LEGAL GAPS IN THE ARBITRATION LAW OF NIGERIA: NEED FOR REFORM

BY
Ogugua C V Ikpeze,[1]
And
Nwakoby, Ifeoma Priscillia,[2]

Abstract

Arbitration, a form of Alternative Dispute Resolution (ADR) is one of the methods of amicable resolution of dispute outside the Courts. The parties to a dispute refer it to arbitration of one or more persons (Arbitrators or Arbitral Tribunal) and agree to be bound by the award of the arbitral panel. The Arbitrator of one person or Arbitral Tribunal of more than one person reviews the evidence adduced by the parties to Arbitration and in the end gives an award which is legally binding on both sides and enforceable by the Courts. Arbitration is often used to resolve commercial disputes. In Nigeria, arbitration practice is governed by the Arbitration and Conciliation Act Cap A18 LFN, 2004. This paper intends to discuss the gaps found in some sections of the Act relating to Domestic Arbitration which currently affect the smooth running of commercial transactions. The methodology adopted is doctrinal. The sources of data are literature review and case analysis. The research found that there were a lot of provisions in the Act which cause delay or hinder the aspirations of those who hopefully intended arbitration as a quick mode of resolving disputes in their businesses. The research concluded that our Act ought to be amended because of the gaps or flaws contained therein. The research made some recommendations which included but not limited to the following suggestions: that the provisions of section 4 of the Act be replaced in the subsequent amendment of the Act because of its challenges on the inherent discretion of the court to either grant or refuse an application made before it. The provision of section 7(4) of the Act which forbids appeal against a decision of the court to appoint arbitrator(s) for disputing parties is an infraction

[1]**Ogugua C V Ikpeze**, Esq, L.L.B (Hons), BL (Hons), LL.M, PhD, a Prof. of Law in the Faculty of Law, Nnamdi Azikiwe University, Awka Anambra State Nigeria, +2348068733216, diaikpeze@yahoo.com.

[2]**IfeomaNwakoby**, Esq, L.L.L (Hons), BL (Hons), LL.M, a Legal Practitioner from Standard Trust Chambers, No. 69 Zik Avenue, Awka Anambra State Nigeria, +2347032939026 ifeomanwakoby890@gmail.com

of the citizen's right of appeal pursuant to the provisions of section 241 and 242 of the Constitution of the Federal Republic Nigeria, 1999 as amended. It is recommended that section 7(4) be declared void in accordance with the provisions of section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. The research concluded that our Act ought to be amended because of the gaps or flaws contained therein.

Keywords: Legal Gaps, Arbitration, Arbitrator(s), Arbitration Agreement, Arbitration and Conciliation Act of Nigeria.

1. Introduction

The first statute on arbitration in Nigeria was the Arbitration Ordinance of 1914. Unfortunately it applied only to the Lagos area and which later became Chapter 13 of the Revised Laws of the Federation of Nigeria of 1958. The inadequacy of the above statute led to the promulgation of the Arbitration and Conciliation Decree 1988[3] and it provides for both domestic and international commercial arbitration and applied only to disputes arising from commercial transaction.[4] Later the Arbitration and Conciliation Act Cap 19 Laws of the Federation of Nigeria 1990, was enacted. In 1999, a new constitution came into effect in Nigeria under the Constitution of the Federal Republic of Nigeria 1999, the Arbitration and Conciliation Act of 1990 became an "existing law" and continued to apply to Nigeria pursuant to Section 315 (1) (a) of the Constitution and after the enactment of the Arbitration and Conciliation Act Cap 19 LFN 1990, the Arbitration and Conciliation Act Cap A 18 LFN 2004 was promulgated to meet some of the requirements of modern arbitration practice both domestically and internationally. Today, the Act also continues to apply to Nigeria by virtue of the update of all Laws of the Federation of Nigeria made in 2004[5]. The object or purpose of the Arbitration and Conciliation Act is to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation. This paper intends to discuss the gaps found in some sections of the Act relating to Domestic Arbitration which currently affect the smooth running of commercial transactions.

