THE NIGERIA LEGAL FRAMEWORK FOR ARBITRATION AND ITS EFFECTIVENESS IN DISPUTE RESOLUTION

BY

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TITLE PAGE

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APPROVAL PAGE

The Long Essay titled 'the Nigeria Legal Framework for Arbitration and its Effectiveness in Dispute Resolution' has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo.

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DEDICATION

This research work is dedicated to God Almighty for his love, mercies and grace all throughout my undergraduate days.

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LIST OF ABBREVIATIONS

AC	Appeal Cases
ADR	Alternative Dispute Resolution
AMA	Arbitration and Mediation Act
ACA	Arbitration and Conciliation Act
NMLR	Nigeria Monthly Law Report
CFRN	Constitution of Federal Republic of Nigeria
NWLR	Nigeria Weekly Law Report
ALL NLR	All Nigeria Law Report

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ABSTRACT

This project undertakes a comprehensive and critical analysis of the legal framework governing arbitration in Nigeria, with a specific focus on the Arbitration and Mediation Act (AMA) 2023, which repealed the Arbitration and Conciliation Act (ACA) of 2004. From a doctrinal point of view, this study evaluates the effectiveness of the AMA in facilitating efficient dispute resolution. It finds that the AMA made elaborate provisions for the conduct of arbitration in Nigeria but there are two significant lacunae under the Act. First, the AMA does not make provision for electronic arbitration, especially regarding commercial transactions. Second, the AMA does not provide guidance or clear guidelines on arbitrator qualifications and the provision of the Award Review Tribunal (ART) under section 56 may lead to delay and additional expenses in the conduct of arbitration seated in Nigeria. In conclusion, the research recommends that addressing the foregoing concerns by amending those provisions may position Nigeria as an arbitration destination in the whole of Africa and ultimately contribute to the overall efficiency of the Nigerian legal system.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Conflict and disagreement are inevitable in human existence and must always exist. However, they must be settled in a way that guarantees harmony, peace, stability, and advancement in every facet of human civilization.[1] Mutual negotiation is the fundamental method of resolving disputes; if this fails, a third party must intervene. To assist in resolving the conflict, a third person may be invited by the parties involved or may step in spontaneously. As time went on, this led to the development of the legal system and alternative dispute resolution (ADR).

Alternative Dispute Resolution is a collection of techniques that operate outside of the usual process of litigation or rigorous determination of legal rights.[2] It can also be defined as a set of procedures that serve as alternatives to court-based litigation for dispute settlement, typically involving the intervention and aid of a neutral and unbiased third party.[3] This process takes various forms, including arbitration, mediation, conciliation, negotiation, mediation-arbitration (medarb), mini-trials, and so on. These methods are often more cost-effective and efficient than traditional litigation.

The benefit of ADR is that it allows each party to have a sense of belonging and it maintains the confidence of the people. People instinctively loathe being told that they are incorrect. Some learned authors support this viewpoint, arguing that while one party may be right and the other wrong in a dispute, there may also be some element of right on each side; one party may be

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[1] Arbitration as a Tool for Dispute Resolution in Nigeria Today'. Available at: <http://www.oblaandco.com/wp-content/uploads/ARBITRATION-AS-A-TOOL-FOR-DISPUTE-.pdf> Accessed on 22 June 2024.
[2] O Agbakoba, 'Need for National Arbitration Institution in Nigeria', in OD Amucheazi and CO Ogbuabor (eds.), *Thematic Issues in Nigerian Arbitration Law and Practice* (Varsity Press Ltd, 2008), 1-8.
[3] PO Idornigie, 'Alternative Dispute Resolution Mechanisms', in AF Afolayan and PC Okorie, *Modern Civil Procedure Law*, (The Dee Sage Nigeria Ltd 2007) 563.

morally right and another legally right; or genuine differences in perception or concepts may allow each to be right from different perspectives.[4] ADR has existed for as long as humanity has. Jesus Christ, who lived over 2,000 years ago, advocated for out-of-court settlements. He said:

> If someone brings a lawsuit against you and takes you to court, settle the dispute with him while there is time before you get to court. Once you are there, he will hand you over to the judge, who will hand you over to the police, and you will be put in jail. There you will stay, I tell you, until you pay the last penny of your fine.[5]

Also in the Holy Koran, there is a similar teaching by Prophet Mohammed who says 'but if one of them transgresses against the other, then fight against the transgressing group until they ˹are willing to˺ submit to the rule of Allah. If they do so, then make peace between both ˹groups˺ in all fairness and act justly. Surely Allah loves those who uphold justice.'[6]

