THE LAWS AND PRACTICE OF ARBITRATION IN NIGERIA AND SOUTH AFRICA: A COMPARATIVE ANALYSIS

Dominic Obilor Akabuiro*

and

Matilda Adedoyin Chukwuemeka**

Abstract

Arbitration, one of the mechanisms of Alternative Dispute Resolution, is a process in which a dispute is resolved by an impartial adjudicator, whose decision the parties to the dispute have agreed to, or legislation has decreed, will be final and binding. The main aims of this paper are firstly, to examine similarities and distinctions between Nigerian and South African arbitration laws with the view to unraveling possible lacunas in any of the jurisdictions, and drawing lessons therein to close possible gaps. Secondly, the paper aims at examining the challenges of domestic and international arbitration practices in both jurisdictions with the view to making necessary recommendations. It evaluates the laws governing Nigerian and South African arbitration. It seeks to find out the sources of arbitration in Nigeria and South Africa. This paper, in addition, delves into the matter of affiliation of arbitration institutions in both countries with other international arbitration institutions. The proceedings of arbitration, international arbitration, enforcement of domestic and international arbitration awards are also considered here. This paper also explains the international recognition of the arbitration of both countries and the preference of both countries' arbitration in the global space. It also explains the challenges of the Nigerian arbitration compared with that of South Africa. It goes on to recommended ways of improving international recognition and choice of Nigerian as a preferred venue and seat of international arbitration.

Keywords; Law, Arbitration; Arbitration Institutions; Domestic and International Arbitration; Arbitral Awards

Introduction

Arbitration is a unique branch of the Alternative Dispute Resolution (ADR) process. It is so in the sense that in spite of its informal and voluntary nature, it still possesses some attributes of litigation, while still leaving the process in the realm of ADR. It is a settlement technique in which a third neutral party reviews the case of the parties in dispute and makes a decision on the basis of their claims. Arbitration can either be voluntary or mandatory. It is voluntary where parties are allowed to freely enter into arbitration by their agreement. It becomes mandatory where the extant law compels the parties to resort to arbitration in any case of dispute.

Arbitration, as a form of ADR is a way to resolve disputes outside of the courts. The dispute will be resolved by one or more persons (the 'arbitrators,' 'arbiters' or 'arbitral tribunal'), who thereafter give the "arbitration award." An arbitration award is legally binding on both sides and enforceable in the courts.[1] In the case of *Kano State Urban Dev. Board v. Fanz Construction Co. Ltd*,[2] arbitration was defined as the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner by a person other than a court of competent jurisdiction.[3] Arbitration has been aptly defined as a mechanism for the resolution of disputes which takes place in private pursuant to an agreement between two or more parties under which parties agree to be bound by the decision of the arbitrators.

In African societies, prior to the enactment of arbitration legislations, the practice of customary arbitration predates colonial regimes. Customary arbitration is not governed by modern arbitration laws. It is usually conducted in accordance with the customs, trade practices, and usages of a particular community or group of people. It should be understood that customary arbitral awards are not enforceable in the same manner as ordinary ones. The enforcement of an award under

*****Dominic Obilor Akabuiro, LLB, BL, MA, LLM, PhD, Fellow IPMD, Arbitrator, Mediator, Notary Public, Lecturer –at- law, Lead City University, Ibadan, Nigeria, and a Partner in Dom Akabuiro & Co. (Ideal Solicitors), a Commercial Law Firm based in Ibadan Nigeria.