[3] Decree No 11, which came into force on the 14th day of March, 1988

[4] Arbitration and Conciliation Decree, 1988, S. 57(1)

[5]The current law is found in the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria,
2004

2. What Is Arbitration?

Arbitration has been defined variously by different scholars, jurists and commentators. According to John Parris, arbitration is the submission of a dispute between two or more parties for decision by a third party of their choice.[6] For Ronald Bernstein, arbitration is an agreement of the parties that disputes between them be settled by a tribunal of their choice.[7]

In *Kanu State Urban Development Board v Fanz Construction Limited*[8], the Supreme Court defined arbitration as:

> The reference of a dispute or differences 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, although an arbitration agreement may relate to present or future differences an arbitration is the reference of actual matter in controversy.

According to Fulton Maxwell, J:

> Arbitration is a private process whereby a private disinterested person called an arbitrator chosen by the parties to a dispute… acting in judicial technicalities, applying either existing law or norms agreed by the parties, acting in accordance with equity, good conscience and the perceived merit of the dispute makes an award to dissolve the dispute...[9]

The Supreme Court also in the case of *Nigerian National Petroleum Corporation v Lutin Investment Limited &Anor*[10], defined arbitration as:

> The reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a

[6]John& Paris, *The Law and Practice of Arbitration*, Great Britain: George Godwin Ltd, 1974) p 1
[7]*Hand book of Arbitration Practice*, (London: Sweet and Maxwell, 1987) p 8 cited by G C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria*,(Enugu: Snap Press Ltd, 2nd ed)
[8][1990]4 NWLR (pt 142)1; [1990] LPELR 1659 (SC)
[9] J F Maxwell, *Commercial Alternative Dispute Resolution*, (The Law Book Co Ltd, 1989) 55
[10][2006] NSCQR 77 at 112

judicial manner by a person other than a court of competent jurisdiction.

3. **Types of Arbitration**

In Nigeria, we have domestic and international arbitration and they could be ad *hoc* or institutional. The three main types of domestic arbitration we have are namely; Customary Law Arbitration, Common Law Arbitration and Arbitration under the Act

(a) Customary Law

The customary law is the source of our customary law arbitration. Customary arbitration is a system of dispute resolution under customary law by which parties to a dispute voluntarily refer a dispute to a panel which could comprise their chief(s), elder(s), or some other person(s) for investigation and resolution in accordance with customary law. In arbitration, parties by their agreement may decide to choose a particular customary law as the applicable law in their arbitral proceedings[11]. Where the parties so choose, customary law will apply. It is notable that in such situation the subject matter of the dispute ought to be such that is known to native law and custom.

(b) Common Law

The common law is one of the sources of the law of arbitration in Nigeria. The common law rules on arbitration form part of the Nigerian law because of reception of English law into Nigeria. The common law arbitration is *parol* in nature. It may also be written. It is worthy of note that in the present commercial and business relationships between merchants and businessmen, common law arbitration is hardly resorted to because of its *parol* nature which makes its terms uncertain and also because common law arbitration operates in respect of an existing dispute and not future ones[12] But where parties in their arbitration agreement choose common law as the applicable law, the arbitral tribunal will conduct the arbitral proceedings in accordance with the common law in resolving their dispute.

[11]Arbitration and Conciliation Act 2004, *op cit*. s. 47()1

[12] G C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (Enuge: Iyke Ventures, 2004)
p18

(c) Arbitration and Conciliation Act Cap A18 LFN 2004.

The Arbitration and Conciliation Act 2004 is a statute of the National Assembly enacted to regulate arbitration. Arbitration under the Act is governed by the provisions of the Nigerian Arbitration and Conciliation Act[13]. There are state laws on the subject matter and rules of court of the various states of Nigeria. Also there are High Court Rules governing its provisions on each state and they contain provisions on arbitration.