Both Jesus Christ and Prophet Mohammed emphasized the importance of resolving disputes peacefully and avoiding lengthy legal battles. By advocating for out-of-court settlements, they highlighted the benefits of coming to a mutual agreement before escalating the conflict. Their teachings serve as a reminder of the value of compromise and reconciliation in resolving conflicts and maintaining harmony within communities. There have been moments where the introduction of ADR has been compared to a legal transplant. The ADR movement, which has recently gained traction in contemporary society, has been characterized as a return to a fundamental dispute resolution approach that was once employed in both contemporary non-Western societies and other non-Western nations.[7] The only ADR methods that are legally recognized at the federal level in Nigeria are arbitration and mediation;[8] all other ADR methods

[4] PB Kestner, R D Hyde, JM Johnson, et al, 'Alternative Dispute Resolution: An ADR Primer' [1989] *The Association Standing Committee on Dispute Resolution Journal*, 63.
[5] Good News Bible, Mt. 5:25 & 26; Lk. 12; 58 & 59
[6] The Holy Koran, Surah 49, Al-Hujurat verse 9 & 10
[7] E Grande, 'Alternate Dispute Resolution, Africa and the Structure of Law and Power: The Horn in Context'. [1999] (43) (1) *Journal of African Law* 63.
[8] Arbitration and Mediation Act 2023.

are only now beginning to gain traction as dispute resolution techniques. This is still primarily at the state level, but even there, the provisions of the laws or rules of courts on alternative dispute resolution mechanisms remain ambiguous and make no meaningful contribution to the effective growth of alternative dispute resolution mechanisms.

The Nigerian legal framework for arbitration plays a crucial role in the country's dispute resolution process. It provides a mechanism for parties to resolve their disputes outside of the traditional court system, offering a more efficient and cost-effective alternative. Additionally, arbitration in Nigeria is governed by the Arbitration and Conciliation Act, which incorporates the UNCITRAL Model Law and provides a comprehensive set of rules and procedures for conducting arbitration proceedings.

Based on the above highlights, the purpose of this long essay is to analyze the effectiveness of the Nigerian legal framework for arbitration in promoting efficient and timely dispute resolution. By examining the key provisions of the Arbitration and Mediation Act 2023 and comparing them to international standards, the long essay will explore recent developments in Nigerian arbitration law and propose recommendations for enhancing the efficiency and effectiveness of the arbitration process in the country. Ultimately, the goal is to contribute to the ongoing discourse on improving dispute resolution mechanisms in Nigeria and ensuring access to justice for all parties involved.

1.2 Statement of the Problem

Arbitration has emerged as a prominent alternative dispute resolution (ADR) mechanism, garnering considerable attention within the legal academia and practice. In Nigeria, the legal

framework for arbitration is a crucial aspect of the country's legal system.[9] However, the effectiveness of this framework in resolving disputes is a matter of concern and warrants thorough investigation.

One of the major issues surrounding the Nigerian legal framework for arbitration is the enforcement of arbitral awards. Despite the existence of laws that support arbitration and the recognition of arbitral awards, challenges persist in the enforcement process.[10] This raises questions about the efficacy of the legal framework and its ability to provide swift and enforceable resolutions to disputes.

Another pertinent issue is the capacity and competence of arbitrators in Nigeria. The quality of arbitration proceedings heavily relies on the expertise and proficiency of arbitrators. Therefore, an assessment of the qualifications, training, and experience of arbitrators within the Nigeria legal framework is imperative in understanding the framework's effectiveness in dispute resolution.

Furthermore, the cost and time efficiency of arbitration in Nigeria warrant attention. The expeditious resolution of disputes is a fundamental aspect of arbitration. Delays and exorbitant costs can undermine the attractiveness of arbitration as a dispute resolution mechanism. Evaluating the cost-effectiveness and timeliness of arbitration within the Nigeria legal framework is essential to discern its efficacy in addressing disputes.

Additionally, the compatibility of the Nigeria legal framework for arbitration with international standards and best practices is a crucial consideration. As globalization continues to shape legal practices, aligning the Nigeria legal framework with internationally recognized standards is

[9] A Ephraim, *The Nigerian Arbitration Law in Focus* (West African Book Publishers Ltd, 1997) 1
[10] *Ibid*

pivotal for enhancing its effectiveness in resolving disputes with international dimensions. Despite the challenges, the Nigeria legal framework for arbitration also presents opportunities for improvement. Exploring mechanisms to enhance the enforceability of arbitral awards, fostering the professional development of arbitrators, and promoting cost-effective and timely arbitration processes are potential areas for reform within the legal framework.

In conclusion, as the use of arbitration continues to grow in Nigeria, an appraisal of the legal framework for arbitration and its effectiveness in dispute resolution is essential. Addressing the aforementioned issues and identifying opportunities for improvement within the framework can contribute to the enhancement of the arbitration landscape in Nigeria. Conducting comprehensive research to delve into these aspects will provide valuable insights and potentially pave the way for reforms that can bolster the effectiveness of the Nigeria legal framework for arbitration.