Matilda Adedoyin Chukwuemeka, BSC, LLB, BL, LL.M; Assistant Lecturer, Faculty of Law, Lead City University, Ibadan.**

[1]O'Sullivan, Arthur; Sheffrin, Steven M, *Economics: Principles in Action* (Upper Saddle River, New Jersey: Pearson Prentice Hall, 2003) p. 324.ISBN 978-0-13-063085-8.
[2][1990] 4 NWLR (Pt. 142) 1 SC.
[3]*Misr (Nig). Ltd v. Oyedele* [1966] 2 A.L.R.

customary arbitration depends on whether or not it satisfies the certain conditions laid down by the courts. The court is wary in holding that a particular customary arbitration has extinguished a party's right to litigate over a matter. Apart from the fact that arbitration under the customary law may be largely illiterate, personal and/or family prejudices and alliances and pre-knowledge of the subject matter of the dispute, may operate to the detriment of one of the parties to the dispute. Akpata JSC in *Ohiaeri v. Akabeze*[4] stated the rationale for such caution by the courts in the following words:

> It is a common feature of customary arbitration in a closely knit community that some of the arbitrators, if not all, not have only prior knowledge of the facts of the dispute, but also have their prejudices and varying interests in the matter, and are therefore sometimes judges in their own case and are likely to prejudge the issues.[5]

Sources of Nigerian and South African Arbitration Laws

In Nigeria, the primary sources of arbitration laws are English Common Law, Doctrines of Equity, Nigerian Statutes, and Nigerian Customary Arbitration Law. Trade Usage also form part of the sources of Nigerian Arbitration Law. The English Common Law and the Doctrines of Equity including the English Statutes of General Application were received into Nigeria by the local legislatures during the colonial administration.[6] As a general rule, the common law of England and its Doctrines of Equity apply in Nigeria, as it plays an important role in our arbitration processes, except where they have been modified or rejected in Nigeria either by statute or by the courts. Also, the Nigerian Arbitration Law is largely derived from foreign and local statutes. They include: The Arbitration Act of 1914, The Arbitration and Conciliation Decree 1988, now known as Arbitration and Conciliation Act[7] and the Lagos State Arbitration Law 2009. The Arbitration Act of 1914 was the first arbitration statute established in Nigeria based on the English Arbitration Act 1889. It was applied to the whole country which was then governed as a unitary state. The

[4] [1992] 2 NWLR (Pt.221) 1.
[5] *Ibid*. p.24.
[6] NWAKOBY: *Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004 -Call for Amendment* JILJ 2010.
[7] 1988 CAP. A18 LFN 2004.

provisions of the Act included the number and mode of appointment of arbitrators, the making of awards, the umpire, and examination of witnesses and others on oath and the costs of the reference.

The Arbitration and Conciliation Decree was made to provide for both domestic and international arbitration. It also provides for conciliation. The decree incorporates the New York Convention 1958 which is set out as the second schedule to the decree. The decree, which is now known as Arbitration and Conciliation Act, is divided into four (4) parts and three (3) schedules.[8] The Arbitration and Conciliation Act 1988 is currently the applicable law on arbitration and conciliation throughout the Federation of Nigeria, except in Lagos state. It provides a unified legal framework for the fair and efficient settlement of domestic and international disputes in Nigeria. Moreover, it supersedes any other law on arbitration in Nigeria. Where there is any inconsistency with other laws or any other law, that other law (state law) is void and of no effect to the extent of the inconsistency, as was held in the case of *C.G de Geophysique v. Etuk*.[9] The Constitution of the Federal Republic of Nigeria also reaffirms that where any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly prevails, and that other law shall, to the extent of the inconsistency, be void.[10]

On the one hand, Lagos State arbitration is regulated by the Lagos State Arbitration Law 2009 and it places all arbitrations in the state under the law except where parties expressly agree that another arbitration law shall govern their arbitral proceeding.[11] In South Africa, on the other hand, arbitration and other mechanisms of Alternative Dispute Resolution (ADR) have been well-established and remain a popular means for the resolution of commercial disputes.[12] Thus, arbitration is governed by the Domestic Arbitration Act 1965 and The International Arbitration Act. The Arbitration Act 42 of 1965 (the Arbitration Act) was the only arbitration legislation in South Africa until the enactment and promulgation of the International Arbitration Act in 2017. The Arbitration Act is now applicable to domestic arbitrations only. It has been suggested by