4. The Merits of Arbitration

The essence and place of arbitration in the national and international commercial and business relationships are obvious. Arbitration offers advantages that litigation from its nature can never provide. These advantages vary from case to case and can be summarized thus;

1. It saves cost
2. It provides speedy resolution of disputes
3. It provides the parties with a wider choice of procedure than in litigation.
4. It ensures privacy and convenience.
5. It is less acrimonious, less formal and less confrontational
6. It ensures the appointment of arbitrators and acceptability of outcomes without regards to areas of expertise, specialty and others.
7. It provides for the enforcement of foreign awards thereby ensuring foreign earnings.
8. Another advantage of arbitration is its flexibility and simplicity of procedure.
9. It guarantees choice of tribunal and also choice of applicable law
10. It helps in the preservation of good business and personal relation.
11. It ensures freedom of choice of venue and finality of decision[14]

5. Form of An Arbitration Agreement (An Appraisal of Section 1(1) & (2) of the Act)

Section 1(1) of the Act[15] provides that every arbitration agreement shall be in writing contained:

a) In a document signed by the parties; or

[13] Cap A18 LFN, 2004

[14]Orojo&Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*(Lagos: Mbeyi&Associates Nig. Ltd 1999) p 166

[15] Arbitration and Conciliation Act Cap A18 LFN, 2004

b) In an exchange of letters, telex, telegram or other means of communication which provides a record of the arbitration agreement: or
c) In an exchange of claim and of the defence in which the existence of an arbitration agreement is alleged by one party and not denied by another.

(2) 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.

The Arbitration and Conciliation Act of Nigeria, by its Section 1 (1) (a) stipulates that an arbitration agreement must be signed by the parties but in sub section 1 (b), (c) and section 1 (2), there is no provision as to whether the document shall be written and signed by both parties in order to be enforced or to be under the Act. Arbitration agreement is a condition precedent to the enforcement of an arbitration agreement under the Act. There is conflict of judicial authorities as to whether the signature of both parties on the arbitration agreement is a prerequisite of a valid arbitration agreement under the Act. *In Re Thompson*[16] the court held that signature is not necessary for the enforcement of an arbitration agreement between the parties except where expressly required by the law governing a particular form of agreement. However, in *Timplates Co v Hughes*[17], the Court held that there was no valid arbitration agreement because the signatures of both parties were not there.

It is a better view to state that the signature of both parties are not necessary for the enforcement of an arbitration agreement under the Act; except where the agreement respecting particular issues or subject matters are specifically required to be in writing and signed by the parties thereto or their agents. It is enough if the document or different documents relating to the arbitration agreement are signed by their makers, especially where the agreement is in the form of letters or in an exchange of points of claim and defencein which the existence of an arbitration agreement is alleged by one party and not denied by the other.

[16] (1894) Q B 462
[17] (1891) 60 L J 189

6. **Stay of Proceedings (An Appraisal of Section 4 and 5 of the Act**)

Sections 4 and 5 of the Act deal with the issue of stay of proceeding. Unlike common law and customary law arbitration agreements, arbitration under the Act provides for stay of proceeding where a party to arbitration abandons the same and commences an action in court.

Section 5 (1) of the Act is preferred to section 4 (1) of Act. It is advised that section 4 and 5 should be read together for better understanding and in the interest of justice. Since section 4 is narrow, it will be preferable for the court to lean always on section 5 which has wider interpretation. It is however, unfortunate that these two conflicting sections should be in the same piece of legislation, one conferred discretion on the court and the other denied the court the exercise of any discretion at all. It is expected that section 4 of the Act will be repealed in the subsequent amendment of the Act.

A very pertinent question is why the drafters of the Act included two conflicting sections on the same subject issue within the same piece of legislation. Section 4 is a repetition of the provision of section 5. This work sees it as an aberration in the Act. It gives rise to a call for amendment or review of the Act[18]. As two consecutive sections of the Act provided for the same stay of proceedings, it is humbly submitted that it is an oversight on the part of the legislators.

