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Safeguarding the Sanctity of Arbitral Awards under Nigerian Law

Stanley U. Nweke-Eze*

Abstract

This article examines the recent attitude of Nigerian courts towards the finality of arbitral awards, through the lens of the Supreme Court's decision in Metroline Nigeria Limited & Others v Dikko [2021] 2 NWLR (Pt.1761) 422 (SC). *It sets out the implication of the court's decision and, with the aid of other Nigerian court decisions, demonstrates that Nigerian courts are more likely to disregard frivolous efforts to challenge the enforcement of valid final arbitral awards. Instead, Nigerian courts typically encourage utmost respect for the arbitral process by respecting valid arbitration agreements which consenting parties have entered in relation to an arbitrable dispute and enforcing any final, valid arbitral award that is issued pursuant to such agreements.*

Key words: arbitration, arbitration agreements, arbitral awards, courts, Nigerian law.

1. Introduction

Arbitration has become a popular mechanism for the settlement of commercial disputes in Nigeria and globally. A key attraction to arbitration is the ability of the successful party to enforce the final arbitral award, instead of relitigating issues that have been determined by an arbitral tribunal. Indeed, it is one of the hallmarks of an arbitration-friendly jurisdiction.[1] Nigeria is, without a doubt, keen to be viewed as a pro-arbitration jurisdiction and this is corroborated by the fact that the Arbitration and Mediation Act, 2023,[2] which ushers in a range of innovative provisions, has come into force.[3] Nigerian courts have also been in support of the trend towards promoting the use of arbitration in the settlement of commercial disputes.[4] In the sections that follow, this article will briefly discuss the decision of the Supreme Court in *Metroline Nigeria Limited & Others v Dikko*[5]and assess the attitude of Nigerian courts towards arbitration agreements and final awards under Nigerian law.

*__Stanley U. Nweke-Eze__: LLB (*First Class Honours, UNIZIK*), LLM (*Commercial Law, University of Cambridge*), LLM (*International Law, Harvard Law School*), PhD (*International Investment Law, The University of Hong Kong*). Admitted to practice law in Nigeria, State of New York, and England and Wales. Email: snwekeeze@llm17.law.harvard.edu.

[1] Queen Mary University of London and White & Case, 2021 'International Arbitration Survey: Adapting Arbitration to a Changing World' (2021) 6. Available at <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/#:~:text=The%202021%20International%20Arbitration%20Survey,the%20SIA%20Surveys%20to%20date >Last accessed 30 April 2024.

[2] Hereinafter referred to as the "AMA".

[3] The AMA has introduced provisions that would further improve arbitration practice in Nigeria, including the appointment of emergency arbitrators (sections 16 and 18 of the AMA), third-party funding (section 61 of the AMA), electronic communication as a form of an arbitration agreement (sections 2(4) and 91 of the AMA), interim reliefs (sections 28 and 29 of the AMA), default number of arbitrators (section 6(2) of the AMA), joinder of parties (section 40 of the AMA), consolidation (section 39 of the AMA), calculation of limitation of time (section 34 of the AMA), amongst others.

[4] See the Supreme Court in action in *Mainstreet Bank Capital Ltd v Nig. RE* (2018) 14 NWLR (Pt 1640) 425;*Kwara State Govt &Orsv Guthrie (Nig) Ltd* (2022) LPELR-57678(SC); *Umeadi v Chibunze* (2020) 10 NWLR (Pt 1733) 413.

[5] {2021] 2 NWLR (Pt.1761) 422 (SC)

2. Brief Facts of *Metroline Nigeria Limited & Others v Dikko*

Metroline Nigeria Limited, Sheba International Limited, Axis Consulting, Design Matrix Associates and Inter-Arc Concept Limited (together, the "**Appellants**") entered into a joint venture agreement (the "**JVA**") with Alhaji Muktar Dikko (the "**Respondent**"), agreeing to settle any dispute arising out of the JVA by arbitration.[6] Pursuant to the JVA, the parties also created a special purpose vehicle, Metshade Limited (the "**SPV**"), in order to perform the obligations set out in the JVA. A dispute subsequently arose in relation to the operations of the SPV and the Respondent, instituted an arbitral claim on the basis of the JVA.