The project will address the following questions:

1. Whether the old arbitration framework (the Arbitration and Conciliation Act/ACA) was effective for dispute resolution?
2. What is the importance of an arbitration clause in an arbitration agreement?
3. Why do people opt to arbitration other than the formal court system of justice?
4. Whether the Arbitration and Mediation Act 2023 can compare with the international standards in the amicable resolution of disputes?

1.3 Aim and Objectives of the Study

The general aim of this study is to underscore the Nigerian legal framework for arbitration and its effectiveness in dispute resolution.

Specifically, the study tends to achieve the following objectives:

1. To ascertain the effectiveness of the old arbitration framework (the Arbitration and Conciliation Act/ACA) in dispute resolution.
2. To determine the importance of an arbitration clause in an arbitration agreement.
3. To ascertain the advantages of arbitration over litigation.
4. To compare the Nigerian Arbitration and Mediation Act 2023 with the arbitration legislation of some advanced jurisdictions.

1.4 Scope and Limitation of the Study

The scope of this study is focused on analyzing the Nigerian legal framework for arbitration and its effectiveness in resolving disputes within the country. The study will not delve into the historical background of arbitration in Nigeria or its cultural implications. The primary focus will be on the current legal framework and how it is utilized in practice to resolve disputes in the country. The goal is to provide a comprehensive overview of the arbitration process in Nigeria and evaluate its effectiveness in promoting efficient and fair dispute resolution.

1.5 Limitation of the Study

The major limitation of this project is the dearth of materials on some of the innovative provisions of the AMA which are the subject of analysis in this project.

1.6 Significance of the Study

This study has both theoretical and practical significance. The theoretical significance lies in the exploration of how the Nigerian legal framework for arbitration compares to international

standards and best practices. By analyzing the effectiveness of this framework in resolving disputes, this study will provide valuable insights into the strengths and weaknesses of the ACA that led to the enactment of AMA 2023 respectively. This is because it will help to identify areas for improvement to enhance the efficiency and legitimacy of arbitration in Nigeria. Additionally, understanding the effectiveness of the legal framework for arbitration can also contribute to the development of a more conducive business environment in the country, as businesses will have more confidence in utilizing arbitration as a means of dispute resolution.

On a practical level, the findings of this research can be used to inform policy decisions aimed at improving the efficiency and fairness of arbitration processes in Nigeria. This is because a well-functioning arbitration system can help attract foreign investment and promote economic development by providing businesses with a reliable and efficient way to resolve disputes. By establishing a reputation for fair and effective arbitration, Nigeria can position itself as a destination hub for international business transactions. More so, a strong arbitration system can help reduce the burden on the country's overburdened court system, allowing for quicker and more cost-effective resolution of commercial disputes. In a nutshell, this study aims to contribute to the development of a more robust and reliable dispute-resolution mechanism in the country, which is essential for fostering a conducive business environment and promoting economic growth.

1.7 Research Methodology

This study adopts the doctrinal approach to legal research, focusing on the analysis of primary and secondary sources of law in Nigeria related to arbitration. Journals, articles, and textbooks on arbitration will also be consulted to gain insights into current trends and best practices in the

field. The research will involve a thorough examination of the legal provisions governing arbitration in Nigeria, as well as an exploration of the practical implications of these provisions in actual dispute resolution cases. By combining theoretical analysis with practical examples, this study aims to provide a comprehensive understanding of the effectiveness of arbitration in the Nigerian legal system.

1.8 Chapter Analysis

This research work is divided into five distinct chapters. Chapter one introduces the work and lays a foundation regarding Nigeria's legal framework for arbitration and its effectiveness in dispute resolution. It examines the problem that necessitated the study and consequently analyzed the research questions with the objectives of how to address those questions. The project further sets its scope and identifies the limitations of the study among others.

Chapter two discusses some key concepts to the topic of the research, reviews the opinion of some scholars and explains in clear terms the gap in knowledge the work intends to fill.

Chapter three discusses the existing legal and institutional frameworks about the topic under discourse. Such legal and institutional frameworks respectively include the Constitution of Nigeria, Arbitration and Mediation Act 2023, New York Convention, High Court Rules of States, and Court of Appeal Rules 2021, as well as some institutions like arbitral tribunal and Court.

Chapter four looks at some key issues in the topic of the study and makes comparison between arbitration with other forms of ADR methods. It discusses the need for a clearer guideline on arbitrator qualifications in Nigeria, while chapter five concludes the work with necessary recommendations.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK AND REVIEW OF RELATED LITERATURE

2.1 Conceptual Framework

2.1.1 Concept of Arbitration

Arbitration is simply a process for the settlement of disputes under which the parties agree to appoint their judge (arbitrator) who will decide according to their agreement and the law, and the parties agree to be bound by their decision[11]. Unlike litigation, parties agree to arbitrate. In other words, there must have been a written agreement where parties agreed to submit the dispute to arbitration. It is from such an agreement that arbitration derives its jurisdiction.

