

**A CRITICAL APPRAISAL OF THE DISPUTE RESOLUTION MECHANISM
STIPULATED IN THE LAGOS STATE ARBITRATION LAW AND THOSE
ENSHRINED IN THE ARBITRATION AND CONCILIATION ACT IN RESPECT OF
COMMERCIAL ARBITRATION IN NIGERIA¹**

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Abstract

Traditionally, the Alternative Dispute Resolution (ADR) comprises diverse mechanisms for the settlement of various kinds of disputes. Generally, ADR methods typically adopt any of the variants viz; negotiation, mediation, conciliation or arbitration in reaching a compromise between disputants. It however seems that among the states in Nigeria, it is only the Lagos State government that has taken bold step to enact an arbitration law that specifically provides for commercial arbitration in the resolution of disputes. This is evident in the Lagos State Arbitration Law and the Lagos Court of Arbitration Law. One begins to wonder whether this is occasioned by the high volume of commercial activities, trades or industrial activities in Lagos State. Although at the Federal level, the Arbitration and Conciliation Act holds sway with many similarities and differences yet both statutes are pivotal to resolving commercial disputes in Nigeria.

This article examines the salient dispute resolution mechanisms enshrined in the laws for resolution of commercial law disputes. This paper also considers the relevance and applicability of regional arbitration body in the resolution of commercial disputes in Nigeria. This work adopts a doctrinal and comparative approach in its research methodology. It found that commercial arbitration methods are speedy, result oriented and effective in settling commercial conflicts among parties when compared to the traditional court system in Nigeria. But the writer observes that commercial arbitration could be very expensive for parties especially when it borders on technical issues. There are some recommendations after reaching a conclusion.

Keywords: Arbitration, Commercial Dispute, Dispute Resolution, Alternative Dispute Resolution

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Introduction

Alternative Dispute Resolution (ADR) mechanism is widely recognized in the settlement of different classes of disputes in Nigeria. Parties to a commercial transaction have the freedom to concede to submit any dispute stemming from their transaction to arbitration instead of having recourse to litigation. Considering the nature and complexity of some commercial transactions, particularly where significant amount of money is involved, the possibility of commercial dispute cannot be entirely ruled out in such business transaction. The time spent in resolving commercial dispute is precious to many businessmen. Thus, many business owners may opt for the ADR method especially arbitration instead of opting for litigation. Arbitration seems to be the dispute resolution mechanism of preference for settlement of commercial dispute. Generally, arbitration is defined as a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding on them. In the resolution of commercial disputes in Nigeria, there are some vital points that must be stated from the beginning. First of all, it should be emphasized that there are certain extant legal framework that are applicable to Lagos State alone while the Arbitration and Conciliation Act,² (which is herein referred as the ACA) applies to other states within Nigeria. The enactment of the ACA on the 14th March, 1988 heralded a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation.³

Consequently, the ACA is applicable throughout the Federation.⁴ However, it is submitted that if a state within the Nigerian Federation enacts her own Arbitration Law, the ACA should not apply to such state.⁵ It is important to state that there are some dispute resolution mechanisms stipulated in the ACA which are not enshrined the Lagos State Arbitration Law (referred to as the LSAL) especially as it concerns commercial arbitration in Nigeria. Both statutes also have some similarities and slight differences in the resolution of commercial disputes. A number of factors are responsible for the great preference of ADR as opposed to litigation. The overloaded court dockets, increasing cost of litigation, slow pace of the Nigerian court systems, lack of

² Cap. 18, Laws of the Federation of Nigeria, 2004

³ See the Preamble to the ACA, LFN, 2004; See also C.O. Atoki, "Use and Practice of Commercial Arbitration in Nigeria" (2008) *Journal of Arbitration*, pp. 1-14

⁴ See the ACA, LFN, 2004; s. 58

⁵ For instance, the ACA will not apply to Lagos State because the Lagos State legislature had enacted the Lagos State Arbitration Law and the Lagos Court of Arbitration Law

confidentiality in litigation among other factors are some of the justifiable reasons why parties prefer the use of ADR mechanism in resolving their disputes.⁶ In addition, the inadequacies of the mainstream judicial system have necessitated the exploration of new methods to resolve commercial dispute.⁷