At the conclusion of the arbitration proceedings, the arbitral tribunal published a final award in favour of the Respondent on 3 April 2017. Dissatisfied with the final award, the Appellants challenged it on the basis that the SPV was not privy to the JVA (which contains the arbitration agreement) and should not have been joined as a party to the proceedings. The Appellants also argued, among others, that the arbitral tribunal exceeded its jurisdiction given that the issues in dispute related to the operation of a company (i.e., the SPV) which is a matter within the exclusive jurisdiction of the Federal High Court of Nigeria under section 251(1)(e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The High Court of the Federal Capital Territory and the Court of Appeal rejected these arguments. In summary, it was held that the arguments on the jurisdiction of the arbitral tribunal lacked merit and joining the SPV as a party to the arbitration proceedings was important because it was a proper party in whose absence the matter could not have been properly resolved. Still dissatisfied, the Appellants approached the Supreme Court.

3. Decision of the Supreme Court

Although the appeal was ultimately dismissed on technical grounds,[7] the Supreme Court reemphasised, albeit in *obiter*,[8] the importance of respecting the finality of arbitral awards and the fact that Nigerian courts will not be used as an instrument to annul valid arbitral awards. Specifically, the Supreme Court, *per* Abba Aji JSC, stated as follows:

> *Once parties have consented to arbitration, they have also consented to accept the final award by the arbitrator. An arbitral award is regarded as a final and conclusive judgment on all matters referred and the courts are enjoined, as far as possible, to uphold and enforce arbitral awards, having regard to the fact that it is a mode of dispute resolution voluntarily agreed upon by the parties*.[9]

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[6] Paragraph 8 of the JVA stated that "*Any dispute or question in connection with the joint venture agreement shall be referred to a single arbitrator to be appointed by the Chief Judge of the Federal Capital Territory in accordance with the Arbitration Act/Law for the time being in force*." See page 426 of the judgement.

[7] In summary, the Supreme Court dismissed the appeal on the basis that the Appellants' grounds of appeal were based on mixed law and facts. Hence, the appellant should have sought and obtained the leave of the Supreme Court to appeal pursuant to section 233(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), but the Appellants failed to do so.

[8] Even though the decision of the Supreme Court is an *obiter dictum*, Nigerian courts have held that an *obiter dictum* of the Supreme Court carries weight and can form the position of the law, particularly if such position has been consistently repeated by the Court. See *Nwana v FCDA &Ors.* (2004) LPELR-SC.169/1999 where the court noted that "*It is however good law that an obiter of the Supreme Court, could with time, and repeated a number of times, assumes the status of a ratio decidendi*." per Niki Tobi JSC.

[9] *Metroline Nigeria Limited & Ors v Dikko*, pp 440, (paras. B-D)

The Supreme Court also noted, *per* Rhodes-Vivour JSC, as follows:

> *I intend to comment on the disturbing trend where all manner of appeals are filed against awards. It is time litigants fully understand, respect, and appreciate the nature of arbitration agreements they freely entered into. It is the duty of counsel to explain the nature of these agreements and not encourage their clients to disregard them when they get unfavourable awards. Arbitration agreements ought to be respected and the resultant awards complied with. We should always bear in mind the importance of respecting arbitration agreements, more so those that have international connotations. Building up and sustaining a globally respected dispute resolution system are major steps for the growth of our Nation into a preferred investment destination.*
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> *The Nigerian Legal System, following international standards, has legislated on the nature of arbitration awards to be final and binding and only to be interfered with by the courts in the exceptional circumstances enunciated in the relevant arbitration statutes. Arbitration is widely acknowledged as an alternative to litigation which enables expeditious dispute resolution. Commendably, the legal framework provides for court interference in specified circumstances only. However, the unfortunate trend in which litigants with the assistance of counsel who fail to appreciate their duties as officers of the court, all in a bid to win their clients' case by all means, bring unsubstantiated and spurious challenges against otherwise good arbitration awards and the arbitration tribunal, ought to be frowned upon and discouraged. The courts should not allow itself to be used as a tool to set side otherwise good awards or frustrate legitimate arbitration awards.*[10]

