

CAN A COURT SIT ON APPEAL OVER AN AWARD REACHED FROM AN ARBITRATION PROCEEDINGS?

ABSTRACT

In Nigeria, litigation has long been the primary method of resolving disputes. It requires a judge or magistrate to hear and decide a case. The process is often slow, and some cases can run for over ten years because counsels frequently file interlocutory applications that delay the proceedings not to mention the number of cases a single judge is sometimes assigned to handle. After judgment has been given by the trial court, a party whom judgment was given against may appeal to the Court of Appeal. If dissatisfied with the decision, the party can further appeal to the Supreme Court which is the highest court in Nigeria. An appeal may take about seven to ten years to reach the Supreme Court, and the court may still take additional years to hear and deliver its final decision because it handles a heavy caseload and remains the only Supreme Court in Nigeria. In some situations, the Supreme Court may order a retrial before the same judge or another judge if it discovers errors in the trial process.

These delays in litigation have made it necessary to explore other options for resolving disputes. This study aims to examine the various ADR mechanisms, with a focus on arbitration and the power of the courts to review and sit on appeal over arbitral awards.

1. INTRODUCTION

Alternative Dispute Resolution has become an integral part of the Nigeria Justice System. Many individuals and organizations now prefer it as a means to settle disputes rather than the regular litigation. This is because it is faster, relatively cheaper when considering time value of money, and does not destroy business relationships.

Nowadays, courts now require legal practitioners to explore ADR options before resorting to litigation. The High Court of Lagos Civil Procedure Rules 2019 requires legal practitioners to file Pre-action Protocol Form 01 as one of the documents to accompany Writ of Summon¹. The rule also requires all originating processes to be screened to determine suitability for ADR and may be referred to Lagos Multi Door Court House²

There are various Alternative dispute resolution options, the major ones are: Negotiation, Conciliation, Mediation and Arbitration.

NEGOTIATION: this is the simplest form of ADR. It involves both parties in the dispute coming together to reach an agreement without involving a third party. The parties involved in the dispute can be more than two. A successful negotiation usually resorts in an agreement. Where the parties are already in court, and the dispute is a civil dispute, the agreement is referred to as terms of settlement and the parties can file it for the court to adopt it as consent judgment³.

¹ Order 5 Rule 1 (2) High Court of Lagos Civil Procedure Rules 2019

² Ibid Or. 5 r.8

³ Alternative Dispute Resolution Mechanisms and Procedure, Abdulrasheed Badmus (2023)

<<https://www.mondaq.com/nigeria/arbitration-dispute-resolution/1297702/alternative-disputes-resolution-mechanisms-and-procedure?msg=15>> accessed 16th November 2025

MEDIATION: this involves a neutral third party who facilitates discussion between the disputing parties. He is known as the mediator. The mediator guides the parties toward an amicable settlement without imposing any decision and helps them work out a solution that benefits both sides.

CONCILIATION: This involves a third party known as the Conciliator who works to help the parties reach a voluntary settlement. This is similar to mediation but the conciliator can suggest possible terms of settlement.

ARBITRATION: This is more formal and structured. It is similar to litigation, but it is not litigation. Here, the parties submit themselves to an arbitrator who listens to both parties and delivers a binding decision called an arbitral award. The award is binding on both parties. It is governed by the Arbitration and Mediation Act 2023.

2. APPOINTMENT OF AN ARBITRATOR

In Nigeria, arbitration is governed by the Arbitration and Mediation Act 2023⁴ which repealed the former Arbitration and Conciliation Act⁵. By the provision of the Arbitration and Mediation Act 2023, appointment of an arbitrator is done by an agreement between the parties in dispute⁶. Where the parties failed to agree on the procedure for appointing an arbitrator, the procedure in Arbitration and Mediation Act 2023 shall be followed⁷, which is:

- With three Arbitrators: each party shall appoint one arbitrator and the two arbitrators appointed shall appoint the third arbitrator. Where a party fails to appoint an arbitrator or where the two arbitrators fail to appoint the third

⁴ Arbitration and Mediation Act 2023

⁵ Arbitration and Conciliation Act (ACA), Cap A18 LFN 2004

⁶ S.7(2) AMA 2023

⁷ S.7(3) (a) – (e) AMA 2023

arbitrator with 30 days of a request to do so, upon the request by a party, the appointment shall be made by the appointing authorities designated by the parties or where there is no designation, by an arbitral institution in Nigeria or by the Court.

- With a sole arbitrator: where the parties are unable to agree on the arbitrator within 30 days after the receipt of a written communication of the dispute to be referred to arbitration by the other party, the arbitrator shall be appointed by the appointing authorities designated by the parties or where there is no designation, by an arbitral institution in Nigeria or by the Court.

As to the number of Arbitrators, the Arbitration and Mediation Act 2023⁸ provides that parties may agree on the number of arbitrators to constitute an arbitral tribunal. Where there is no agreement as to the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.