This article is divided into five parts. Part I is the general introduction of the subject matter. Part II takes a critical look at the dispute resolution mechanism stipulated in the Lagos State Arbitration Law and those enshrined in the ACA especially as it relates to commercial arbitration. Part III examines the dispute resolution technique of the Regional Centre for International Commercial Arbitration, Lagos, Nigeria. Part IV discusses the various attempts at reviewing the outdated ACA and the prospects embedded in the new Arbitration and Mediation Bill, 2022 especially in respect of commercial arbitration. Part V is the recommendation and conclusion of the article.

Appraisal of Dispute Resolution Mechanisms Stipulated in the LSAL, 2009 and Those Enshrined in the ACA, LFN, 2004 in Respect of Commercial Arbitration

Before a critique is embarked on both statutes especially as it concerns dispute resolution through commercial arbitration, it is imperative that the term “commercial arbitration” be defined. Commercial arbitration is defined under the ACA 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, constructing, engineering, licensing, investment, financing, banking, insurance, exploitation, agreement or concession, joint venture and other forms of industrial or business cooperation, carriage of goods or passengers by air, sea, rail or road.⁸

The inference from the foregoing definition is that the ACA has narrowed the scope of dispute which can be arbitrated upon as far as commercial arbitration is concerned. As such not all classes of disputes are within the ambit of commercial arbitration under the ACA. In the case of *Opebiyi & Ors v Noibi & Ors*⁹ the Supreme Court ruled that matters concerning the selection and

⁶See O. Ojielo, “Spectrum of ADR Options” (2008) *Journal of Arbitration*, pp. 39-55

⁷ A. Ibidapo-Obe, “Arbitration as a Mandatory Tool for 21st Century Lawyers” (2009) *Journal of Arbitration*, pp. 1-9

⁸See the ACA, LFN, 2004; s. 57

⁹ (1977) SC, Vol. II, p. 464.

installation of the Chief Imam of Igbogila Central Mosque cannot be resolved by arbitration. It is submitted that in the case above litigation would have brought about a conclusive and binding resolution. It has been posited that in spite of a flawless draft of contractual agreements, yet commercial disputes are still inevitable.¹⁰ This is depicted from the volume of litigation experienced in commodity trades, shipping industry, construction work and other commercial transactions.¹¹ In many civilized countries, arbitration is frequently used because it is speedy, confidential and cost effective mechanism for dispute resolution, particularly where such disputes are commercial in nature.¹² Generally, commercial arbitrations are voluntary however some could be mandatory otherwise the court will be deprived of jurisdiction to hear a matter where compulsory arbitration¹³ is not complied with.

The Lagos State Arbitration Law, 2009 (herein referred to as the LSAL) is one of the legal framework for regulating arbitration practice in Lagos State.¹⁴ Although there are other laws¹⁵ governing ADR proceedings in Lagos State but the LSAL and the Lagos Court of Arbitration Law (herein referred to as the LCAL) are more prominent for statutory arbitration practice especially in respect to commercial disputes.¹⁶ Generally speaking the dispute resolution mechanisms enshrined in both statutes as it relates to resolution of commercial disputes are: arbitration and conciliation. It is important to state that the LSAL shares some vital similarities with the Arbitration and Conciliation Act which is a federal legislation. However, there are glaring disparities between both statutes. One of the differences between the LSAL and the ACA is that whereas the ACA divides commercial arbitration into “arbitration and conciliation,” the LSAL in its dispute resolution mechanism, ostensibly assumed such a distinction is not mandatory. This is clearly depicted on the face of both statutes.

¹⁰ See M.M. Akanbi, *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* (Lambert Academic, Germany, 2012).

¹¹ A.M. Sani, “Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints” (2015) 8 *Journal of Marketing and Consumer Research*, pp. 14-20.

¹² A.M. Sani, (n. 11).

¹³ See for example Industrial Arbitration Tribunal under the Trade Dispute Act, Cap. 432 LFN, 2004.

