

Judicial Intervention in Arbitration

A. Oluwabiyi, O. A. Ajani, J. O. Aransiola, M. O. Agboke, and E. E. Uwoghiren, Obafemi Awolowo University, Ile-Ife, Nigeria

Abstract

The paper looks at the intervention of Courts in arbitral proceedings. Employing the doctrinal research method, the study found that the jurisdiction of the court is necessary and prescribed by the 2023 Arbitration and Mediation Act of Nigeria, to commence the arbitration; in the course of the arbitration; and in the enforcement of an arbitral award. The paper concludes that as much as the involvement of national courts in arbitration is necessary, courts should restrict such interference to stipulated areas, to achieve quick dispensation of justice.

Keywords: Judicial, Intervention, Arbitration, Arbitral Proceedings.

Introduction

Arbitration may be defined as a method of settling disputes between two or more persons by which such disputes or differences are referred to one or more persons nominated by the disputants for settlement either before it comes to court or by order of court. It is a resolution of disputes by one or more persons appointed by parties to an arbitration agreement.¹ An arbitration agreement is a written agreement to submit present and future differences to arbitration even when no arbitrator is named therein.²

In recent times, arbitration as an alternative form of dispute resolution procedure has gained wider acceptance and practice in Nigeria as a method of resolving disputes, particularly in commercial transactions. This is largely due to the slow pace of dispute resolution by the courts, increasing foreign content transactions where usually the foreign partners may not have utmost confidence in the Nigerian Courts or may desire a neutral forum to resolve possible disputes, and of course the increasing desire by parties to remain in control of the process of resolving disputes as a term of contracting with each other from the onset.

¹ Freshfields guide to Arbitration and ADR 1993.

² English Arbitration Act 1950

Arbitration is governed in Nigeria by the Arbitration and Mediation Act 2023.³ The Arbitration Act establishes a cohesive legal framework aimed at ensuring the equitable and effective resolution of commercial disputes through arbitration and mediation. It also applies the New York Convention on the Recognition and Enforcement of Arbitral Awards to any awards issued in Nigeria or any contracting state resulting from International Commercial Arbitration.⁴

Parties to an arbitration agreement generally consent to submit their disputes, in accordance with the agreement's terms, to arbitration, thereby excluding court jurisdiction over the dispute's subject matter.. This assumes that parties who agree to refer disputes to arbitration have chosen a private system and means of resolving their disputes without recourse to the Court.

In practice, it is evident that arbitration relies on the foundational support of the courts, which possess the exclusive authority to intervene and preserve the integrity of the system when one party attempts to undermine it. The relationship between courts and arbitral tribunals swings between forced cohabitation and true partnership. In the case of *Coppie Levalin N.V. v. Ken-Ren Fertilisers & Chemicals*, Lord Mustill articulated that:

On one side, the notion of arbitration as a consensual process, bolstered by the principles of transnationalism, tends to oppose the engagement of state mechanisms via the medium of a municipal court. Conversely, it is an undeniable reality, whether agreeable or not, that only a court endowed with coercive authority has the capacity to salvage arbitration when it is at risk of failing.⁵

The Role of Courts in Arbitration

At least three scenarios may be identified in which judicial involvement may be requisite in an arbitration procedure. These are:

- a. Commencement of the Arbitration
- b. During the Arbitration
- c. Enforcement of the Arbitral Award

The jurisdiction of Courts is necessary to sometimes kick off the arbitration itself, salvage the process or the subject matter of dispute, and indeed enforce any resultant award from the arbitration or set it aside altogether.