Based on the foregoing pronouncements of the Supreme Court, there is a duty on counsel to advise their clients against seeking to frustrate the enforcement of unfavourable arbitral awards based on unsustainable grounds. Even though Nigerian law provides certain grounds upon which the court can set aside or refuse to recognise or enforce an award, including on the basis that the award is contrary to public policy and on the basis of a party's incapacity, invalidity of the arbitration agreement, lack of proper notice of appointment of arbitrators, the decisions in the award are beyond the scope of submission, among others,[11] the Supreme Court's decision in *Metroline Nigeria Limited & Others v Dikko* reiterates that Nigerian courts should treat arbitral awards like the final judgments by courts and enforce such awards except the party challenging the award can adduce a valid reason why the award should be annulled.[12]

4. Significance of the Supreme Court's decision in *Metroline Nigeria Limited & Others v Dikko*

It is not unusual that parties, who have agreed to settle their disputes by arbitration, will proceed to file frivolous actions in courts to set aside a final arbitral award. However, challenges to arbitral awards on such pedantic grounds are increasingly being rejected by Nigerian courts. The decision of the Supreme Court in *Metroline Nigeria Limited & Others v Dikko* is, therefore, an important

[10] *Metroline Nigeria Limited & Ors v Dikko*, pp 445, (paras. A-F)

[11] Sections 55(3) and 58(2) of the AMA 2023; *The Vessel Mv Naval Gent &Ors v Associated Commodity Int'l Ltd* (2015) LPELR-25973(CA); *Statoil (Nigeria) Ltd & Anor v FIRS & Anor* (2014) LPELR- 23144(CA); *K.S.U.D.B. v Fanz Construction Ltd* [1990] NWLR (Pt.142) 43; *Aker Marine Nigeria Ltd v Chevron Nigeria Ltd* [2000] 12 NWLR (Pt. 681) 393.

[12] It is notable that the "error on the face of the award" ground has been deleted from the AMA 2023.

pronouncement that will signal to the international community that Nigeria is a pro-arbitration jurisdiction and will encourage commercial parties to adopt arbitration as their preferred choice of mechanism for the settlement of commercial disputes.

Indeed, this is not the only instance where Nigerian courts have expressly shunned attempts to frustrate the enforcement of arbitral awards.[13] For example, the Supreme Court has held, *per* Abba Aji JSC, in *Mekwunye v Imoukhuede* that "[c]*ourts are enjoined to, as much as possible, uphold or affirm and enforce arbitral awards when being approached especially in view of the fact that parties had voluntarily resolved or agreed to submit to the jurisdiction of the arbitrator or arbitrators to resolve their dispute.*"[14]Furthermore, the Supreme Court has held, *per* Nnaemeka Agu JSC in *Ojibah v Ojibah* that:

> *where two parties to a dispute voluntarily submit their matter in controversy to arbitration according to customary law and agreed expressly or by implication that the decision of the arbitrators would be accepted as final and binding, then once the arbitrators reach a decision; it is no longer open to either party to subsequently back out of such a decision.*[15]

The Supreme Court has been emphatic on the bindingness of an arbitral award, and that Nigerian courts will presume that every arbitration clause contains a provision that the award is to be final and binding on the parties. In *Optimum Construction & Property (Dev) Ltd v Ake Shareholdings Ltd,* the court, *per* Agim JSC, held that:

> [w]*here no contrary intention is expressed and where such provision is applicable, every arbitration agreement is deemed to contain a provision that the award is to be final and binding on the parties and any person claiming under them respectively. The publication of the award thus extinguishes any right of action in respect of the former batters indifference but gives rise to a new cause of action based on the agreement between the parties to perform the award implied in every arbitration agreement*.[16]