From the above, it can be deduced that there are three ways of appointing Arbitrators under the act, which include:

- By the agreement of the parties
- By arbitral institutions
- By the court

⁸ S.6 AMA 2023

3. CAN A COURT SIT ON APPEAL OVER AN AWARD REACHED FROM AN ARBITRATION PROCEEDING?

An arbitral award is a complete, final and binding determination of all issues brought before an arbitral tribunal by the parties. It is the final resolution of the matter or decision, on merit, of all the issues by the arbitral tribunal⁹.

The Arbitration and Mediation Act¹⁰ sets out the required form of an arbitral award. They must be in writing and signed by the arbitrator or arbitrators. It must also contain the reasons for the decision, except where the parties have agreed that no reasons are needed or the award is made on agreed terms. In addition, the award must state the date it was made.

The position of the court in **Bolingo Hotel & Tower Ltd v. Dee-V-8 Ltd**¹¹ is that a final award is binding as it is recognizable and enforceable by the courts on the application of a party to the arbitral proceedings. In that case, the court stated thus:

“An Arbitral Award is a determination on the merits by an arbitration tribunal in an arbitral proceedings. It is analogous to a judgment in a Court of law. An award, shall upon application in writing to the Court, be enforced by the Court. Once an award has been given, it qualifies for recognition and enforcement under the relevant applicable laws or conventions, subject to right of either party to apply to court to set aside the award”.

⁹ Hagler Okorie, *Arbitration Law: Practice and Procedure* (Princeton & Associates Publishing Co. Ltd 2024)

¹⁰ S.47 AMA 2023

¹¹ (2021) LPELR-54670 (CA)

Also, in **Dangote Farms Ltd v. Pleuwx Cotton Ltd**¹², the Court stated that

“.....the court cannot rewrite the agreement between parties to a contract. Once it is shown by credible evidence as it was shown in the instant that the parties had willingly agreed to submit their disputes to arbitration, then they are bound by the term of their agreement and if in the arbitration proceedings as agreed upon by the parties a decision is reached on their dispute, it is final. The parties cannot be allowed and are not in law to reopen it. The only jurisdiction conferred on the court is to give leave to enforce the award as judgment unless there is a ground for doubting the validity of the award.....”

It is important to note that by the provision of the Arbitration and Mediation Act 2023¹³, an arbitral award may be set aside by the court upon an application by any party. The grounds upon which the award may be set aside is listed in Section 55 (3) of the Act, which is summarized thus:¹⁴

- Invalidity of arbitration agreement
- Legal incapacity
- Improper notice of the appointment of an arbitrator or the arbitral proceedings
- Award outside the scope of agreement or submission
- Non-conformity with the composition of the arbitral tribunal or the arbitral procedure
- Excess authority or ultra vires act

¹² (2018) LPELR-46581 (CA).

¹³ S.55 AMA 2023

¹⁴Bamidele Ikusika, ‘The Novelty of Proving ‘Substantial Injustice’ for Setting an Arbitral Award Aside in Nigeria under the Arbitration and Mediation Act 2023: To What End of Justice?’ (2024) SSRN ELECTRONIC JOURNAL <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5001046 > accessed 17th November 2025

The provision of the Arbitration and Mediation Act 2023 gives the court the power to set aside an arbitral award on the grounds stated in the Act¹⁵, however, it does not empower the court to sit on appeal over the award reached in the arbitration proceedings. A court cannot sit as an appellate court over an arbitral award. This has been affirmed by the Courts in plethora of cases.

The court in **Adamen Publishers (Nig.) Ltd v. Abhulimen**¹⁶ stated that a court cannot assume appellate jurisdiction over a challenged award. The court stated thus:

“The court before whom an arbitral award is challenged cannot assume appellate jurisdiction over the award of the arbitrator. Consequently, the court lacks the jurisdiction to determine whether or not the findings of the arbitrator and his conclusion are wrong in law. Therefore, The court, faced with the prayer to set aside an arbitral award cannot approach the award in the same manner it would if it were exercising its ordinary appellate jurisdiction. Thus, the fundamental premise of law is that the arbitral award is final the parties having submitted themselves to arbitration, are bound by it.....”

The court also in **Nitel Ltd v. Okeke**¹⁷ stated that

“The court does not sit on appeal over an arbitral award. Thus, even where the court finds merit in an application to set aside an award, its jurisdiction is limited to setting aside the award and remitting it to the arbitrator for reconsideration. The court has no jurisdiction to determine the merits of the matter, which

¹⁵ S.55(3) AMA 2023

¹⁶ (2016) 6 NWLR (Pt. 1509) 431

¹⁷ (2017) 9 NWLR (Pt. 1571) 439

is the subject of the arbitration proceedings. In this case, a significant portion of the appellant's brief was devoted to challenging the award, which is not proper”.

In **N.N.P.C. v. Fung Tai Eng. Co. Ltd**¹⁸, the Court stated that:

“Courts do not sit on appeal over an award made by an arbitral tribunal for the purpose of a re-hearing which an appeal before an appellate court is.