³ herein after referred to as AMA

⁴ Preamble, AMA

⁵ [1994] 2 Lloyds Report 109 at 116 HL

Commencement of the Arbitration:

At the commencement of an arbitration, the jurisdiction of the courts may be invoked to start off the process particularly where one of the parties to the arbitration agreement acts contrary to the terms of the agreement. Three instances readily come to mind at commencement where courts have been known to intervene in an arbitration:

a) Enforcing the arbitration agreement:

A party to an arbitration agreement could opt to issue proceedings, in a court of law, rather than submit the disagreement to arbitration. If the defendant agrees to this, the court action will proceed. However, having entered into an arbitration agreement, the defendant usually insists on his right to have the dispute decided by arbitration rather than by the national court and may make an application to the court to stay further court proceedings pending arbitration as agreed by the parties.

The majority of courts are inclined to uphold the arbitration agreement by dismissing any judicial proceedings and directing the parties to arbitration instead.

The Act empowers the court, upon the application of a party to an arbitration agreement, to stay proceedings before it and refer the matter to arbitration in line with their arbitration agreement.⁶ This is equally an obligation imposed by Article II of the New York Convention on the courts of signatory States.⁷ In the case of *Oba Jimoh Oyewunmi v. Nigerian Tobacco Company Ltd.*,⁸ it was held that the court had the power to refer the dispute to arbitration and stay court proceedings since the applicant had not taken any further steps in the proceedings than to enter an appearance, before the application to refer. The applicant before the court seeking to enforce the arbitration agreement must show that:

- d.** An arbitration agreement exists between the parties, or there is a statutory provision that mandates arbitration in these cases;
- e.** The parties involved in the court proceedings are parties to the agreement/transaction that mandates arbitration;

⁶ section 5 of AMA

⁷ Article II (3) of the New York Convention states:

"The court of a contracting state, upon receiving an action related to a matter for which the parties have established an agreement as defined in this article, shall refer the parties to arbitration at the request of one party, unless it determines that the agreement is null and void, inoperative, or incapable of being performed."

⁸ Unreported Suit No. HOG/105/94: Ruling delivered by Adeniji J. on 12/5,95

- f. That the arbitration sought is within the contemplation of the arbitration agreement;
- g. That there is no reason why reference to arbitration should not be made and;
- h. That the application for stay of proceedings is made in time as envisaged by the Act and no other step than the entry of appearance has been taken by the applicant.⁹ See also *Kurubo v. Zach Motison (Nig) Ltd*¹⁰

A similar provision as in The Arbitration Act is also found in Article 8 of the United Nations Commission on International Trade Law¹¹ Model Law of International Commercial Arbitration.

b) Establishing the arbitral tribunal:

In instances where the parties to an arbitration agreement fail to establish sufficient provisions for the formation of an arbitral tribunal, particularly concerning the appointment of arbitrators, and in the absence of relevant institutional or alternative rules, such as the UNCITRAL Rules, the involvement of a national court is typically necessary. In the absence of established rules, it is necessary to address any challenges to the independence or impartiality of an arbitrator.

Incidentally, the New Act under S. 56 makes it possible for parties to benefit from an award review under an Award Review Tribunal.¹² It enables the tribunal to set aside an arbitral award relying on the same grounds as the Court. The ART has the option of setting aside or upholding an award within 6 days of being constituted. The Court however, can reinstate an award that has been set aside by the ART once it finds the decision unstoppable. The Court can on the grounds of non-arbitrability and public policy set aside an award upheld by the ART. A disadvantage of this provision is that it could lead to outright increase in the cost and time for the final settlement and enforcement of a dispute.

According to Section 7 of the Arbitration and Mediation Act (AMA), a court possesses the authority to appoint an arbitrator upon the request of any party involved in the arbitration agreement. This provision is applicable in scenarios where a member of a three-member arbitration panel neglects to appoint an