¹⁴ A. Ibidapo-Obe and F.A. Williams, *Arbitration in Lagos State: A Synoptic Guide* (Concept Law Series, 2010) pp.33-55.

¹⁵ For instance, the Lagos Multi-Door Courthouse Law; See also the Citizens Mediation Centre Law.

¹⁶ See H.I. Ugorji and L.C. Opara, “Arbitration in Place of Litigation for Settlement of Commercial Disputes in Lagos Nigeria: A Discourse” (2020) 2 (7) *Nnamdi Azikiwe University Journal of Commercial and Property Law*, pp. 106-119.

Nevertheless, it is submitted that the concept of “conciliation” can be inferred from the broad use of the term “arbitration” stipulated in both the LSAL and the LCAL. “Conciliation” as a dispute resolution mechanism is not statutorily codified under the LSAL and LCAL in the settlement of commercial disputes unlike what is applicable under the ACA. The ACA specifically provides for conciliation in the resolution of commercial disputes in Nigeria.¹⁷ For many years prior to the enactment of the LSAL AND LCAL, the ACA has been regulating the practice of commercial arbitration in Nigeria,¹⁸ though there have been frequent calls for the complete review of the extant ACA.

Another cardinal distinction between the ACA and the LSAL is that the LSAL has excluded any reference to international arbitration instruments as was typified by the ACA when it incorporated the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.¹⁹ The establishment of the Lagos Court of Arbitration which functions in the same model like other foreign international arbitration organs indicate that Lagos State has also institutionalize best international standard in its arbitration practice. In addition, it is submitted that the LSAL is more indigenous to Nigerians than the ACA which is more of a domestication of Nigerian treaty obligations under the enforcement of Foreign Awards.

Dispute Resolution Mechanism under the LSAL and LCAL

The primary reason for arbitration is an agreement between the parties for the resolution of any dispute between them by a neutral third party.²⁰ The written agreement for arbitration or the insertion and express incorporation of an arbitration clause into the contractual agreement between the parties cannot be underestimated. The LSAL recognizes the electronic modes of communicating arbitration agreement. An arbitration agreement under the LSAL and ACA is generally irrevocable.²¹ However, in some circumstances, an arbitration agreement may still be revoked.²² The arbitral proceedings are commenced in accordance with the procedure enshrined

¹⁷The ACA, LFN, 2004; s. 37.

¹⁸M.M. Akanbi, “Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations” (2012) 78(4) *The International Journal of Arbitration, Mediation and Dispute Management*. Pp. 325-331.

¹⁹See the Second Schedule to the ACA, LFN, 2004; See also A. Ibidapo-Obe and F. Williams (n. 14).

²⁰ The LSAL, 2009; ss. 3 and 4.

²¹Ibid; s. 4.

²² See the case of *Home Developments Limited v Scancellia Contracting Company Limited* (1994)8 NWLR (pt.362)252. CA.

in the Arbitration Rules of the Lagos Court of Arbitration.²³ The date on which the request to refer the dispute to arbitration and its delivery to the other party are material in the commencement of arbitral proceedings. In the event of a dispute over a contract clothed with an arbitration clause, commercial arbitration can be initiated by the parties by delivering to the other party a Notice of Arbitration.²⁴ Upon the appointment of the arbitrators,²⁵ parties are to submit their Points of Claim and Point of Defence within the period prescribed in the arbitration agreement or within a reasonable time.²⁶ It is imperative to state that a competent court in Nigeria can stay court proceedings pending the continuation and conclusion of arbitration.²⁷ In Lagos State, a specialized court of arbitration has assumed the powers exercised by the courts under the ACA. In fact, section 38 of the LSAL permits the parties to agree on the powers exercisable by the arbitral tribunal in respect of remedies. While the arbitral tribunal in Lagos can make declaratory orders, pecuniary and mandatory orders,²⁸ an arbitrator under the ACA does not possess such powers.