7. Challenge Procedure (An Appraisal of Section 9 of the Act)

An arbitrator appointed by the parties shall be impartial and independent and must not have any ill feeling or malice against any of the parties in the matter. Where an arbitrator is aware of any circumstance which may lead to any justifiable doubt as to his impartiality and independence, he has a duty to disclose same forthwith at the time he was approached for appointment. This duty of disclosure subsists even after his appointment and continues all through the arbitral proceedings[19]

However, the arbitrator should not be allowed to preside if he has interest in the matter, blood or very close relationship with any of the parties or there is a likelihood of bias. This is so because; the arbitrator must not be permitted to be

[18] G C Nwakoby, 'Arbitration and Conciliation Act Cap A 18 Laws of the Federation of Nigeria, 2004- Call for
Amendment' (2010) 1 *UNIZIK JILJ*, 2

[19] Arbitration and Conciliation Act Cap A18 LFN, 2004, s. 8

a judge in his own matter. The parties may determine the procedure to be followed to challenge an arbitrator[20]. Where the parties have not stipulated any procedure for the challenge, then a party who wants to challenge the arbitrator shall send to the arbitral tribunal a written statement of the reasons for the challenge. He must however do so within 15 days of becoming aware of the circumstances likely to give rise to any justifiable doubt as to his impartiality or independence[21]where the challenged arbitrator fails to withdraw after the submission of the written statement, the arbitral tribunal shall have the jurisdiction to determine the issue.[22] When a challenge is made by a party, it is open to the tribunal in its wisdom to withdraw. Where this occurs, the challenge succeeds. A grave difficulty arises where a challenge is made by one party to which the adverse party disagrees and where also the arbitrator rules against the challenge.

The Act in section 9 (3) resolves this problem by inviting the same arbitrator whose challenge is in issue and investing him with the competence to determine the merit of the subsisting challenge. Article 9-12 of the Arbitration Rules[23] provide also for challenge of arbitrators. Article 12 provides thus:

> 1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made
> (a) When the initial appointment was made by the court:
> (b) When the initial appointment was not made by court, but an appointing authority has been previously designated, by the authority:
> (c) In all other cases, by the court as provided for in Article 6.

From the above, there can be no doubt that section 9 (3) of the Act conflicts with article 12 of the Rules and article 1 (1) of the Arbitration Rules provides that:

[20] Arbitration and Conciliation Act Cap A18 LFN, 2004, s. 9 (1)
[21] Arbitration and Conciliation Act Cap A18 LFN, 2004, s. 9 (2)
[22] Arbitration and Conciliation Act Cap A18 LFN, 2004, s. 9 (3)
[23]First Schedule to the Arbitration and Conciliation Act, Cap A18 LFN, 2004

> These rules shall govern any arbitration proceeding except that where any of these Rules is in conflict with a provision of this Act, the provision of this Act shall prevail.

Also following the precept of natural justice embodied in the twin elements of *audi alteram partem* (let the other side be heard) and *nemo judex in causa sua* (one must not be a judge in one's cause). We submit that section 9 of the Act under review is an incentive and inducement to abuse of arbitral process. It leaves room for the employment of subjective considerations by an arbitrator in the event of a challenge. It is difficult to see how an arbitrator who does not desire to withdraw, for whatever reason(s), ranging from the sublime to the ridiculous, would determine the challenge by ruling against himself.

Obviously, the provision is a flagrant disregard to the tenets of *nemojudex in causasua*. We submit that where an arbitrator with an established interest or bias goes on to rule under section 9 of the Act against the challenge, any resultant award in the circumstance would occasion a denial of fair hearing whether or not the award turns out to be correct.

8. Appointment of Arbitrators and the Extent of Court Intervention (An Appraisal of Section 7(4) and Section 34 of the Act)

Section 7 (4) provides that: 'A decision of the court under subsections (2) and (3) of this section shall not be subject to appeal'. It is important to note that subsection 2 and 3 of section 7 relate to court's power to appoint an arbitrator for the disputing parties upon application. Section 34 provides that 'A court shall not intervene in any matter governed by the Act unless so provided in the Act'. We see at first hand, that section 34 ventilates section 7 (4). Section 7 (4) on its part purports to oust the appellate jurisdiction of the court over any decision of the court with respect to appointing an arbitrator pursuant to sub section (2) and (3) of section 7. Yet section 241 (1) of the Constitution of the Federal Republic of Nigeria, 1999 enshrines the citizen's right of appeal. The section provides that an appeal shall lie on decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:

a) Final decision in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance:
b) Where the ground for appeal involves question of law alone, decision in any civil or criminal proceedings;

c) Decision in any civil or criminal proceedings on question as to the interpretation or application of this constitution.