According to section 91 of the Arbitration and Mediation Act 2023, arbitration means commercial arbitration whether or not administered by a permanent arbitration institution. The same section defines commercial to include matters arising from all relationships of a commercial nature whether contractual or not, such as any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road..

2.1.2 Concept of Dispute Resolution

Dispute resolution refers to the methods and processes used to resolve conflicts or disagreements between parties peacefully and satisfactorily. In the context of arbitration, dispute resolution

[11] E.S. Nwauche, 'State Responses to Outcomes of Traditional Justice Resolution Mechanisms in Commonwealth Africa: Customary Arbitration in Nigeria and Ghana.' *Journal of Commonwealth Law* 4 (2022): 43

involves the use of a neutral third party to help facilitate a resolution that is binding on all parties involved.

2.2 Theoretical Framework

2.2.1 Positivist Theory of Law

This theory of law states that law is what law is; as made by the sovereign or his agent. The agent in this perspective is the legislature which is primarily empowered to make laws or a delegated legislator with delegated powers to make delegated legislations or judges who in the course of deciding cases may establish case law or judicial precedents. In other words, the law is law as made by the lawmaker and it remains the law until it is reformed by amendment or abolished. The existence of law is one thing, its merit or demerit is another. A law which eventually exists is a law, though people may dislike it.[12] John Austin believes that positive law is a command set by a political superior for a political inferior and which the inferior has to obey or suffer sanction. That law is a command made by a sovereign for an inferior and which the inferior must obey or suffer a penalty.

In line with this theory, the Arbitration and Mediation Act 2023 was enacted to give legal backing to the conduct of alternative dispute resolution. Positivists believe that the people have a duty and are obligated to obey and comply with the dictates of the law such as the Arbitration and Mediation Act 2023, the New York Convention, among others.

[12] J Austin, *The Province of Jurisprudence Determined* (HLA Hart Publishers, 1832) 184.

2.2.2 Sociological Theory

In early times, rules and laws originated from the only custom to govern society which had only a social sanction. The main subject matter of sociological theory is Society and impacts of law. The theory takes into consideration society, human behaviour, and social changes brought by law. It advocates that the Law and society are related to each other and that the law is a social phenomenon because it has major impacts on society. It lays more emphasis on the legal perspective of every problem and every change that takes place in society. Law is a social phenomenon and law has some direct or indirect relation to society.

In the words of Ehrlich,[13] 'At the present as well as at any their time, the centre of gravity of legal development lies not in legislation, nor in the juristic decision, but in society itself. According to Pound,[14] 'Law is social engineering which means a balance between the competing interests in society, in which applied science is used for resolving individual and social problems.'

Social Engineering is balancing the conflicting interest of Individual and the state with the help of law. With the help of law as a body of knowledge, a large part of social engineering is carried on. Law is used to solve conflicting interests and problems in society. He mentioned that everybody has their own individual interest and considered it supreme over all other interests. The objective of the law is to create a balance between the interests of the people. Law is used as a veritable instrument to bring changes in the environment and ensure that society confirms to the technological advancement. Roscoe Pound in his interest theory mentioned the three kinds of

[13] BN Mani, *Jurisprudence Legal Theory*, 16th Ed., (Allahabad Book Agency, 1999) 23.
[14] Available at: <https://www.jstor.org/stable/1120350> accessed on 10th October, 2024.

interest. To avoid the overlapping of interests, he put boundaries and divides the kinds of interests.[15]

a. **Individual Interest:**

These are claims or demands involved from the standpoint of the individual life which consists of interest of personality, interest in domestic relations and interest of substance.

b. **Public Interest:**

These are the claims or desires asserted by the individual from the standpoint of political life which means every individual in a society has a responsibility towards each other and to make use of things which are open to public use. Interest in the preservation of state

C **Social Interest:**

These are the claims or demands in terms of social life, which means to fulfill all the needs of society as a whole for the proper functioning and maintenance of it. Interest in the preservation of general peace, health, security of transactions, preserving social institutions like religion, politics, economics.

In line with sociological theory and especially Roscoe Pound's postulation of law being a veritable instrument for societal changes, the Arbitration and Mediation Act 2023 and other laws are veritable instruments in ensuring that parties settle their disputes amicably.

[15] A Sachdeva and C Gupta, *A Simple Study of Political Science Theory*. (Ajanta Publishers, 1980), 18.

2.2.3 Utilitarian Theory

The utilitarian theory of law was started by Jeremy Bentham. He propounded that life is full of pain and pleasure and that law should be used as a tool of social engineering or means to increase human happiness and minimize pain.[16] Every law should be enacted to secure or ensure the happiness of the greatest possible number of people. The aim of law should be to maximize human happiness by securing the greatest happiness of the greatest number of people. Every person in the view of utilitarian theorists should be allowed freedom to pursue his or her own happiness, advantage, and actualize himself, and to seek self fulfilment without interference by the state. This is a support of a free market economy.