⁹ Nigerian LNG. LID. v. ADIC. [1995] 8NWLR PT 416, Pg 677 at 697

¹⁰ [1992] 4NWLR PT 239, Pg 102 at 117-119

¹¹ herein after referred to as UNCITRAL

¹² herein after referred to as ART

arbitrator within a 30-day period following a written request from the opposing party. Additionally, it applies when the two arbitrators selected by the parties are unable to reach a consensus on the appointment of a third arbitrator within 30 days of their respective appointments. Furthermore, in cases involving a sole arbitrator, this provision is invoked when the parties are unable to agree on the selection of an arbitrator. The Court of Appeal examined this Section in the case of *C.G. De Geophysique v. Etuk*.¹³

It was determined that when a sole arbitrator is to be appointed but the arbitration agreement lacks a defined procedure for such appointment, and the parties do not mutually agree on the appointment, one party cannot unilaterally appoint the sole arbitrator to the disadvantage of the other party without seeking court intervention. In instances where the parties cannot reach an agreement regarding the arbitrator, the court shall appoint one upon the application of any party to the arbitration agreement, provided this application is made within 30 days of the disagreement, as stipulated in Section 7(2)(b) of the Act.¹⁴

Although the facts of this case were that the arbitration agreement required two arbitrators, the court extended the application of Section 7(2)(b) of the Act¹⁵ which makes provisions for the appointment of a sole arbitrator, to this case. Section 7(2)(b) can be invoked for the appointment of two arbitrators in this case, where the court's jurisdiction was sought to appoint two arbitrators due to the absence of such a provision in the Act.

Countries with advanced arbitration law systems acknowledge the essential role of their legal frameworks and courts in facilitating the arbitral process. In this role, national courts are typically authorised to appoint arbitrators when a party to a dispute finds it necessary to make such a request. Most contemporary national arbitration codes grant extensive authority for the appointment of arbitrators and umpires. In England, Section 18 of the Arbitration Act 1996 empowers the court to make an appointment when the arbitration agreement designates an appointing authority that either refuses or fails to fulfil this role.

However, an application to a national court to act as appointing authority, in order to rescue an arbitration agreement from inoperability is unsatisfactory in a number of ways and should be regarded as a last resort. Article 6 of the Arbitration Rules, as outlined in the Schedule to the Act, designates the default Director of the Regional Centre for International Commercial Arbitration in Lagos (RCICAL) as the appointing authority when the parties have not reached an agreement. The designation of an appointing

¹³ [2004] INWLR PT 853, Pg 20 at 49-50

¹⁴ *ibid*

¹⁵ *ibid*

authority is required when one party has previously proposed an appointing authority, and the other party has not agreed to this proposal within 30 days.

c) Challenges to jurisdiction:

Generally, issues that challenge the jurisdiction of an arbitral tribunal are raised at commencement. Where successfully raised the arbitration is terminated immediately. In some cases, it is however raised at the enforcement stage as a ground for setting aside the award. While challenges to the jurisdiction of an arbitral tribunal may be dealt with initially by the tribunal itself,¹⁶ a final decision on jurisdiction however rests with the relevant national court. The relevant court is either located at the seat of arbitration or is situated in the state or states where recognition and enforcement of the arbitral award is pursued.¹⁷

2. During the Arbitration

When the arbitrators begin their task, it is assumed that the baton for the resolution of the dispute has been passed to them and ordinarily there need not be the involvement of National courts any longer in the process, at least at this stage. Numerous arbitrations continue to completion without judicial intervention, even if one party neglects or declines to participate in the procedures. In some circumstances, the engagement of a national court may be required to guarantee the appropriate execution of the arbitration.¹⁸ During the arbitration procedure, judicial jurisdiction is occasionally requested for the following reasons:

a). Interim Measures and Reliefs:

Usually the arbitral tribunal has the power to grant interim reliefs where necessary at the request of a party. Such relief under the Nigerian Arbitration Act may be for the preservation and protection of the subject matter of dispute, or require any party to provide security for any preservative order granted.¹⁹ The International Chamber of Commerce (ICC) Arbitration Rules have a similar provision allowing an arbitral tribunal to order interim or conservatory measures it deems appropriate.²⁰

With this provision, the question may be asked should a court then become involved in a dispute already the subject of arbitration, and if so to what extent should this involvement be? At what point does this engagement transition

¹⁶ *ibid*

¹⁷ A. Redfern and M. Hunter, *Law and Practice of International Commercial Arbitration* (4th Edn, 2004) 332

¹⁸ *ibid*

¹⁹ section 19 of AMA

²⁰ Article 23 (1) ICC Arbitration Rules

into an intervention in the arbitral process, and when does such intervention constitute an interference with a procedure intended to remain independent of the court?