The LSAL provides for the appointment of umpires in arbitration proceedings.²⁹ In addition, immunity is conferred on arbitrators under the LSAL.³⁰ This provision is also absent in the ACA. Thus, in the case of *Nigerian National Petroleum (NNPC) v Lutin Investment Ltd & Anor*³¹ the learned arbitrator was named as a party in a judicial proceeding for action taken as an arbitrator. Furthermore, the LSAL also empowers the arbitral tribunal to award simple or compound interest as it considers just.³² It is submitted that this provision on the award of interest by an arbitrator is suitable as additional relief in commercial arbitration especially where the defaulting party as a result of fundamental breach of contract, caused the innocent Claimant significant financial loss. The award of interest in addition to other remedies could placate the innocent party. These innovative provisions are not enshrined in the ACA, LFN, 2004. Thus, it is obvious that there are

²³ The LSAL, 2009; s. 31.

²⁴ This used to be compulsory under the repealed the Arbitration Law of Lagos State but it is now optional under the LSAL, 2009.

²⁵ See the LSAL, 2009; s.7.

²⁶ *Ibid*; s. 37.

²⁷ The LSAL, 2009; s.6; See also the *Ogun State Housing Corporation v. Olu Ogunsola* (2000)4 NWLR (pt 687) 431 CA.

²⁸ *Ibid*; s. 38.

²⁹ *Ibid*; s.9.

³⁰ *Ibid*; s. 18; See also A. Rhodes-Vivour, "Immunity of Arbitrators" (2017) 84(4) *International Journal of Arbitration, Mediation and Dispute Management*.

³¹ (2006)2 CLRN, 1 at 16.

³² See the LSAL, 2009; s. 46.

many lacunas in the ACA. An important question is whether the LSAL and LCAL are inconsistent with the provisions of the ACA? This discussion is important because the case of *CG DE Geophysique v. Etuk*³³ apparently showed the prevalence of the ACA over the Arbitration Law, Cap 12, Law of Cross Rivers State which applied to Akwa Ibom State. In that case, the Court of Appeal held that section 7(1)(b) of the Arbitration Law of Cross River State was inconsistent with the ACA and the latter must prevail in the face of such inconsistency. It is however submitted that since arbitration falls under residual matter and they stem from contract, thus, it is contended that the state legislature have the competence to enact law on arbitration. As such, the LSAL and LCAL can co-exist with the ACA.³⁴ Moreover, since “arbitration” is not in the Exclusive Legislative List under the 1999 Constitution of the Federal Republic of Nigeria (as amended), some federating states in Nigeria have enacted legislation on arbitration.³⁵ This position is still a contentious constitutional issue and same can be conclusively resolved by the Supreme Court.

Arbitration under the Lagos Court of Arbitration (LCA)

The LCA denote a stable institution with permanent organ which reflects a synonymous feature typical in the international parlance.³⁶ The LCA is a domestic arbitration centre and it is administered by the local commercial experts in Nigeria. Without mincing words, speedy commercial arbitration is paramount to continuous foreign investment. Thus, the LCA as an arbitration institution is equipped to meet this objective. Prior to the enactment of the LCA, commercial disputes were referred to arbitral institutions oversea even where all the business relating to the commercial transaction occurred in Nigeria. Accordingly, Nigeria lost huge revenue before the enactment of the LCA.³⁷ While commenting on the exceptional feat of the LCA in commercial arbitration, a learned scholar opined that Lagos State had:

³³ {2004} 1 NWLR (Pt. 853) 2.

³⁴ A. Rhodes-Vivour, “The Federal Arbitration Act and the Lagos State Arbitration Law: A Comparison”(2012)7(1) *Nigerian Business Law and Practice Journal*, pp. 53-81; See also, A. Daibu, “The Lagos State Arbitration Law and the Doctrine of Covering the Field: A Review”(2015)6(1) *The Gravitas Review of Business and Property Law*, p.9

³⁵ See F. Oleghe, “The Historical Development of Modern Arbitration in Nigeria” (2019)14(1) *Journal of Arbitration*, 427-451.

³⁶ For instance, in the United Kingdom, we have the London Court of International Arbitration (LCIA); See also A. Ibidapo-Obe and F. A. Williams (n.14).