[8] 1988 CAP. A18 LFN 2004.
[9] [2004] 1 NWLR (Pt. 853) 20 CA.
[10] *Constitution of the Federal Republic of Nigeria, 1999* (As amended).
[11] Lagos State Arbitration Law, 2009.
[12] Des Williams; Arbitration Procedures and Practice in South Africa (2020) Arbitration procedures and practice in South Africa: overview | Practical Law (westlaw.com) accessed 23/02/2021.

practitioners and the academia that it requires amendment in order to modernize it and to make it more suitable for the domestic practice of arbitration in South Africa in the modern age. To date, however, there have been no significant changes in the National Arbitration Law. Like the Nigerian Arbitration law, South African Arbitration law is based largely on the UNCITRAL Model Law. The preamble to the International Arbitration Act provides "for the incorporation of the model law on International Commercial Arbitration" into South African law.[13] The popularity of arbitration was significantly boosted by the enactment of the South African International Arbitration Act in 2017. The International Arbitration Act incorporates the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Arbitration Law) into South African law. The UNCITRAL Model Arbitration Law, as adapted into schedule 1 of the International Arbitration Act applies in South Africa subject to the provisions of the International Arbitration Act.

As shown above, both Nigerian and South African Arbitration Laws are derived from the international treaties which are the UNCITRAL Model Law, the UNCITRAL Model Rules, and the New York Convention. In essence, the arbitration laws of both countries are the same as they have incorporated the provisions of the aforementioned treaties in their arbitration laws which govern the proceedings of settling commercial disputes through arbitration.

Arbitration Institutions in Nigeria and South Africa

Both countries have their respective arbitration institutions and are also in affiliation with international arbitration institutions. In Nigeria, the domestic arbitration institutions include: The Regional Centre for International Commercial Arbitration, Lagos, the Arbitration Commission of the International Chamber of Commerce – Nigerian National Committee (ICCN), the Chartered Institute of Arbitrators, UK - Nigeria Branch, the Chartered Institute of Arbitrators, the Maritime Arbitrators' Association, and the recently launched Lagos Court of Arbitration.

In South Africa, the domestic arbitration institutions include: The Arbitration Foundation of the Southern Africa (AFSA), the Arbitration Foundation of South Africa International, China-Africa Joint Arbitration Centre (CAJAC Johannesburg), and the Association of Arbitrators, Southern Africa (AASA). Both countries are in affiliation with the following international arbitration

[13] International Arbitration Act, 2007.

institutions: The London Court of International Arbitration, the International Center for the Settlement of Investment Disputes (ICSID), the American Arbitrators Association, and the International Court of Arbitration of the International Chamber of Commerce (ICC).

Arbitral Matters in Nigeria and South Africa

Arbitral matters arise out of contractual and business agreements. It cannot include constitutional matters or customary law matters. It is purely business disputes between parties to an agreement. It could also be an exchange of points of claim or defense in which the existence of an arbitration agreement is alleged by one party and denied by another. Therefore, any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract. Hence, arbitral matters in Nigeria and South Africa[14] include: Breach of contract, tort, compensation for the acquisition of land, and matrimonial causes of ancillary matters for example, division of property.

Non-Arbitral Matters in Nigeria and South Africa

Although parties are largely allowed to have their disputes settled by way of arbitration, few limitations to that right exist. Arbitration may not be employed in the settlement of the following disputes in Nigeria and South Africa:[15] Disputes involving criminal matters in general accepting plea bargaining, disputes involving the interpretation of the constitution or other statutes, and election petition being a matter of public policy.