All existing laws and consequently the institutions established by such laws should be reformed to ensure justice delivery to all disputing parties, and when this is done, the greatest happiness possible for the populace would be secured. A law could be seen as good or bad after assessing or evaluating its utility to individuals and society at large. To ensure the efficacy of any existing legal framework, every law should seek to promote security, equality, and liberty, when these things are promoted, peace and unity can be fostered.

2.3 Literature Review

Many scholars have worked on arbitration as an alternative to the traditional means of resolving disputes in Nigeria through the court. The works of these scholars are reviewed thus:

[16] B Appadorai, *The Substance of politics* (Oxford University Press, 2003) 23.

Reviewing Kieriseiye's[17] work is necessary because it is pertinent to this research work. This is due to the fact that his book covers a wide range of topics related to arbitration and alternative dispute resolution (ADR), with a focus on how ADR might be applied to particular situations. His book provides a very concise explanation of what alternative dispute resolution (ADR) is, how it works, why it's better than going to court, and how conflict is analyzed under ADR models. An especially noteworthy addition to the corpus of knowledge is found in Chapter 5, where the author illustrates how it can be applied to settle issues in the center of society, such as political and business conflicts involving investments and elections. The book is not only a handy textbook for use by teachers and students but should also meet the increasing needs of practicing lawyers, judges, other professionals, corporate practitioners, the oil and banking industries, trade unions, and state agencies concerned with mediation, conciliation, and arbitration. Irrespective of how empirical his work may seem, the lacuna in his work lies on the fact that he does not address the cultural and social nuances that can impact the resolution of disputes. While his knowledge and expertise in the legal field are apparent, a more holistic approach that takes into account the diverse backgrounds and values of those involved in disputes would greatly enhance the effectiveness of his methods. Additionally, the book could benefit from real-life case studies and practical examples to illustrate the application of his theories in a more tangible and relatable manner. It is this that this present study aims to fill.

Llias[18] introduces the reader to the law and practice of international arbitration. Arbitration is a complicated field due to the range of disciplines involved, and it requires an approach that takes nothing for granted. Written by a well-known scholar and practitioner, the book covers the

[17] DD Kieriseiye, *Alternative Dispute Resolution in Nigeria: A Functional Approach* (Malthouse Press Limited, 2016) 232.
[18] B Llias, *An Introduction to International Arbitration* (Cambridge University Press, 2015) 336

various issues of civil procedure, contracts, conflict of laws, and international law, among others, in an understandable manner. The book focuses mostly on international commercial arbitration, but also includes a separate chapter on consumer and internet arbitration, as well as an equally detailed chapter on international investment arbitration. Its aim is to provide a comprehensive overview of the various aspects of arbitration. However, his work is good and thorough, providing valuable insights for both practitioners and academics alike, but his major focus is on International Arbitration, with limited discussion on domestic arbitration processes. This present work will fill this gap by delving deeper into the intricacies of domestic arbitration procedures and practices. By including detailed case studies and practical examples, this book will serve as a valuable resource for those looking to understand the nuances of arbitration in a domestic setting.

The work of Umahi and Nwano[19] is also worthy of review, as it relates significantly to this study. To them, arbitration is one term that is frequently used in both legal and non-legal settings, and it is often used in both commercial and non-commercial transactions. Their paper discusses, amongst other things, the procedural aspect of arbitration in Nigeria. It underlines that the local law that governs Nigeria is the appropriate law. Additionally, it provides an x-ray of the entire arbitral process at each level. In conclusion, it shows that the procedure in arbitration is similar to that in litigation, but the procedure is more flexible and simpler. The researchers, however, did not delve into the specific case studies to provide real-life examples of how arbitration has been utilized in Nigeria to resolve disputes effectively. This could have added valuable insight into the practical application of the procedural aspects discussed in the paper. Additionally, the researcher could have explored the challenges and limitations of arbitration in Nigeria, providing

[19] T Umahi and TC Nwano, 'Procedural Aspect of Arbitration in Nigeria,' [2012] *(PDF) Procedural Aspect of Arbitration in Nigeria*.<: https://www.researchgate.net/publication/235932992_Procedural_Aspect_of_Arbitration_in_Nigeria >accessed June 22 2024

a more balanced perspective on the topic. Overall, while the paper provides a comprehensive overview of arbitration in Nigeria, there is room for further research and analysis to enhance its depth and relevance. It is this issue that informed the present study.

Asouzu,[20] critically examines the arbitral and alternative dispute resolution (ADR) processes in the African context, processes that are often seen as potential facilitators of commercial activities, socio-economic development, and prosperity in Africa. Asouzu talks about African arbitration laws, their application and interpretation, as well as the OHADA Uniform Arbitration Regime, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Asouzu was elaborate in his work, but he didn't examine any legal framework for arbitration or its effectiveness in resolving disputes in Africa. This research will fill that gap in the research.