The challenges posed by the limitation of the powers of an arbitral tribunal in some jurisdictions however make the involvement of National courts inevitable in granting interim reliefs. For instance, the Greek Code of Civil Procedure states that "the arbitrator may not order, amend, or revoke interim measures of protection".²¹ A similar provision is to be found in the Italian code of civil procedure, which states that "the arbitrator is not permitted to award attachment or other temporary protective measures..."²²

Other challenges faced by arbitral tribunals with regard to the grant of interim measures include the inability of the tribunal to act prior to its formation, the difficulty of enforcing its orders where one of the parties defaults, the inability to make ex parte orders even in cases of extreme urgency, and the fact that such orders by arbitral tribunals can only affect the parties to the arbitration.

These limitations and challenges inevitably make National-courts the last resort in such circumstances. It is essential that the appropriate court has the authority to grant interim measures to facilitate the arbitration process. In instances of acute urgency, when other parties must be engaged or where there is a significant likelihood that a party would not willingly comply with the tribunal's ruling, the only recourse may be to find the relevant state or court and submit the application there. The proposed actions may encompass the issuance of injunctions to maintain the status quo or avert the dissipation of assets, as well as the preservation of evidence or property.²³

The Act gives jurisdiction to the State and Federal High court with respect to matters arising from the Act.²⁴ It is therefore comforting for the practitioner seeking interim measures in arbitration to note that both the court and the arbitral tribunal may have the power to order such interim measures. In practice however this is likely to give rise to other questions as: where a party to an arbitration agreement seeks interim measures from the court instead of the arbitral tribunal, would this be considered a violation of the arbitration agreement, or if the practitioner has a choice of seeking interim measures from the court or the arbitral tribunal, should the application be to the court or to the arbitral tribunal?

The United States (US) third circuit judgment in *McCary Tire & Rubber Co. v. Seat SPA*²⁵ held that it was incompatible with the terms of an arbitration

²¹ Article 889 Greek Code of Civil Procedure

²² Article 818 Italian Code of Civil Procedure

²³ supra 22 pg. 336

²⁴ section 19 of AMA

²⁵ [1974] 501 F. 2d. 1032, 3rd Cir.

agreement for a party to approach the court for interim measures rather than the arbitral tribunal. This case has however been widely condemned and was refused to be followed by another US District Court in *Carolina Power & Light Co. v. Uranex*²⁶ holding that "nothing in the text of the convention itself suggests that it precludes pre-judgment attachment".

Although the Nigerian Arbitration Act does not directly preclude a party to arbitration from making an application to the court for interim measures²⁷ as the right to approach the courts is primarily a constitutional right²⁸ It should be noted that section 64 of the Act serves as an omnibus provision that seeks to limit the intervention of courts in any arbitration process from commencement to conclusion. The section states that: "A court shall refrain from intervening in any issue regulated by this Act unless explicitly permitted by this Act"²⁹ This was perhaps inserted by the lawmaker to avoid the incompatibility issue arising from arbitrations in other jurisdictions.