Conduct of Arbitral Proceedings in Both Jurisdictions

In Nigeria[16] and South Africa,[17] the disputing parties are entitled to equal treatment and they are given opportunity to present their cases. The place of arbitration is determined by the tribunal with due regards to the matter and at the convenience of the parties.[18] The tribunal also has power to appoint and is expected to report on the matter before it while it could also order the attendance of

[14] Section 7 Domestic Arbitration Act.
[15] *Ibid*. s 2.
[16] Section 14 Arbitration Act.
[17] Article 18 of Schedule 1 to the International Arbitration Act.
[18] *Ibid.* Article 16.

a witness.[19] Also, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Save such an agreement, the arbitral tribunal may, subject to the provisions of this law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.[20]

The arbitral proceeding is conducted in a flexible manner. The discretion of the parties is always put into consideration. Parties can decide whether or not there should be a hearing in the first place. Where hearing is agreed to be held by the parties in any arbitral proceeding, the arbitral tribunal shall ensure that the parties are accorded equal treatment and that each party is given full opportunity to present its case.[21] The arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the first schedule to this Act. The parties are free to agree on the juridical seat of arbitration. In the absence of such an agreement, the juridical seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any geographic location it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.[22] It is necessary for the arbitral tribunal to observe the mandatory rules of national laws applicable to international arbitration in the country where the arbitration takes place to ensure that the award to be made by it will be enforceable at law. Arbitration, being a matter of procedure as opposed to a matter of substantive law, is governed by the *lexfori* (that is, the law of the country in which an action is brought) as it was held in the case of *James Miller & Partners Ltd. v. Whitworth Street Estates (Manchester) Ltd*.[23]

[19] *Ibid*. Article 22-23.
[20] *Ibid*. Article 19(1)-(2).
[21] *Ibid*. Article 14.
[22] *Ibid*. Article 20(1)-(2).
[23] [1970] A. C 583 at 606.

Commencement of Arbitral Proceedings

The procedure to commence arbitral proceedings is usually set out in the relevant arbitration agreement or in the rules that the parties have chosen to govern the proceedings. A dispute must have arisen before either party can take any step that commences arbitration proceedings. Such a step must advance the arbitration proceedings as it was held in the case of *Wilmington (Pty) Ltd v Short and McDonald (Pty) Ltd.*[24]The Nigerian[25] and South African[26] courts have noted that the giving of notice for the appointment of an arbitrator may constitute a step that commences arbitration proceedings.[27]

The Language Used in Arbitral Proceedings

In arbitral proceedings in Nigeria[28] and South Africa, the parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal determines the language or languages to be used in the proceedings.[29] This simply means that any language or languages agreed upon by the parties or determined by the arbitral tribunal shall, unless, a contrary intention is expressed by the parties or the arbitral tribunal, be the language or languages to be used in any written statement by the parties, in any hearing, award, decision, or any other communication in the course of the arbitration.[30] The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.[31]

Enforcement of Domestic Arbitral Award Procured in Nigeria and South Africa

Initially, the Nigerian judiciary was quite reluctant to enforce arbitration agreements. It seemed that they considered it to be trespass on their authority. As such, despite the Arbitration and Conciliation Act providing for the settlement of commercial disputes through arbitration, some judges dismissed arbitration agreements on technicalities. An example is the case of *Imoukhuede*

[24][1966] (4) SA 33 (D).
[25] Section 17 Arbitration and Conciliation Act.
[26]Article 21 of Schedule 1 to the International Arbitration Act.
[27]*Wilmington (Pty) Ltd (supra).*
[28] Section 18(1) of the Arbitration and Conciliation Act.
[29] Article 21(1-) -(2) of Schedule 1 to the International Arbitration Act.
[30]*Ibid*. Article 18(2).
[31]*Ibid*. Article 18(3).

