria without the party seeking enforcement approaching our national courts. This is a substantial difference from the New York Convention, where arbitral awards are subject to annulment (in the arbitral seat) and non-recognition (elsewhere).

5. The Challenges in the Enforcement of Foreign Arbitral Awards in Nigeria

5.1 Statutory Limitation Periods

---

53 U.N.T.S. 159 (No. 8359) (1966), www/worldbank.org/icsid/. ['the Convention]. Produced at Washington, D.C., 18 March 1965.['The Convention].

54 Currently157 States have signed the ICSID Convention. Of these, 147 States have deposited their instruments of ratification, acceptance and, or approval of the Convention and have become ICSID Contracting States. Available online http://en.wikipedia.org/wiki/International_Centre_for_Settlement_of_Investment_Disputes. Accessed on July 15, 2017.

55 Article 1 of the Convention.

56 Article 25(1) of the Convention.

57 See Rules 32, 37 and 41 of the ICSID Rules.

58 Article 54 of the ICSID Convention.

59 ICSID Case No.ARB/78/1.

60 Articles 53-54 of the Convention.

The question of when time begins to run for the purpose of commencement of enforcement proceedings has been the subject of much debate. The debate stems from the conception of the enforcement proceedings as an action instituted for the assertion of a right. If it is considered as such, then the limitation periods contained in the Limitation Act as well as the Limitation Laws of the different states for the institution of an action in court would be relevant and applicable. With regards to the time within which an action can be instituted in court for the enforcement of a foreign arbitral award, the Supreme Court has held that such an action must be brought within six years of the accrual of the cause of action.In *Murmansk State Steamship Line v Kano Oil Millers Limited*,[61] the Plaintiff's claim was for the enforcement of the award which he had been granted by a Moscow arbitral tribunal on February28, 1966 in accordance with a charter-party entered into between the Plaintiff and the Defendant in Nigeria. The Defendant defaulted under the charter party by failing to load the cargo of groundnuts when the ship was presented at the Apapa port by the plaintiff within time. The charter party contained an agreement to refer any dispute to arbitration under Russian law, and this was done in due course on February 28, 1966. The award was in favour of the plaintiff, who then brought an action on the Moscow award before the Kano State High Court. The High Court dismissed the claims. On appeal to the Supreme Court, judgment of the High Court was upheld *inter alia* on the ground that the enforcement proceedings was statute barred having been commenced eight years after the cause of action arose, instead of within the 6 years limitation period imposed by the applicable Limitation law of Kano State.

The Supreme Court's decision in Murmansk has been followed and applied in subsequent cases such as *City Engineering Nigeria Limited v Federal Housing Authority*[62]and in *Tulip (Nig.) Ltd. v. Noleggioe Transport Maritime S.A.S*[63] where the Supreme Court held that it is six years from the date of accrual of cause of action. In City Engineering, the parties entered into an agreement to build housing units at Festac Town, Badagry Road, Lagos with a provision to submit all matters in dispute in connection with the execution of the contract to arbitration. A dispute arose in the course of the execution of the contract which resulted in the contract being terminated on 12th December 1980. In accordance with the agreement, the dispute was referred to arbitration which ended in November 1985 when the Arbitrator made his award. When the claimant sought to enforce the award in the High Court sometime in 1988, the trial judge held that by virtue of section 6 of the Limitation Law of Lagos state, the action for enforcement had become statute barred, having been brought in excess of 6 (six) years after 12th December 1980 when the cause of action arose. The matter went all the way to the Supreme Court.