The effect of this is that save for where expressly provided for in the Act, it is doubtful if courts in Nigeria have the power to make interim measures during a pending arbitration. The question then begs to be asked that since arbitral tribunals do not have any enforcement structure, how then will interim measures made by the arbitral tribunal (for example to deposit goods for inspection or maintain status quo) be enforced during the arbitration, where one of the parties fails or refuses to comply with such interim orders? An effective solution for a party confronting this dilemma may involve treating the interim order of the arbitral tribunal as a preliminary award, which can then be recognised for enforcement by the court while arbitration proceeds.³⁰

Most arbitration rules explicitly confirm that seeking interim relief from a court does not conflict with an arbitration agreement.³¹ The ICC stipulates that a party's request to a judicial authority for interim or conservatory remedies, or for the enforcement of measures mandated by an arbitral tribunal, will not be considered a violation or a relinquishment of the arbitration agreement.³² Comparable stipulations are established under the UNCITRAL rules, the UNCITRAL Model Law on International Commercial Arbitration, and several other international arbitration regulations.

²⁶ [1977] 451 F. Supp. 1044, 1051 ND. CAL.

²⁷ section 19 of AMA

²⁸ section 6 of the Constitution of the Federal Republic of Nigeria

²⁹ section 64 (1) of AMA

³⁰ section 28 of AMA

³¹ supra 22, pg. 336

³² Article 23(2) ICC Rules

It should however be continued here that while the court may have the Power to order interim measures, for example by assuming an interim injunction to maintain the status quo it would still need to consider very carefully, whether or not it should do so. The English court addressed this issue in the case of *Charnel Turned Group Ltd. v. Balfour Beauty Construction Ltd.* The case progressed through the Court of First Instance, followed by an appeal to the Court of Appeal, and subsequently to the House of Lords. Each court provided a distinct response to the enquiries:

- (1) Whether the court had the power to issue the interim injunction which was sought and;
- (2) If so, whether it should do so in order to preserve the status quo.

The judge presiding over the case determined that he possessed the authority to issue an injunction and subsequently granted it. The Court of Appeal determined that the case warranted an injunction; however, it lacked the authority to issue one due to the arbitration agreement. The House of Lords acknowledged their authority to issue an injunction but deemed it unsuitable to proceed with such action. In delivering the judgment of the House of Lords, Lord Mustill stated,

...However, the court must exercise extreme caution when issuing such an order and should be ready to proceed only when the balance of benefits clearly supports the provision of relief. Given the current circumstances, I would have been reluctant to suggest that such an order be issued, even if the matter were to continue in the High Court.

It is however worthy of note that under ACA, parties in an arbitral proceeding could apply for an interim measure before the arbitral tribunal, but there are no provisions for the recognition and enforcement of the interim measures or order granted by a tribunal in court.

Section 28 of the AMA permits a party in Nigeria to request the recognition and implementation of an intermediate remedy in a manner analogous to that of a court. It prohibits the Court from doing a comprehensive analysis of the measure and permits denial just on restricted grounds akin to those applicable for denying the recognition and enforcement of an arbitral ruling.³³

b) Measures relating to attendance of witnesses and preservation of evidence:

This is a significant concern, as the arbitral tribunal typically lacks the authority to mandate the attendance of pertinent witnesses. Consequently, it may be essential to seek recourse through the courts, especially if the witness

³³ <https://arbitration.blog.kluwerarbitration.com>> accessed 10 May 2024

whose presence is needed has no employment or other affiliation with the parties involved in the arbitration, thereby rendering voluntary attendance unlikely.³⁴

In such cases the need for the assistance of the courts is obvious. The Act allows the court to grant an order issuing a subpoena on a witness to compel his attendance before any arbitral tribunal, or even issue a writ of habeas corpus on a prisoner to testify before an arbitral tribunal. However, does not extend to orders requiring the preservation of evidence.³⁵ A party under the Arbitration Act in Nigeria may need to make such an application to the arbitral tribunal and have it treated as an interim measure sought, which can then if necessary be enforced as discussed above, as a preliminary award.