v. Mekwunye,[32] where parties to an agreement inserted an arbitration clause to the effect that disputes were to be referred to a sole arbitrator to be appointed by the president of the "Chartered Institute of Arbitration (London), Nigerian Chapter. However, through arbitral institutions such as the Chartered Institute of Arbitrators and the ICC Commission on Arbitration and ADR, numerous judicial trainings were held and are still periodically held, informing a change in the attribute of the judiciary. Whenever a dispute arises out of an agreement which has an arbitration clause, the courts will stay all proceedings pending the determination by an arbitral tribunal.[33] This is evidenced by cases such as *Frontier Oil Limited v. Mai Epo Manu Oil Nigeria Limited*. The High Court of Lagos State affirmed that "Courts of law have inherent jurisdiction to decide disputes between parties, but where the parties by their own agreement opt for arbitration, the courts will always respect such agreements and decline jurisdiction."[34]

Thus, an arbitral award is legally binding on the parties to the arbitration and shall be enforceable by the court against the parties on an application in writing. [35]The application should, however, be supported with a duly authenticated original award or a certified copy of it and the original arbitration agreement or certified copy of it[36] as it was held in *Ebokam v. Ekwenibe & Sons Trading* Company.[37] Where the award of the arbitration agreement is not written in English, a translation in English is required.[38] Where the conditions are fulfilled, such an award shall be enforced as a judgment of the court with the leave of the court.[39]

The South African courts are also empowered to make an arbitration award an order of court upon application by one of the parties. In instances where there is a patent clerical error or mistake arising from any accidental slip or omission, the court is empowered to correct any such error or mistake prior to making the award an order of court.[40]

[32][2019] LPELR-48996(SC).
[33]Arbitration in Nigeria., ARBITRATION IN NIGERIA: OVERVIEW AND CHALLENGES – Folashade Alli & Associates (faa-law.com) accessed 22/02/2021.
[34]*Obembe v. Wemabod Estates Ltd* [1977] 5 SC 131.
[35]Section 31(1) of the Arbitration and Conciliation Act.
[36]*Ibid.* s 31(2).
[37] [2001] NWLR 2 (Pt. 696),32.
[38] Section 56(2)(c) of the Lagos State Arbitration Law 2009.
[39]*Ibid*. s 31(2).
[40] Section 31 Arbitration Act.

Recognition of the Enforcement International Arbitration Award in Nigeria and South Africa

Nigeria and South Africa are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "New York Convention"). As a signatory to this convention, Nigeria is obliged to recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied on and in accordance with the articles of the New York Convention. Section 51 of the Arbitration and Conciliation Act provides that "an arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to this section and section 32 of this Act which shall upon application in writing be enforced by the court." Pursuant to this provision, recognition, and enforcement of foreign arbitral awards are granted (or refused) on the basis of an *exparte* application, without any adversarial proceedings between the parties. However, prior to a determination, the court may summon the other party where the court considers it necessary. The English case of *IOT Engineering Projects Limited v Dangote Fertilizer Limited & Anor*,[41] stressed on the alleged difficulties and delays encountered by parties seeking to enforce foreign arbitral awards in Nigeria. The Court of Appeal rejected the notion that a party who is desirous of frustrating the enforcement of a foreign award or judgment in Nigeria could do so successfully for many years.

Nigeria, very supportive of international arbitration, recognizes and gives effect to foreign arbitral awards validly made. This is acknowledged by the International Bar Association[42] as well as by a large number of commentators and practitioners.[43] Nigerian law on the enforcement of arbitral awards is simple, straightforward, and unambiguous. The legal process for enforcement of arbitral awards is also simple. Nigerian Arbitration Law is therefore in tandem with international attitudes on easy enforceability of arbitral awards.[44] The recent decisions by the Federal High Court and the Court of Appeal, not only solidify the commitment of Nigerian jurisprudence to the universal