Also, Rui [21] discovers that international commercial arbitration has always been a dispute resolution mechanism based on the principle of "final and binding" to efficiently resolve disputes, which has been widely used by international commercial parties. The "final and binding" principle can relatively quickly resolve disputes between parties because the arbitral award is final. However, under the existing system of arbitral award review procedures, the "final and binding" principle also means that parties have no further possibility to correct substantive errors in the award. Therefore, to better adapt to today's international commercial environment, his article discussed the establishment of a review mechanism in international commercial arbitration through the design of the arbitration system on the premise of ensuring

[20] A Amazu. *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Cambridge University Press, 2001), 12.
[21] H Rui, Construction of the Review Mechanism in International Commercial Arbitration[J]. *Dispute Resolution*, 2023, 9(5): 2391-2396<https://doi.org/10.12677/DS.2023.95325> accessed 6 June 2023.

the advantages of efficient dispute resolution by arbitration, to further improve the impartiality of international commercial arbitration awards. Rui's work is comprehensive enough, but there is a gap in his work that this present study will fill. This present study aims to analyze the Nigerian legal framework for international arbitration and compare it to best practices in other jurisdictions. By doing so, it will provide a more holistic view of the challenges and opportunities for improving the impartiality of international commercial arbitration awards in Nigeria. Additionally, this study will also propose recommendations for reforms that can be implemented to enhance the efficiency and fairness of the arbitration system in the country.

A cursory look at the research work of Banke[22] reveals that disputes in every aspect of human relationships and in every society are inevitable due to diverse interests, which are often conflicting. The author asserted that a primary function of the law is to assist in resolving disputes that arise from such conflicts. The need for quick dispensation of disputes, especially in commercial cases, is therefore more important now than ever. The scholar further states that, over the years, Arbitration in Nigeria has proved to be an effective means of resolving commercial disputes, though with few hiccups. Notwithstanding the hiccups, unlike litigation and other forms of alternative dispute resolution (ADR) such as mediation and conciliation, arbitration has been preferred by parties in commercial cases because of its unique features and respect for party autonomy, procedural flexibility unlike the case with litigation, the ability of parties to decide on their choice of seat, rules, language, and arbitrators, the doctrine of separability of arbitral agreements, its binding and final effects, confidentiality, and privacy, amongst others. Irrespective of the fact that her paper discusses and interrogates the current state

[22] B Olagbegi-Oloba, 'Arbitration in Nigeria, Moving Forward?' *(PDF) ARBITRATION IN NIGERIA, MOVING FORWARD?* Available from: https://www.researchgate.net/publication/379374999_ARBITRATION_IN_NIGERIA_MOVING_FORWARD< accessed June 22 2024.

of arbitration in Nigeria—whether it is moving forward or not—the author didn't examine the legal framework and practical implementation of arbitration in the country. This is a crucial aspect that must be considered to understand the challenges and opportunities that exist within the Nigerian arbitration system. Without a thorough analysis of the legal framework and practical application of arbitration laws, it is difficult to make an informed judgment on the progress of arbitration in Nigeria. It is this lapse that informed the current study.

Behn, Fauchald, and Langford,[23] find that international investment arbitration remains one of the most controversial areas of globalization and international law. Their book provides a fresh contribution to the debate by adopting a thoroughly empirical approach. Based on new datasets and a range of quantitative, qualitative, and computational methods, the contributors interrogate claims and counter-claims about the regime's legitimacy. The result is a nuanced picture of many of the critiques lodged against the regime, whether they are biased in arbitral decision-making, close relationships between law firms and arbitrators, the absence of arbitral diversity, or excessive compensation. The book comes at a time when several national and international initiatives are underway to reform international investment arbitration. The authors discussed and analyzed how the regime can be reformed and how a process of legitimation might occur. The gap in this literature lies in the fact that the editors didn't provide concrete examples of successful reforms in international investment arbitration, leaving readers wondering about the feasibility and effectiveness of proposed changes. Despite this limitation, the book serves as an important starting point for further discussions and research on how to improve the legitimacy and fairness of the current system. This present study will fill that gap. It will provide valuable insights and recommendations for policymakers and stakeholders to consider.

[23] D Behn, OK Fauchald, Malcolm Langford (eds), *The Legitimacy of Investment Arbitration: Empirical Perspectives* (Estonia: Cambridge University Press, 2022).