Moreover, regarding the preservation of evidence, it is crucial that evidence remains intact until a proper record is established. National courts should therefore be empowered to compel the production of evidence for use in arbitration and enforce discovery orders. In instances where the contention pertains to the quality of a shipment of cocoa or coffee beans, an assessment of that quality must be conducted prior to the sale or deterioration of the consignment.³⁶ Article 26 (1) of the UNCITRAL Rules provide that :

...upon the request of either party, the arbitral tribunal may implement any interim measures it considers necessary concerning the dispute's subject matter, including actions to preserve the goods in question, such as directing their deposit with a third party or the sale of perishable goods..

There may therefore be a need to include express provision for the preservation of evidence in the Nigerian Arbitration Act with the courts given limited power to so order. It is worthy of note here that the Evidence Act of Nigeria does not apply to arbitral proceedings.³⁷

c) Leave for the revocation of an arbitration agreement:

*“An arbitration agreement is irreversible until modified by mutual consent of the parties or with permission from the court or a judge.”*³⁸ Although this application is rarely made in this jurisdiction, it suffices to note that the courts have the power to grant a party leave to revoke an arbitration agreement where grounds exist to do so. The applicant for leave will however have the task of satisfying the court why such a leave is sought to revoke an agreement mutually reached between parties, and if grounds exist to do so.

d) Removal of an arbitrator:

³⁴ supra 22, pg. 339

³⁵ section 43 of AMA

³⁶ supra 22, pg. 341

³⁷ Section 256(1) a of the Evidence Act, 2011

³⁸ section 3 of AMA

The court's jurisdiction may also be invoked where grounds exist to request the removal of an arbitrator.³⁹ Usually, where an arbitrator is accused of misconduct and the same is brought to the attention of the arbitral tribunal, the arbitrator should, where the misconduct is real, disqualify himself from further proceedings in the arbitration. Evidence in Arbitration in Nigeria is based on rules of Evidence.

In extreme circumstances where an arbitrator declines to remove himself willingly or the arbitral tribunal inadequately addresses the misconduct, a party alleging such misconduct may petition the Court for the arbitrator's dismissal.

3. Enforcement of the Arbitral Award

a) Recognition and Enforcement of Awards:

In spite of the advantages of Arbitration over a formal judicial process, the process will be meaningless and the resultant award will be a barren victory for the successful party if there was no valid and recognized legal framework in place for the realization of the fruits of his award. Situations may therefore arise where parties fail to honour such arbitral awards, be it domestic or international arbitral awards.

Most arbitral tribunals, whether ad-hoc or institutionalized, have no legal machinery for enforcement. Therefore there will be a need to resort to the available judicial machinery of enforcement. Article III of the Convention on the Recognition and Enforcement of Arbitral Awards of 1958, often known as the New York Convention, requires signatory nations to recognise international arbitral awards issued by other contracting states. Arbitration being a process hinged on the voluntary agreement of parties presupposes that the parties should ordinarily voluntarily obey the resultant award since the award is binding between the parties and their privies.

Nevertheless, situations exist in practice where an unsuccessful party in arbitration, fails or refuses to comply with the award. In that event, the only course open to the successful party is to seek to enforce the award through a judicial process.

The Arbitration Act of Nigeria stipulates the acceptance and execution of arbitral awards.⁴⁰ The Act facilitates the execution of a domestic award⁴¹ and the execution of a foreign arbitral award⁴² in Nigeria. In the enforcement of either type of award, the successful party will apply to the court for the enforcement of the award, supplying to the court a duly authenticated original or certified copy of the award, the original arbitration agreement or duly

³⁹ section 30 of AMA

⁴⁰ section 57 of AMA

⁴¹ ibid

⁴² ibid

certified copy thereof, and in the case of a foreign award, in instances where the award or arbitration agreement is not executed in the English language, it is necessary to provide a duly certified translation into the English language. The procedure in practice is for the applicant to file an originating motion on notice and attach a supporting affidavit to which the required documents are attached.⁴³