[41] [2014] EWHC 901.
[42] Arbitration – Guide IBA Arbitration Committee, Nigeria, February 2012, p. 15.
[43] E. Onyema, Nigeria in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide*, Kluwer Law International 2013, pp. 164-169; Amazu A. Asouzu, "The UN, the UNCITRAL Model Arbitration Law and the LexArbitri of Nigeria," (2000) 17 (5) *Journal of International Arbitration* p. 104.
[44] U. H. Azikiwe, "Country Chapter: Nigeria, in the European, Middle Eastern and African Arbitration Review," (2014) *Global Arbitration Review.*

enforcement of foreign arbitral awards, but also supports the growing trend toward speedy adjudication in Nigerian courts where such legal issues are concerned. The decision of the Court of Appeal in *IOT Engineering Projects Limited v Dangote Fertilizer Limited*, for example, confirms the position that Nigerian Arbitration Law continues to evolve in perfect alignment with international standards of recognition and enforcement. South Africa, without any reservations, is also a party to the New York Convention. The International Arbitration Act in schedule 1 provide for the recognition and enforcement of foreign arbitration awards in South Africa. Arbitral awards are recognized as binding and on application in writing to the competent court, will be enforced irrespective of the country in which they were made.[45] Foreign arbitral awards are deemed to be recognized and enforceable in South Africa and a party may, on application, have a foreign arbitral award declared an order of court, which is enforceable in the same manner as any judgment or order of court.[46] The court to which the application must be made is made is the High Court in whose jurisdiction the arbitration was held or the High Court division with jurisdiction over a South African party to the arbitration.

Grounds for Refusal to Enforce an Award

The court may refuse to enforce an award on the application of any of the parties on any of the following grounds:

(i) Incapacities of any of the parties to the arbitration agreement. For example, insanity;
(ii) On the ground of public policy;
(iii) Applicant was not given proper notice of the appointment of an arbitrator, the arbitral proceedings or, to present his case before the tribunal;
(iv) The award exceeded the scope of the submission to arbitration;
(v) The composition of the tribunal or its procedure is contrary to the agreement of the parties;
(vi) The parties did not observe the provisions of the law in the appointment of arbitrators where they did not stipulate the procedure for the appointment;
(vii) The award has not yet become binding on the parties or has been set aside in the jurisdiction where it was obtained;

[45]Article 35(1) of Schedule 1 to the International Arbitration Act.
[46]Section 16 of the International Arbitration Act.

(viii) Where the award is not in writing, not signed, or does not contain the date of award or reasons for the award;[47]and

(ix) Where the subject matter of the arbitral proceedings had become statute-barred before the arbitration.[48]

Recognition of Nigeria and South Africa as International Arbitral Destinations

Arbitration is thriving in Nigeria and numerous disputes are settled by this means every year. International arbitration, however, has gained little traction. Even where disputes of international nature arise out of contracts executed and carried out in Nigeria, parties tend to choose seats and arbitrators in the more famous western seats such as London, New York, Paris, and Geneva.

According to the 2018 International Arbitration Survey,[49] preferences for a given seat is primarily determined by its:

(i) General reputation and recognition;
(ii) Users' perception of its 'formal legal infrastructure;'
(iii) The neutrality and impartiality of its legal system;
(iv) National Arbitration Law;
(v) Track record in enforcing agreements to arbitrate and arbitral awards; and
(vi) Availability of quality arbitrators who are familiar with the seat.

It should be noted that negative press and insecurity pose challenges in some parts of the country for the choice of Nigeria as an international arbitration destination. Unfortunately, Nigeria's reputation for corruption does not encourage confidence in the judiciary by the international world. Arbitration and the judiciary are intertwined. For instance, granting of injunctions, enforcement of awards, and appointment of arbitrators are some of the roles the court plays in arbitration. Where the judiciary is seen as corrupt, intending parties would be reluctant to rely on such judiciary as a support system in cases where their arbitration needs the courts' intervention. Matters referred for international arbitration in South Africa are mainly cross-border commercial disputes. These

[47] Section 35(1) Arbitration and Conciliation Act.
[48] *ibid*. s 51(2).
[49] The Evolution of International Arbitration carried out by Queen Mary University of London and the law firm, White and Case.

commercial disputes involve, amongst other things, general contractual disputes, engineering and construction disputes, and disputes involving share agreements and/or loan repayment. Given the relatively nascent state of a distinct international arbitration regime in South Africa, the current general trend is the uptake in the number of new matters being referred to local and international arbitral institutions.