³⁷ See O. Agbakoba’s Interview on “How Lagos Arbitration Court Will Boost Economy” reported in the Guardian, Tuesday, 18th November, 2008.

thus, demystified arbitration practice from its misconceived exclusivity to large international corporations to its practical utilitarian level as a tool to privatize commercial dispute settlement, decongest the courts, reduce the costs, speed the time of dispute resolution and allow a forum and institution of repute for local commercial interests to also avail themselves of these advantages of ADR.³⁸

To reiterate the importance of commercial arbitration in Lagos State, the criteria for membership of the LCA clearly shows that it is opened to “any person or body corporate of good standing with bonafide interest in Commercial Arbitration or Alternative Dispute Resolution³⁹.....” It therefore follows that commercial arbitration and other forms of ADR are of paramount importance to members of the LCA. The core jurisdiction of the LCA is for the speedy resolution of domestic and transnational commercial disputes.⁴⁰ The LCA is now an international centre for arbitration and ADR serving its clients in Nigeria and Africa.

Commercial Arbitration under the ACA, LFN, 2004

The fulcrum of contemporary commercial arbitration is the agreement between the parties to submit any dispute between them to arbitration. Prior to the enactment of the LSAL and LCAL, commercial arbitration in Nigeria was principally governed by the ACA. But there are now different legal frameworks for regulating commercial arbitration in Nigeria.⁴¹ The ACA defines arbitration as “commercial arbitration whether or not administered by a permanent arbitral institution.⁴² Commercial arbitration may be defined as the voluntary submission of a dispute arising from relationship of a commercial nature for determination in a judicial manner by a person or body of persons chosen by the parties.⁴³

³⁸A. Ibidapo-Obe and F.A. Williams (n. 14) pp. 60-61.

³⁹See the LCAL, 2009; s. 2; See also, A. Rhodes-Vivour, “Recent Arbitration Related Developments in Nigeria” (2010) 76 (1) *International Journal of Arbitration, Mediation and Dispute Management*, 130-135.

⁴⁰The LCA Arbitration Rules, 2018 Available at <http://www.lca.org.ng/> accessed 9th June, 2022.

⁴¹ See E.G. Orié, “An Appraisal of the Sources of Arbitration Laws in Nigeria,” (2021)5 *University of Benin Journal of Private and Property Law*, 122-146.

⁴² The ACA, LFN, 2004; s. 19(1).

⁴³ G.G. Otuturu, “Some Aspects of the Law and Practice of Commercial Arbitration in Nigeria,” (2014) 6 (4) *Journal of Law and Conflict Resolution*, pp. 68—76.

Commercial arbitration can be classified into two. First, is the domestic commercial arbitration and the International Commercial Arbitration which involves disputing parties having their places of business in different countries or the subject matter of the arbitration relates to more than one country or a substantial part of the obligation of the parties is to be executed outside their places of business or in a foreign jurisdiction.⁴⁴ After establishing the existence of a written arbitration agreement, the Claimant is expected to submit to the arbitrators his points of claim stating the facts that support his claim,⁴⁵ The point of claim must also specify the relief sought by the Claimant. To rebut the point of claim, the respondent is to submit his points of defence in response to those particulars stated in the points of claim. The arbitral proceedings may commence by holding oral arguments⁴⁶ or on the basis of documents or other materials or by both holding oral hearings and on the basis of documents. Normally, a preliminary meeting holds after the constitution of the arbitral tribunal.⁴⁷ This is a matter of practice and expediency although it is not stated in the ACA.⁴⁸ Surprisingly, the ACA insists on a written and signed Arbitration Agreement even in the present age⁴⁹ This clearly shows that the ACA is archaic and outdated in meeting the need of modern arbitration practice in Nigeria. The gaps in the ACA especially as it relates to commercial arbitration in Nigeria necessitated the novel innovations enshrined in the LSAL and LCAL.

Other anachronistic features of the ACA include: failure to specifically state the powers of the arbitral tribunal with respect to the remedies,⁵⁰ failure to provide for the appointment of umpire,⁵¹ absence of immunity for arbitrators,⁵² silence on the applicability of limitation laws to arbitration proceedings⁵³ absence of provision for consolidation, concurrent hearing and joinder of parties,⁵⁴

⁴⁴ Ibid

⁴⁵ See the ACA, LFN, 2004; s. 19(1)

⁴⁶ The ACA, LFN, 2004; s.20; See also A. Rhodes-Vivour, *Commercial Arbitration Law and Practice in Nigeria through the Cases* (Lexis Nexis Africa, 2016) pp. 27-60.