It should however be noted that the Act equally allows the unsuccessful party to equally apply to the court requesting the court to refuse recognition and enforcement of the award.⁴⁴ This will equally follow the same procedure as enumerated above.

b) Setting Aside an Award:

The court may, upon a party's application made within three months of the award, annul an arbitral award if the applicant demonstrates that the award addresses issues beyond the scope of the arbitration submission. However, if the decisions on matters submitted to arbitration can be distinguished from those not submitted, only the portion of the award addressing non-submitted matters may be set aside.⁴⁵ If an arbitrator has engaged in misconduct, or if the arbitral procedures or award were fraudulently obtained, the court may, upon a party's motion, annul the award.⁴⁶

It was held by the Court of Appeal that an award made by a sole arbitrator not appointed by the consent of both parties was improperly procured.⁴⁷ The onus however is entirely on the party seeking to set aside to establish that there are indeed grounds to set aside.⁴⁸ In the case of *A. Savoia Limited v. A. O. Sonubi*,⁴⁹ the appellant in this case clearly did not establish sufficient grounds to warrant a setting aside of the arbitration award. In the instant case, a dispute arose and according to the terms of contract, the dispute was referred to an arbitrator. After taking evidence from witnesses, the arbitrator issued a report containing his award. The appellant herein filed an application in the high court pursuant to section 12 Arbitration Law Cap 10 1978 Laws of Lagos State which was the applicable law to the instant case,⁵⁰ for various reasons amongst which were that the arbitrator breached the rules of natural justice, acted on his experience

⁴³ supra 22, pt. 244, 254

⁴⁴ section 58 of AMA

⁴⁵ section 55 of AMA

⁴⁶ ibid

⁴⁷ *C.G. de Physique v. Etuk* [2004] INWLR PT 853, Pg 20 at 52

⁴⁸ *Arbico Ltd. v. N.M.T. Ltd.* [2002] 15 NWLR PT 789, Pg 1

⁴⁹ [2000] EMR PT 12 P. 1952

⁵⁰ supra 49

and skill in place of evidence placed before him and that the award was uncertain, contradictory and ambiguous. The trial court found against the appellant on all issues except on the issue of a N5,000 claimed by him, which the trial judge remitted to the arbitrator for a reconsideration. The Court of Appeal upheld the decision of the trial court.

The Appellant further appealed to the Supreme Court, which court also unanimously dismissed the appeal. It was held inter alia by the Supreme Court that under sections 11 and 12 of the Arbitration Law of Lagos State, the court's jurisdiction to interfere with the award of an arbitrator is limited to setting aside an award or remitting a matter to the arbitrator for reconsideration.⁵¹ According to Ogundare JSC who read the leading judgement, "*It is clear that the arbitrator based his findings and award on the evidence before him.....I agree with the Courts below that a case of misconduct was not proved by the Appellant against the arbitrator.*"⁵²

An arbitrator who has engaged in misconduct may be dismissed by the court upon the request of any party.⁵³ AMA did not however define anywhere what misconduct is.

Conclusion and Recommendations

The involvement of national courts where necessary in an arbitral process can obviously not be totally dispensed with given the numerous challenges an arbitral tribunal may face in carrying out its mandate and ensuring its awards and orders are not merely barren pronouncements. However, as in all relationships, the trick lies in establishing the appropriate balance between the rights of the court to supervise the arbitration, and the rights of the parties to solicit their assistance in times of need. The general rule of thumb however ought to be for the courts to understand the acceptable limits of their intervention so as not to undermine a now universally accepted alternative dispute resolution method, as arbitration has now become. It is essential for the courts to limit their involvement in arbitration to designated areas and to accomplish this within a brief timeframe, considering that a primary goal of arbitration is the swift administration of justice.

¹ supra 47, pg. 1960

¹ supra 49

⁵¹ supra 52, pg. 1962, Para. F

⁵² supra 47, pg. 1960

⁵³ supra 49