Odoh[24] states that Alternative Dispute Resolution (ADR) is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their dispute in a way that is less formal and often more consensual than is done in the courts. To him, ADR includes Dispute Resolution Processes and Techniques that act as a means for disagreeing parties to agree without resorting to litigation. His findings show that despite historic resistance to ADR by many popular parties and advocates, ADR has gained wide-spread acceptance among both the general public and the legal profession in recent years, especially in Nigeria. A massive programme of court modernization is underway in Nigeria, aimed at stamping out delays and corruption in the legal system. His work is empirical enough, but it lacks a comprehensive analysis of the potential drawbacks and limitations of ADR in the Nigerian legal system. While the acceptance of ADR is growing, there are still challenges that need to be addressed, such as ensuring equal access to justice for all parties involved. Additionally, more research is needed to determine the long-term effectiveness of ADR compared to traditional litigation in resolving disputes in Nigeria. It is this gap that informed this study.

Olawale[25] studies the informal channels of conflict resolution among people living in Ibadan. Although informal channels of justice are generally preferred by the poor because they cannot afford to hire an attorney, this study has shown that informal channels are often the first choice of citizens who wish to solve their conflicts outside a court of law. This is due to the quicker resolution of disputes, lower costs, and the ability to maintain relationships with the opposing party. Olawale's research highlights the importance of recognizing and incorporating informal

[24] BU Odoh, *Alternative Dispute Resolution in Nigeria*, (Lap Lambert Academic Publishing GmbH KG, 2014) 34.
[25] AI Olawale, *Informal Channels for Conflict Resolution in Ibadan, Nigeria*, (Institut Français De Recherche En Afrique, 1995) 54.

methods of conflict resolution into the legal framework of Nigeria in order to provide more accessible and effective avenues for dispute resolution. His work has a lacuna as it is narrowed to only Ibadan, but further research could expand this study to other regions of the country to provide a more comprehensive understanding of the utilization of informal channels in conflict resolution. It is this lacuna that informed the present study.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 Legal Framework

3.1.1 Arbitration and Mediation Act 2023

The Arbitration and Mediation Act 2023 is the principal legislation regulating the conduct of arbitration and mediation in Nigeria. There is definitely a clear legal roadmap on how to deploy arbitration and mediation in the resolution of disputes in Nigeria. Before now, the major legal framework regulating the conduct of arbitration in Nigeria started with the Arbitration and Conciliation Act 2004 which made elaborate provisions for the carrying out of arbitration and conciliation in Nigeria excluding mediation. However, litigants have always placed much emphasis on arbitration and mediation in the course of resolving their disputes. So, the enactment of the Arbitration and Mediation Act in 2023 gives mediation a legal basis.

The law vis-à-vis arbitration is as outlined in sections 2 to 66 of the Arbitration and Mediation Act 2023. Section 2(2) of the Arbitration and Mediation Act 2023 thus: the arbitration agreement shall be in writing. The requirement for an arbitration agreement to be in writing is met, where it is-

(a) By an electronic communication, as defined in section 91, and the information contained in it is accessible so as to be useable for subsequent reference; and

(b) It is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. This is because there cannot be a valid arbitration without arbitral agreement.

Consequently, in the case of *Continental Sales Limited v R. Shipping Inc*.[26] the Court of Appeal explained how arbitration should be commenced in the following terms:

> Where the arbitrator or arbitrators are bound to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.

Thus, it is certain that under both case law and statute, arbitration has a very definite legal guideline on its commencement, hearing, and rendering of an award. Concerning mediation, section 70 of the Arbitration and Mediation Act 2023 stipulates that: "where the initiation of a mediation procedure is prescribed by a special statute as a condition for the conduct of judicial or other proceedings, or where the parties have agreed when agreeing to try to resolve the dispute through mediation before resorting to judicial or other proceedings, the party concerned shall propose to the other party, in writing, the conclusion of a mediation agreement".

The Arbitration and Mediation Act 2023 went further to make elaborate provisions for arbitration. The new Act came up with some innovations like arbitrator immunity,[27] electronic communication, and third-party funding, [28] limitation period, [29] hierarchy of authority, [30] emergency arbitrator procedure,[31] etc The Arbitration and Mediation Act made robust provisions for the safe conduct of arbitration and mediation proceedings in Nigeria as a means of disputing parties settling amicably out of the court.

However, the major problem of the Arbitration and Mediation Act 2023 is that it failed to make provisions for the safe conduct of online arbitration and mediation in Nigeria.

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[26] (2012] 23 WRN 151.
[27] AMA s 13.
[28] AMA s 62 (1).
[29] AMA s 34 (1).
[30] AMA s 32.
[31] AMA s 16.

The emergence of technologies and applications has begun to significantly influence every sphere of human life and commercial transactions. The current advancement of technology has also crept into the domain of arbitration and has increased an unpredictable shift in the arbitral process. This penetration of technology into arbitration has given birth to a new arbitration called online arbitration. Online arbitration is therefore arbitration in which all aspects of the proceedings are conducted online. Recently, it has gained prominence as it is deemed to be a private and faster means of solving disputes, especially online disputes. Its enormous advantages have made it an outstanding dispute resolution over conventional arbitration and other means of dispute resolution. Like every other mechanism, it is not without challenges.