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[13] Also see the strong decisions rendered by the Court of Appeal in *Triana Ltd v. Universal Trust Bank Plc* (2009) LPELR-8922 CA; *Baker Marina Ltd v Danoscurole Cont. Inc* [2001] 7 NWLR (Part 712) 341; *Vessel MV Naval Gent &Ors v Associated Commodity Int'l Ltd* (2015) LPELR 25973 (CA); *Dangote Farms Ltd v Plexux Cotton Ltd* (2018) LPELR-46581(CA); and the Court of Appeal's decision in the very *Metroline (Nig) Ltd &Ors v Dikko* (2018) LPELR-46853(CA) before it arrived the Supreme Court. Other important cases include *NNPC v Fung Tai Engineering Co Ltd* (2023) LPELR-59745(SC) where the Supreme Court affirmed the Federal High Court's decision declining to set aside an award; *Miden Systems Ltd v BBC Chartering & Logistic GMBH & Co.* (2019) LPELR-48929(CA); *Adamen Publishers Ltd v Abdulimen* (2016) 6 NWLR (Pt. 1509) 431, and *Emerald Energy Res. Ltd. v. Signet Advisors Ltd* (2021) 8 NWLR (Pt 1779) 585.

[14]*Mekwunye v Imoukhuede* (2019) LPELR-48996 (SC); see also *OnyenawulivOnyenawuli*(2017) LPELR-42661-CA.

[15]*Ojibah v Ojibah*(1991) LPELR-SC.128/1988. See also *Ras Palgazi Construction Company Ltd v FCDA* (2001) LPELR-SC.45/96 where the court held, per Kalgo, JSC: "*It is very clear and without any iota of doubt, that an arbitral award made by an arbitrator to whom a voluntary submission was made by the parties to the arbitration, is binding between the parties*". (p 25, paras. C-D).

[16]*Optimum Construction & Property (Dev) Ltd v. Ake Shareholdings Ltd* (2021) LPELR-56229 (SC), pp 34-35, paras F-E. See also *Emerald Energy Res. Ltd. v. Signet Advisors Ltd* (2021) 8 NWLR (Pt 1779) 585, where the Court of Appeal held: "[a]*rbitral awards have binding force for all intent and purpose on the parties who choose arbitration instead of going to court to settle their dispute. An arbitral award once published operates as a final and conclusive judgment. In fact, it constitutes a final judgment over the matter referred to the arbitral panel. A valid award on a voluntary reference operates between the parties as a final and conclusive judgment upon all matters referred. When parties decide to take their matter to arbitration, they are simply opting for an alternative mode of dispute*

These cases lend credence to the fact that arbitral awards are generally treated as final and binding between the relevant parties under Nigerian law. And a similar approach is adopted in recent Nigerian court decisions in relation to arbitration agreements which are the basis of the arbitration proceedings that give rise to arbitral awards. Indeed, the Supreme Court in *Kwara State Govt &Ors v Guthrie (Nig) Ltd* held, per Ogunwumiju JSC, that**:**

> [a]*rbitration clauses are included in contracts to enable parties cut short litigation time and engage in the shorter and simpler method of dispute resolution. Parties should not be encouraged on any pretext to renege from arbitration clauses in order to clog the Courts with litigations they had consented to subject to arbitration.*[17]

In *Neural Proprietary Limited v Unic Insurance Plc*, the Court of Appeal held that:

> [w]*here parties make provisions to arbitration, the parties are bound to resort to arbitration before seeking any other remedy available. The court has a duty to decline jurisdiction as long as the arbitration clause is mandatory, precise and unequivocal*."[18] Similarly, in *SCOA (Nig.) Plc v. Sterling Bank Plc* where the court held that "*it is trite that where a clause in an agreement provides that any difference or dispute arising out of the agreement shall be referred to an arbitrator, both parties ought to honour and comply with the provisions of the clause*.[19]

In addition to the foregoing judicial precedents, the AMA also seeks to discourage frivolous attempts to set aside final awards. For instance, one of its most distinguishing feature is the introduction of the Award Review Tribunal ("**ART**") which enables a first-level review of an arbitral award made in a Nigerian-seated arbitration and provides that the award can only be set aside by the new, streamlined grounds in section 55(3) of the AMA.[20] If an ART has partially or wholly upheld an award, the award can only be set aside by a court on the limited grounds of arbitrability and/or public policy.[21] Also, the AMA has limited the grounds for setting aside an arbitral award by excluding the "error on the face of the award" ground[22] which was relied upon as an omnibus basis to challenge awards under the ACA and gave Nigerian courts the powers to

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resolution. The parties have a choice to either go to court and have their dispute determined by the court or refer the matter in dispute to an arbitrator for resolution. By reference to arbitration, the mode adopted by the parties in the present case was consistent with the agreement executed by both parties. Arbitration as an alternative mode of dispute resolution has for decades been given legal backing." *(p 624, paras. B-G)*

[17] *Kwara State Govt &Ors v Guthrie (Nig) Ltd* (2022) LPELR-57678 (SC), pp 21, paras A-B.