⁴⁷ O.P. Faseluka, "Preliminary Meetings and Interlocutories in Arbitration" (2019)14(1) *Journal of Arbitration*, 482.

⁴⁸ See J.O. Orojo and M.A. Ajomo, *Law and Practice of Arbitration in Nigeria* (Mbeyi & Associates Ltd, 1999) p. 189.

⁴⁹ The ACA, LFN, 2004; s. 1, however the LSAL, 2009 recognizes and permits electronic arbitration agreements which is in tandem with modern reality.

⁵⁰ But section 38 of the LSAL, 2009 specifies that the parties are free to agree on the powers exercisable by the arbitral tribunal in respect of remedies.

⁵¹ Whereas section 9 of the LSAL, 2009 makes provision for the appointment of an umpire during arbitration.

⁵² However, see, the LSAL, 2009; s. 18.

⁵³ Ibid; s. 35.

⁵⁴ Ibid; s 40; See also A. Rhodes-Vivour, "The Federal Arbitration Act and the Lagos State Arbitration Law: A Comparison" (2012)7(1) *Nigerian Business Law and Practice Journal*, pp. 53-81.

absence of provision for the award of interest,⁵⁵ absence of provision for notification of award/arbitrator's lien on award.⁵⁶ The outdated provisions enshrine in the ACA has not facilitated quick resolution of commercial disputes and so this has increased the clamour for a review of the federal Act.⁵⁷ It is submitted that the LSAL has many novel provisions that conforms with modern business practices and most of these provisions significantly align with best international practices. The overall effect of the provisions in the LSAL and LCAL is that they will promote speedy and efficient commercial arbitration thereby minimizing the volume of commercial dispute.

Aside from commercial arbitration, the ACA also provides for statutory conciliation as a dispute resolution mechanism for commercial disputes. Orji⁵⁸ defines "conciliation" as "a non-binding dispute resolution mechanism in which a neutral third party known as the conciliator assists disputing parties to settle their differences and achieve reconciliation." The term "conciliation" shares a lot of similarities with "mediation," since both make use of a neutral third party who is more of an adviser and a bridge-builder than a judge.⁵⁹ However, the thin line of difference is that while "conciliation" is statutorily regulated,⁶⁰ "mediation" is not governed by statute. It is submitted that the term "mediation" is subsumed within the concept of "conciliation." When broadly interpreted under the extant federal Act. The ACA generally arrogates to parties the right to settle commercial disputes by conciliation. As such, trade disputes, commercial disputes, political disputes, family and matrimonial disputes may be resolved through conciliation.

To initiate conciliation proceedings under the ACA, an interested party must send the other party a written request to conciliate.⁶¹ Upon the acceptance of the request to conciliate, then it is presumed that conciliation has commenced.⁶² Appointment of conciliators follow immediately after the request to conciliate has been accepted.⁶³ In the course of studying the dispute, the conciliator may request a written or oral submission from the disputing parties where needed. After

⁵⁵Ibid; s. 46.

⁵⁶ Ibid; s. 49.

⁵⁷See P.O. Idornigie, "The 1988 Nigerian Arbitration and Conciliation Act: Need for Review" (2003) 2 *International Arbitration Law Journal*, pp. 50-58; See also, M.M. Akanbi, *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* (Lambert Academic Publishing Germany, 2012).

⁵⁸U.J. Orji, "Law and Practice of Conciliation in Nigeria" (2012) 56(1) *Journal of African Law*, pp. 87-108.

⁵⁹ The UNCITRAL;art. 1(3).

⁶⁰ See the ACA, LFN, 2004; s. 37.

⁶¹ Ibid; s. 38.

⁶² Ibid; s.39.