The Supreme Court was urged to depart from its decision in Murmansk and to consider the current position in England as demonstrated in *Agromet Moto import Ltd vs. Maulden Engineering Co. (Beds) Ltd*,[64] where Otton J. held that time begins to run from the date of the breach of the implied term to perform the award, and not from the date of the accrual of the original cause of action giving rise to the submission. The Supreme Court

[61] (1974) All NLR 893.
[62] (1997) 9 NWLR (Pt. 520) 244
[63] (2011) 4 NWLR (Pt. 1237) 254
[64] (1985) 2 All ER 436

however held that the Murmansk case was correctly decided and that no cause had been shown to make it depart from that decision. While this may appear to be unduly onerous and unfair to a successful party, with the current stance of the Supreme Court on the limitation period, it would appear that an applicant wishing to enforce an arbitral award must also ensure that the arbitration proceedings is swiftly concluded in order not to be caught up by the applicable limitation period. In the alternative, as advised by Elias CJN (as he then was) in Murmansk, it may be prudent for an aggrieved party to institute an action in court following a breach of the contract containing the arbitration agreement. Upon an application by the other party, the matter may be stayed pending the outcome of arbitration and this will effectively stop the limitation period from running.

5.2 Jurisdiction of the Enforcing Court

An applicant seeking to enforce a foreign arbitral award may also be faced with an objection to the jurisdiction of the enforcing court. In the legislations relating to the enforcement of arbitral awards in Nigeria, the word 'court' is defined to either include both the Federal High Court and High Court of a State or simply refers to the High Court.[65]

It appears that the underlying subject matter of the arbitration could affect the jurisdiction of the court to enforce an arbitral award. In *Access Bank v Erastus Akingbola*,[66]Candide-Johnson J. of the High Court of Lagos State refused to register a foreign judgment issued in London under the Reciprocal Enforcement of Judgments Ordinance, 1922 because the subject matter of the English case dealt with capital market transactions. It was the opinion of the learned judge that the Federal High Court, being the court vested with exclusive jurisdiction over such matters by virtue of section 254 of the Constitution is the more appropriate forum to enforce the judgment. The learned authors of the book 'Commercial Arbitration Law and Practice in Nigeria, CA Candide – Johnson SAN and Olasupo Shasore SAN take the contrary view that:

> "It is idle to suggest that the subject matter of the dispute or contract can affect the jurisdiction of the court to recognise and enforce an award. Effectively, the court – whichever it may be – has the power to enforce an award made on a subject matter in respect of which it would ordinarily have no jurisdiction."

An objection to jurisdiction on the basis of subject matter when enforcement of the award is sought could arise only from a misunderstanding of provisions of the law such as section 2(1) of the Foreign Judgments (Reciprocal Enforcement) Act Cap 152 which states that 'judgment' shall include an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place'. Relying on the highlighted phrase to suggest that the enforcing court should have subject matter jurisdiction is to make a mockery

---

65 Section 57 of the Arbitration and Conciliation Act, Cap A28, LFN, 2004; section of the Foreign Judgment (Reciprocal Enforcement) Act, Cap 35, LFN 2004; section 3(1) of the Reciprocal Enforcement of Judgments Ordinance, 1992.

58 Suit No. M/563/2013.

59 Candide-Johnson, C. A. and Shasore Olasupo, Commercial Arbitration: Law and Practice

of enforcement principles in international arbitration. For instance, section 51(1) of ACA 1988 states that 'An arbitral award shall irrespective of the country in which it is made be recognised as binding and subject to this section ... and shall upon application in writing to the court be enforced by the court'. The provisions made enforcement of awards a duty of the courts in Nigeria.[67]

We are persuaded to agree with the views of the learned senior counsel cited above. Apart from the reasons given by them, we are also of the view that the issue of subject matter should not be a consideration at all when it comes to the enforcement proceedings. Even though the court is deemed to be recognising and enforcing the foreign award 'as if it were a judgement' of the enforcing court, it is clear that beyond granting leave to enforce the award, the enforcing court is not seised with jurisdiction to make any enquiry into the underlying dispute and cannot even vary any of the orders made under the award. Therefore, there is no question of the enforcing court needing to have therequisite experience to deal with the underlying subject matter as was canvassed by Candide – Johnson J. in the Access Bank case. However, a prudent applicant may need to take this consideration in deciding on the choice of enforcing court in order to avoid needless objections on jurisdiction.