A constitutional issue cannot be set aside as it may amount to a disregard of the constitution. Section 1(1) and 1 (3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended guarantee the supremacy of that constitution.

By section 1(3), any other law that runs contrary to it would be declared null and void.
In consideration of these highlights so far, it becomes imperative to appraise the provision of section 7 (4) and 34 of the Act to determine their constitutionality. Therefore, in construing section 7 (4) and 34 of the Act, we must not lose site of the established rule of construction which was stated by Ephraim Akpata, JSC in the case of *Utih v. Onoyiwe*[24]

In *Eze v. Ejelounu*[25]and *Ibrahim v BaIogun*[26] it was stated that the right of appeal was a constitutional right. Section 241 (a), (b) and (c) have by their provisions unequivocally conferred on any aggrieved party the right to appeal as of right in the circumstances listed therein.

In consequence, it is apposite to enquire about the constitutionality of section 7(4) and 34 of the Act. This question arose and was determined in *Ogunwale v Syria Arab Republic*[27] where the Court of Appeal held, inter alia that sections 7(4) and 34 of the Act cannot override the right of appeal conferred on a party by section 241(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Such right of appeal has constitutional backing and the fact that the Act is an existing law is of no consequence in exercising any of the rights conferred by Section 241 (1) (a), (b) and (c) of the Constitution. Besides, according to the court, section 243 and 315 of the Constitution have not abridged the right of appeal given to a citizen under section 241 (1) of the Constitution. So, the right of appeal is a constitutional right. The purview of section 7(4) and 34 of the Act are strictly tied to sections 7 (2) and (3) of the Act. However, section 7 (4) and by extension section 34 of the Act which forbid appeal against a decision of the court

[24] [1991] 1NWLR (pt166) 166, 225
[25] [1999] 6 NWLR (pt 605) 134, 142-145
[26] [1999] 7 NWLR (pt 610) 254, 266
[27] [2000] 9 NWLR (pt 771) 127

appointing arbitrator (s) for disputing parties are infractions on citizen's right of appeal.

9. Need for Reform

In recent times several African and third world countries have been taking profound and constant steps for the improvement of their legal framework for arbitration and to generally make their countries preferred venues for international commercial arbitration. These efforts have in several countries not been able to bear visible fruits because some of the organs of state, such as the courts, and even the private sector do not seem to be zealous to allow arbitration law and practice develop in those areas or shores. Nigeria is a typical example of such a country and its experience seems in several respects to bear out the weaknesses of the African countries in this area.

The demand for the determination of a dispute in a judicial manner in arbitration re-states the concept of natural justice. We see from the cases of *Tylor Woodrow (Nig) Ltd v Suddeutsche Etnawerk GMBH*[28] *and Re Morphett*[29], that an arbitral tribunal is under a duty to ensure fair hearing to the parties in accordance with natural justice.

Parties to disputes choose arbitration for a plethora of reasons; it would be uncharitable to deprive the parties the benefits inherent in that dispute resolution mechanism under the vestiges of conflicting and inconsistent provisions.

Where an obvious need for a change in the law is made out, the legislative unit of government ought to square up to the occasion; section 9(3) of the Act is overdue for overhaul in the interest of justice and fair play.

However, Section 1(1) and (2) of the Act is currently bringing conflict on judicial authorities as to whether the signature of both parties on the arbitration agreement is a prerequisite of a valid arbitration agreement under the Act. Therefore, for the conflict to be resolved, the provisions of section 1 of the Act must be reviewed and possibly amended to have uniform judicia1 authorities as

[28] [1993] NWLR (Pt. 286)127 (SC)
[29] [1845] 14 L J K B 259

to whether the signature of both parties is required to make valid arbitration agreement under the Act.

Looking at the provisions of section 4 and 5 of the Act, it appears unfortunate that these two conflicting sections are in the same piece of legislation, one conferred discretion on the court and the other denied court the exercise of any discretion at all. It is expected that section 4 of the Act will be replaced in the subsequent amendment of the Act because of its challenges on the inherent discretion of the court to either grant or refuse an application made before it. Section 4(1) of the Act is an unfortunate one as the intendment of arbitration practice is not of the court. Therefore section 4 of the Act is overdue for an overhaul for public interest.