The digitization of South Africa's courts and the uptake of technologies facilitate virtual hearings and e-discovery, all of which have been accelerated by the COVID-19 pandemic, have increased access to arbitration proceedings held in South Africa and to South Africa's courts in instances where parties to arbitration proceedings are required to approach them for relief. South Africa's arbitral institutions are working towards developing technology designed for virtual hearing to enable parties to participate in arbitration from different geographic locations.[50]

Secondly, the COVID-19 pandemic has also necessitated Nigerian and South African law firms and courts to hold hearings via online teleconferencing platforms. This will significantly expand access to international arbitrations seated in South Africa as it becomes increasingly less essential for legal representatives, litigants, and witnesses to convene at a single location. With the option of attending an arbitration proceeding via teleconference, parties are now able to enjoy the full suite of benefits of choosing South Africa as the seat for their international arbitration without the necessity of being physically present in South Africa.

Conclusion

This paper concludes that the Nigerian and South African Arbitration Laws and practice are similar in nature because they both incorporated the International Statutes on Arbitration in their domestic laws. Also, the arbitration proceedings and enforcement of arbitral and international arbitral awards are same. However, the international recognition of Nigerian arbitration is still minimal compared with South African arbitration, especially with respect to the arbitral seat and other challenges.

[50]International Arbitration 2020 - South Africa | Global Practice Guides | Chambers and Partners accessed 22/02/2021.

Recommendations

The recommendations made towards improving the chances of Nigeria being chosen as a preferred choice for international arbitration as compared with South Africa are as follows:

1. Nigerian judges must be trained in the practice and procedure of arbitration. They must support the arbitration process and enforce arbitration agreements and arbitration awards;
2. The judiciary must adopt a pro-enforcement stance when dealing with enforcement of arbitration agreements and awards;
3. Recognition and enforcement of arbitral awards must be refused only under the circumstances set out in Article V of the New York Convention and Sections 52 (2) (b) (i) and (ii) of the Arbitration and Conciliation Act;
4. Nigerian judges must be wary of granting anti-arbitration injunctions except in unique cases that warrant the making of such orders. They must deal expeditiously with proceedings involving arbitrations;
5. Nigerian arbitration institutions should step up technologies facilitating virtual hearing and e-discovery especially with respect to the impact of COVID-19 pandemic on the world;
6. Aside ICSID awards, which are enforced directly at the Supreme Court as the court of first instance, the length of time it takes for arbitration cases to reach the Supreme Court is excessive. This situation must be addressed and the trend reversed;
7. The security situation and perceptions of corruption must be addressed;
8. Arbitrators must be people of knowledge, expertise, and proven integrity;
9. Nigeria's political stability must be well guarded;
10. Nigerian arbitration institutions must embrace international best practices and embark on aggressive marketing and sponsorship of international arbitration programs in order to achieve market presence and gain international recognition and acceptability;

11. Counsel's conduct during arbitration proceedings must be pro-arbitration. Counsel must shun guerrilla tactics while conducting arbitration cases and assist the process towards its conclusion;

With new arbitration institutions being established in Nigeria to compete with existing institutions, the real test of Nigeria's preparedness to be the choice destination for international arbitration will lie in the independence, neutrality, and diversity of these institutions, with the active support and assistance of the judiciary. Nigeria's best assets, in positioning itself as an attractive destination for international arbitration, are its people, its arbitrators, judiciary, lawyers, secretaries, registrars, and aspiring young arbitrators. They should all be committed to pursuing the goal of transforming the country and indeed the African continent into a preferred international arbitration destination.