5.3 Obsolete Arbitration Legislations

There is no doubt that Nigeria's arbitration laws are long due for reforms with the Arbitration and Conciliation Act which is the most recent was enacted in 1988. However, there is a bright spot represented by the Arbitration Law of Lagos State 2009 with its progressive provisions. The Law has attempted to address some of the challenges encountered in the enforcement of foreign arbitral awards in Nigeria. For instance, with regards to the application of limitation laws to arbitral proceedings, the Law makes a departure from the Supreme Court decisions in Murmansk and City Engineering when it provides that in computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.[68] However, the utility of the Law is limited in view of the fact that its application is limited to Lagos State.

It is our view that the Arbitration and Conciliation Act is in need of such reforms too. In this regard, we are aware that in 2005, the then Attorney-General of the Federation and Minister of Justice, Chief Bayo Ojo SAN constituted a National Committee on Arbitration Reform with the mandate to submit proposals for the reform of Nigeria's Arbitration/ADR laws. The work of the Committee resulted in a Draft Federal Arbitration Act and a proposed Uniform States Arbitration and Conciliation Law to be recommended to States for adoption. The Committee also introduced an innovation, the Arbitration Claims and Appeals Procedure Rules to apply to court applications relating to arbitration matters. The rules are a set of specialized procedural rules aimed at enabling the expeditious determination of court applications in support of arbitration. However, at the time of this paper, the Draft Bill is yet to be enacted into law by the National Assembly. It is suggested that renewed impetus should

in Nigeria, pp 151-152.

[68] Section 35(5).

be given by the stakeholders in the arbitration community to ensure that the Bill is passed by the legislature.

5.4 Unrestricted appeals against orders enforcing arbitral awards

One of the greatest challenges facing the enforcement of foreign arbitral awards is the penchant for unsuccessful parties to appeal orders of the enforcing court – sometimes up to the Supreme Court. The right of appeal against the decisions of a High Court is undoubtedly protected under the Constitution[69]. However, the exercise of this right of appeal appears to make a mockery of the nature of arbitration as being final and binding and a speedy means of resolving disputes. Where the enforcement of an arbitral award is challenged all the way to the Supreme Court and taking years to resolve what are sometimes interlocutory applications, then the attractiveness of arbitration over litigation becomes whittled down. In that sense, it becomes a first step towards litigation rather than an alternative to litigation. It is suggested that the right of appeal in arbitration cases should be severely restricted. For instance, it is possible to draw a parallel between an arbitral award and a consent judgment in the sense that both require the consent or approval of the parties to be made. In the case of arbitration, the consent is given in the arbitration agreement by whichthe parties agree to resolve their dispute by arbitration and to be bound by the outcome. If this is the case, then it is our view that an appeal over an arbitral award should also be with the leave of the Court just as is the case with an appeal over a consent judgment under the Constitution[70]. In considering the application for leave, the court will be expected to exercise its discretion judiciously and judicially in order to avoid a needless appeal and in line with the overall objective of promoting arbitration by holding parties to their bargain.

6. Conclusion

In view of the above treatise, we conclude that whilst it is easier to obtaining a foreign arbitral award in disputes arising out of contractual relationships with regards to Nigeria's crude oil and natural gas undertakings, it very difficult to enforce such award in its entirety. As a consequent of this hurdle faced by the judgment creditors, they at all material times must take the time to decide under which regime the award should be enforced as the different regime make different demands on the successful party. Furthermore, although it cannot be confidently said that Nigeria has attained its height in the support of the arbitral process, particularly in the enforcement of foreign judgments and arbitral awards unlike developed societies such as United States, France, and United Kingdom,[71]however, one can say that with the free democratic society Nigeria has found itself, there is an increasing hope that better days lie ahead in making Nigeria the hub of international commercial arbitration in Africa. Achieving this will require a lot of legislative efforts, judicial activism as well as transparency on the part of the parties and practitioners of arbitration.

---

69 Section 241 of the Constitution.

70 Section 241(2) of the Constitution.

71 In constructing the Rolls Building in the UK, the government decided to make the UK the world's pre-eminent destination for swiftly resolving international legal disputes, while making the country's legal services market as lucrative as its financial services sector in the process, aimed at making the UK the lawyer and adviser to the world. See Neil Hodge, Rolls Royce Justice: IBA Global Insight, December 2011, Vol 65 No 6, 39.