They cannot embark on a review of the points of dispute already decided by the tribunal for the purpose of substituting their own views on both the facts and law. The court is not empowered to determine whether or not the findings of arbitrators and their conclusions are wrong in law. What the court has to do is to look at the award and determine whether on the state of the law as understood by them and as stated on the fact of the award, the arbitrators complied with the law as they themselves rightly or wrongly perceived it. The approach is subjective. The court places itself in the position of the arbitrators and not above them and then determines on that hypothesis whether the arbitrators followed the law as they understood and expressed it. There is no law which specifically vests or confers appellate jurisdiction on any court in Nigeria over an award made by an arbitral tribunal under and pursuant to the Arbitration and Conciliation Act. Put in another way, no court in Nigeria has the statutory jurisdiction to entertain and adjudicate over an appeal from the award made by an arbitral

¹⁸ (2023) 15 NWLR (Pt. 1906) 117

tribunal. No court can purport to sit over an appeal against an award made by an arbitration tribunal since it lacks the requisite judicial power and authority to confer or arrogate to itself the jurisdiction it does not have it all under any statute or law”.

From the above judicial authorities, it can be seen that no court in Nigeria has appellate jurisdiction over an arbitral award in arbitration proceedings.

4. ANALYSIS OF BUA INTERNATIONAL LTD V. SKETCHYZ CONSULTING LTD¹⁹

The Respondent instituted an action at the High Court of Lagos State by a Writ of Summons claiming the sum of ₦7,939,521.42 as the balance of contract sums under two separate contracts entered into with the Appellant. In response, the Appellant applied for a stay of proceedings, urging that the matter be referred to arbitration in accordance with the terms of the parties' agreement. The trial court granted the application, and an arbitrator was duly appointed. The arbitrator delivered an award in favor of the Respondent for the claimed amount.

Following the award, the Respondent filed a Motion on Notice at the High Court, seeking recognition and enforcement of the arbitral award. The application was granted by the court which entered judgment in terms of the award. Dissatisfied with this outcome, the Appellant appealed to the Court of Appeal, Lagos Division, challenging the enforcement of the arbitral award.

The following issues were determined by the Court:

1. Whether the Appellant validly challenged the Arbitrator's appointment, competence, or jurisdiction.

¹⁹ (2019) LPELR-47374 (CA)

2. Whether from the facts of the case, the Arbitrator was impartial, fair, and did not misconduct himself in the Arbitral Proceeding.

On the first issue, the Court held that the appointment of an arbitrator is governed by the agreement of the parties, and the principles of contract law apply subject to the Arbitration and Conciliation Act, Cap A18 LFN 2004 (now Arbitration and Mediation Act 2023). Once parties agree on a specific method of appointment, they are bound to follow it. The Court found that although the Respondent's procedure for appointing the arbitrator differed from what was earlier agreed, the Appellant, being aware of this, voluntarily submitted to it. The issue was therefore resolved against the Appellant.

On the second issue, the Court emphasized that an arbitrator functions as a private judge with the duty to conduct proceedings fairly and lawfully, and while an award may be set aside where there is substantial misconduct, the Appellant's allegations were unfounded. The claims of failure to hold a hearing and improper service were rejected, as the proceedings were conducted on documentary evidence and the arbitrator's reasoning on service was logical.

The Court further noted that courts cannot act as appellate bodies over arbitral awards, which are intended to be final and binding, subject only to the limited grounds under the Arbitration and Conciliation Act (now Arbitration and Mediation Act 2023). Finding the award clear, unambiguous, and enforceable, the Court of Appeal dismissed the appeal and affirmed the High Court's decision, holding that the alleged irregularities were unsubstantiated.

5. CONCLUSION

From the Judicial authorities reviewed in this study, particularly **BUA INTERNATIONAL LTD V. SKETCHYZ CONSULTING LTD**, the Courts have affirmed that

no law in Nigeria gives any court the power to act as an appellate body over arbitral award.

This position is logical. Allowing courts to assume appellate jurisdiction over arbitral awards would undermine the purpose of arbitration. Arbitration is private while court proceedings are public. An appeal to the court would therefore compromise the confidentiality that parties sought to protect. An arbitral award is also intended to be final and binding. If courts could sit on appeal over such awards, that finality would be lost. More importantly, parties choose arbitration to avoid the lengthy and technical process of litigation. Permitting appeals to the court would defeat this purpose and erode the efficiency that arbitration is designed to provide.

About the Author

John William Dong is a Legal Practitioner and Notary Public with over twenty-two (22) years of professional experience in litigation, corporate advisory practice, and dispute resolution. He is the Founding and Managing Partner of JDL Solicitors & Advocates, where he engages in the provision of legal services across diverse areas of law, with particular emphasis on civil and commercial litigation, corporate and commercial law, real estate, and regulatory compliance. He has appeared extensively before superior courts of record in Nigeria and is noted for his analytical rigor, depth of legal reasoning, and adherence to professional ethics.

Beyond legal practice, Mr. Dong contributes to the advancement of the legal profession through mentorship of younger lawyers, participation in continuing legal education, and active involvement in professional bodies, including the Nigerian Bar Association and the International Bar Association. His sustained engagement in conferences, seminars, and workshops reflects a commitment to

scholarly development, professional excellence, and the continuous evolution of legal practice.