[18] *Neural Proprietary Limited v. Unic Insurance Plc* (2016) 5 NWLR (Pt. 1505), p 374.

[19] *SCOA (Nig.) Plc v Sterling Bank Plc* (2016) LPELR-40566 (CA). See also the decision of the Court of Appeal in *Polaris Bank v Magic Support (Nig.) Ltd* (2020) LPELR-53106 (CA), where the court approved the opinion of Akpata JSC in his book: "The Nigerian Arbitration Law" where he stated that "*the court should not be seen to encourage the breach of a valid arbitration agreement, particularly those with international flavour*."

[20] Section 56(1) of the AMA. The grounds in section 55(3) are now that the award is contrary to public policy; on the basis of a party's incapacity; invalidity of the arbitration agreement; lack of proper notice of appointment of arbitrators; the decisions in the award are beyond the scope of submission; the composition of the tribunal was not in accordance with the arbitration agreement; and where there is no arbitration agreement as to the composition of the tribunal, that the composition of the tribunal was not in accordance with the AMA. In addition, the award may be set aside if the Court finds that the dispute was unarbitrable or the award is against the public policy of Nigeria.

[21] Section 56(9) of the AMA.

[22] Section 55(2), ibid.

conduct a merit review of tribunal's findings.[23] This should strengthen the finality of arbitral awards and encourage more confidence in the arbitration process.

More so, a recent survey report that examined the enforceability of arbitral awards in Nigeria between October 2020 and September 2021 across the High Courts, Court of Appeal and Supreme Court revealed that 26 out of 33 domestic awards were enforced by the courts, while 7 out of 8 international awards were enforced.[24] This goes to show a 79 % success rate in the enforcement of domestic awards and 88% success rate in relation to international awards.[25] In another survey report on arbitration-related cases in Nigeria[26] which reviewed 82 arbitration cases in 2021, it was recorded that there were 32 cases of successful recognition and enforcement of awards. The cases where awards were set aside, or their enforcement was refused were 14. According to the survey report, there were 13 cases of successful enforcement of arbitration agreements through grant of stay of court proceedings in deference to arbitration, and 23 cases of refusal to grant stay of court proceedings in deference to arbitration.[27] Indeed, these survey reports strongly indicate that there is a high rate of enforcement of arbitral awards by Nigerian courts.

5. Conclusion

Overall, there is little doubt that the decision of the Supreme Court in *Metroline Nigeria Limited & Others v Dikko* is one without mistake and in clear reverence to arbitration under Nigerian law. While the AMA establishes criteria for challenging arbitral awards, any such challenge must conform to those specific criteria. Put differently, in Nigeria, commercial parties are not allowed to challenge awards simply because they are unfavourable to their interests. As can be seen above, frivolous challenges to awards are usually resisted by Nigerian courts. The courts' resistance to frivolous challenges is only reasonable as such challenges not only cripple the Nigerian legal system by clogging the already swamped courts with frivolous claims but also discourage the use of arbitration in the settlement of commercial disputes.

[23] See *Kano State Urban Development Board v Fanz Limited* (1986) 5 NWLR (Pt. 39) 74, and *Taylor Woodrow (Nig) Ltd vSuddeutsche Etna-Werk GmbH* (1993) 4 NWLR (Pt 286) 127.

[24] See Broderick Bozimo and Company, 'Analysis of Arbitration Related Decisions in Nigeria', (2021) available at: <https://broderickbozimo.com/wp-content/uploads/2021/10/BBaC-Analysis-of-Arbitration-Related-Decisions-in-Nigeria.pdf.>Last accessed 30 April 2024.

[25] Ibid.

[26] See Templars Arbitration Report on Nigeria (2021) <https://www.templars-law.com/knowledge-centre/templars-arbitration-report-on-nigeria-2021/>accessed 30 April 2024.

[27] Ibid.