⁶³ Ibid; s. 40.

the conclusion of the conciliator's examination and hearing, the conciliator must submit terms of settlement to the parties.⁶⁴ In the event that the parties agree to the terms of settlement, then the conciliator can draw up and sign a record of settlement.⁶⁵ However, if parties disagree with the terms of settlement, they may submit the dispute to arbitration or institute legal action where necessary.⁶⁶

Although LSAL does not specifically provide for conciliation, but it has a law for Citizen's Mediation.⁶⁷ Some of the functions of the Lagos Citizen's Mediation Centre (herein referred to as the CMC) is to mediate/conciliate in respect of employer and employee matters, debt related matters, provide free dispute resolution options and resolve same within the shortest possible time.⁶⁸ It was reported in January 2022 by the Lagos State Ministry of Justice that the Lagos CMC resolved One Thousand, Eight Hundred and Fourteen (1,814) cases in one month alone.⁶⁹ This feat attained by the Lagos CMC is highly commendable. Similarly, the Lagos Multi-door Courthouse (referred to as the LMDC) apply mediation, arbitration, neutral evaluation and any other ADR mechanism in the resolution of such disputes that may be referred to it.⁷⁰ It should be noted however that, when parties agree that mediation shall be binding on them and or when it is formally registered by recognized ADR bodies, it may become enforceable just like the arbitration awards made by an arbitrator.

Appraisal of the Regional Centre for International Commercial Arbitration, Lagos

The Regional Centre for International Commercial Arbitration, Lagos (herein referred to as the RCICAL) was established in 1989 arising from the negotiations between Asian-African Legal Consultative Organization and the Nigerian government. To regulate the RCICAL, the Nigerian government enacted legislation for the smooth operation of the Regional Centre.⁷¹ Although the Regional Centre's arbitration rules were modeled after the UNCITRAL Model Law, yet it is an

⁶⁴ Ibid' s. 42(1).

⁶⁵ Ibid; s.42(2).

⁶⁶ Ibid; s. 42(3)(b).

⁶⁷For example, the Law to Provide for the Establishment of Citizen's Mediation Centre and for Connected Matters, 2007; See also the Law to Establish the Lagos Multi-Door Courthouse and for Other Connected Matters, 2007.

⁶⁸ Ibid; s. 3(4)(5).

⁶⁹P.N. Olaide, "Lagos CMC Resolves 1,814 Cases in One Month" reported on 3rd of February, 2022. Available at <http://www.lagosstatemoj.org/> accessed 2nd June, 2022.

⁷⁰ See the Law to Establish the Lagos Multi-Door Courthouse and for Other Connected Matters, 2007; ss. 2 and 3.

⁷¹ See the Regional Centre for International Commercial Arbitration Act, No. 39, of 1999.

independent body, devoid of governmental interference. The principal goals of the RCICAL includes:⁷² promoting international commercial arbitration in the Africa region, administer international arbitration under the arbitration rules of the RCICAL premised on the UNCITRAL Arbitration Rules of 1976. The RCICAL also superintends over domestic commercial arbitration regulated by the ACA, LFN, 2004 and provide facilities for arbitrations under its cooperation agreements with international arbitration bodies.⁷³ One of the core objectives of the Regional Centre is to provide a unified legal framework for fair and efficient settlement through arbitration and conciliation of commercial dispute within the region.⁷⁴The RCICAL also resolves commercial disputes involving government, individuals or bodies corporate provided the dispute is of an international character that is, the parties belong to or are resident in two different jurisdictions involving international commercial interest.⁷⁵

There are other regional bodies established for commercial arbitration in different continents of the world. For instance, we have the Kuala Lumpur Regional Centre for arbitration which aids the Asians in resolving commercial disputes. Similarly, we also have the European Court of Arbitration and Centre for European arbitration and mediation. They settle commercial arbitration involving the Europeans. At the international level, the International Court of Arbitration as well as the International Centre for the Settlement of Investment Dispute look into international arbitration of parties and states.

Attempts at Reviewing the Obsolete ACA, LFN, 2004

There have been several attempts proposed by some members of National Assembly to surmount the numerous challenges posed by the outdated ACA. For instance, in 2005, the Federal Government constituted the National Committee on the Reform and Harmonization of Arbitration and ADR Laws in Nigeria. The activity of this Committee culminated in the Draft Federal Act and a proposed Uniform States Arbitration and Conciliation Law to be recommended to states for

⁷²Ibid; ss. 3 and 4.