It is also important to note that the provisions of section 7 (4) of the Act which forbid appeal against a decision of the court to appoint arbitrator (s) for disputing parties are infractions on the citizens right of appeal pursuant to the provisions of section 241 and 242 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Therefore, section 7(4) of the Act is a ploy to restrict and limit the constitutional right of appeal as granted to litigants in our constitution. Section 7(4) is unconstitutional and should be declared void in accordance with the provisions of section 1 (3) of the constitution.

The need for an overhaul of sections 1 (1) and (2), 4 and 5, 7(4), 9(3) and Article 12 of the Rules is obvious and important so as to protect the citizen's legal rights and for maintenance of fair play in general.

10. Conclusion and Recommendations

The all important role of arbitration practice in the society especially in our country Nigeria should not be thrown overboard by allowing some of the lapses in our Act to vitiate it. The Arbitration and Conciliation Act should be amended because of some flaws contained therein.

Parties to dispute choose arbitration for a number of reasons. It would be unfair to deprive the parties the benefits inherent in that dispute resolution mechanism under the auspices of conflicting and inconsistent provisions. The Nigerian Arbitration Act needs to be reformed to preserve and promote the finality of an Award.

Where an obvious need for a change in the law is made out, the legislative unit of government ought to rise up to the occasion. Sections 1(1) and (2), Section 9 especially its subsection 3, Sections 4 and 5, Sections 7(4), of the Act are overdue for an overhaul in the interest of justice and fair play.

There are a number of shortcomings in the area of arbitration which we have highlighted some of these drawbacks and proffered suggestions on the way forward for domestic arbitration in Nigeria, in the hope of re-positioning the instrument of arbitration to effectively grapple with the challenges of domestic dispute settlement under the aegis of the Act.

Conclusively, for our Arbitration law and practice to be recognized and respected both in the international and domestic arbitration community, some of the provisions of our Arbitration and Conciliation Act (Cap A18 LFN 2004), ought to be amended for a thriving arbitration practice to abound. So our Act needs an urgent amendment to correct these imperfections inherent in it. The draftsmen are expected in their subsequent amendment of this Act to address and redress these lapses for the promotion of Arbitration practice in Nigeria. The Arbitration and Conciliation Act of Nigeria by its Section 1(1) (a)stipulates that an arbitration agreement must be signed by the parties but in sub Section 1 (b) (c) and Section 1(2) there is no provision as to whether the document shall be written and signed by both parties in order to be enforced or to be under the Act. It is a better view to state that the signatures of both parties are not necessary for the enforcement of an arbitration agreement under the Act.

Section 5 of the Act is an unhelpful reproduction of the old position of the law which when married together with section 4 produces confusion and uncertainty. It is the better view, in line with practice in a few other countries, that section 4 governs international arbitration while section 5 governs domestic arbitration. It is expected that Section 4 of the Act should be repealed in the subsequent amendment of the Act.

However looking at the provision of section 7(4) of the Act and when viewed with the provisions section 241 of the Constitution of Nigeria, it would be noticed that there are infractions on the citizen's right of appeal. We recommend that the draftsmen in their subsequent amendment of this Act should resolve this issue in view of the constitutional provision of section 241 of our Constitution because

by virtue of section 1 (1) and 1 (3) of our Constitution any other law that runs contrary to it would be declared null and void.

It is also viewed that the likelihood of the breach of fair hearing flowing from the provisions of section 9 of the Act would create an irregularity that would occasion a substantial miscarriage of justice. Such irregularity gravitates to an error of law[30]and by extension, constitutes misconduct.

Parties to disputes choose arbitration for a plethora of reasons; it would be uncharitable to deprive the parties the benefits inherent in that dispute resolution mechanism under the vestiges of unfair procedural consequence.

Where an obvious need for a change in the law is made out, the legislative unit of government ought to square up to the occasion; Section 9(3) of the Act is overdue for overhaul in the interest of justice and fair play. So our recommendation here is that a revisit of the provisions of section 9 particularly its subsection 3 is important to resolve the conflict created by the subsection.

[30]*Ania v Ayanbola*[1977] 4 SC 63 at 69