⁷³For instance, the International Centre for the Settlement of Investment Disputes; London Court of International Arbitration (LCIA), American Arbitration Association, International Branch, Dublin.

⁷⁴ The Regional Centre for International Commercial Arbitration Act; s. 3(a); See also M.G.N. Nwafor, "Evaluating Commercial Arbitration in Nigeria," (2018) 4 (6) *International Journal of Law*, pp. 10-13.

⁷⁵ Ibid.

adoption.⁷⁶ Although the said Bill had a lot of lofty and promising reforms for the resolution of commercial disputes, sadly however, the Bill was never enacted as law. In 2017, one Senator Emmanuel Andy Uba sponsored the Arbitration and Conciliation Act (Repeal and Re-enactment) Bill. This was meant to repeal the ACA⁷⁷ but it was also not enacted into law although it was filled with innovative provisions that align with international best practices as far as conciliation and arbitration are concerned.

On the 10th of May, 2022, the 9th National Assembly also passed the Arbitration and Mediation Bill, 2022 (herein referred to as the AMB, 2022) in order to provide for quick resolution of commercial disputes among other reasons. The new Bill seeks to repeal the extant ACA by providing an improved framework for settling commercial disputes through arbitration and other alternative dispute resolution mechanisms. It also introduced some novel provisions to the practice of arbitration and mediation in Nigeria. For the first time, the Bill provides a legal framework for mediation in Nigeria. It defines “mediation” and recognizes mediation, conciliation and other alternative dispute resolution mechanism.⁷⁸ The AMB, 2022 now recognizes electronic communication as a form of an arbitration agreement.⁷⁹ It provides for the appointment of emergency arbitrator as the need arises.⁸⁰ In addition, the AMB, 2022, makes provision for consolidation of arbitral proceedings and joinder of parties.⁸¹ Interestingly, the new Bill now suspends the statute of limitation to run from the commencement of the arbitral/mediation proceedings.⁸² In the case of *Messrs U. Maduka Ent. (Nig.) Ltd v B.P. E*⁸³ it was held that the time between the commencement of arbitration and the final arbitral award is not reckoned in ascertaining the statute of limitation. This position is further reiterated in the new Bill.

Conclusion and Recommendation

It is submitted in this paper that the dispute resolution mechanism in respect of commercial arbitration stipulated in both LSAL and LCAL are much more effective and they attune with

⁷⁶A. Rhodes-Vivour, “The Federal Arbitration Act and the Lagos State Arbitration Law: A Comparison”(2012)7(1) *Nigerian Business Law and Practice Journal*, pp. 53-81.

⁷⁷ Cap A18, LFN, 2004.

⁷⁸See the AMB, 2022; s.90.

⁷⁹ *Ibid*; s. 1(7).

⁸⁰See the AMB, 2022; ss. 16 and 27(2).

⁸¹ *Ibid*; ss. 39 and 40.

⁸² *Ibid*; ss. 34(1)(b) and 37(1)(2).

⁸³ (2019) 12 NWLR (Pt. 1687) 429.

modern reality when compared with the dispute resolution mechanisms enshrined in the ACA. The effect of the foregoing is that there is a strong tendency that commercial disputes will be settled swiftly under the LSAL than the ACA. This is largely due to the innovative and standardized provisions enshrined in the LSAL and the LCAL. Furthermore, Lagos State has other ADR laws and centres that complement the various attempts at resolving commercial disputes speedily. Therefore, it can be said that the ACA is obsolete and has outlived its usefulness in terms of resolving modern commercial arbitration in Nigeria. It is therefore recommended that the new AMB, 2022 should be assented to by the President so that the face of commercial arbitration at the Federal level can be modernized and elevated to the best international arbitral practice. It is also suggested that referral of commercial disputes to external or foreign arbitration bodies should be dispensed with under the ACA. Instead, same should be resolved by arbitral bodies in Nigeria especially if the commercial disputes took place in Nigeria.