E-commerce is among the fastest-growing industries in the whole world. Advances in computer and information technology have contributed to this tremendous growth. Indeed, such growth needs to be matched by an appropriate legal framework that caters to this type of economic activity. Due to the fluidity of e-commerce transactions over national boundaries and a multivariate number of actors involved, the possibilities for conflicts arising from breaches of certain laws and jurisdictions have increased. In Nigeria, the absence of a regulatory framework detailing the modus of conducting online arbitration and enforcement of electronic awards, may seriously truncate any attempt by the parties to resolve their disputes by way of arbitration using the electronic means.

Section 2(4) of the Arbitration and Mediation Act 2023 only made provision for electronic communication in respect to arbitration agreement but failed to make provisions in respect to the conduct of electronic proceedings, the seat of electronic arbitration, electronic award, requirement of successful online arbitration and challenges and opportunities in implementing online dispute resolution in commercial arbitration.

3.1.2 New York Convention of 1958

Nigeria has signed and ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). By the provisions of the New York Convention, Nigerian Courts are mandated to recognize and enforce arbitration awards as binding and enforceable. The Courts are also mandated by the New York Convention to uphold arbitration agreements by parties.

Nigeria's accession to the New York Convention was on 17 March 1970, adopting both the commercial and reciprocal reservations. Ever since, the Convention has influenced the development of arbitration as a mechanism for resolving international commercial disputes in Nigeria, with the implementation of the Convention by the Arbitration and Conciliation Act, 1988. Specifically, Sections 51 and 52 of the Arbitration and Mediation Act 2023 are in *pari materia* with Articles IV and V of the New York Convention on the recognition and enforcement of arbitral awards and the grounds for the refusal of recognition and enforcement of awards.

There is generally a "pro-enforcement bias," by Nigerian courts, in line with global practice, nonetheless, recognition and enforcement may be refused in circumstances relating to the issues which arise under Article V of the New York Convention.

3.1.3 High Court Rules

High court civil procedure rules of some states in Nigeria made elaborate provisions for the smooth thriving of arbitration in Nigeria. Parties settling amicably or making efforts towards settling amicably has been seen as a condition precedent to the court exercising jurisdiction of the same matter.

States like Lagos have set the pace for the growth of ADR in Nigeria especially as it relates to the conduct of arbitration. For instance, Order 5 Rule 8 of the High Court of Lagos State (Civil Procedure) Rules 2019 provides that all originating processes filed in the Registry shall be screened to determine suitability for ADR and may be referred to the Lagos Multi-Door Court House or any appropriate ADR institution or Practitioner in line with the Practice Directions issued by the chief judge. Order 28 of the High Court of Lagos State (Civil Procedure) Rules 2019 specifically made provisions for the conduct of alternative dispute resolution. The application for ADR shall be by originating motion on notice and such application may be to (a) revoke an arbitration agreement, (b) appoint an arbitrator, (c) stay proceedings, (d) remove an arbitrator or umpire, (e) seek an injunction against arbitration, among others.

Similar provisions for ADR as contained in Order 5 Rule 8 of the High Court of Lagos Rules 2019 are also contained in the High Court Rules of various courts of other states across Nigeria. In Delta State, the High Court of Delta Civil Procedure Rules 2009 has taken a giant stride in the incorporation of ADR practice in the rules. Order 29 of the Rules contains provisions on ADR ranging from:

a. Encouragement of ADR by the judge
b. Court appointment of arbitrator
c. Compelling attendance of witnesses
d. Power of court to order costs
e. Power of court to remit award for reconsideration, etc.

Notably, among other provisions are rules 1 and 10 of the said Order 29. By virtue of Order 29 Rule 1 of the Rules, a court may with the consent of the parties, encourage settlement of any

matter before it either by arbitration or any other ADR mechanism. The role of the judge here is similar to the role of the ADR judge under the Lagos Multi-Door Court House Law in giving ADR directives even where parties are reluctant.

What this entails is that even in the absence of an arbitration agreement by the disputing parties to arbitrate or to resolve their disputes by ADR means, reference to arbitration may be made under Order 29 of the Rules. Also, the Lagos Multi-Door Court House (LCMDC) law was promulgated in 2007 to create a legal framework for the operations of the Lagos Multi-Door Court House and the proper environment for the fulfillment of its objectives. The LMDC is a court-connected ADR center within the premises of the High Court of Lagos State. The central objective is to provide enhanced, timely, cost-effective, and user-friendly dispute resolution alternatives or options by which disputants can resolve their disputes, namely; arbitration, mediation, early neutral evaluation, and hybrid processes.

The court-connected feature of the LMDC makes the LMDC a vital part of the Lagos State Judiciary. By virtue of section 3(1) of the LMDC Law 2007, the LMDC may apply any of its ADR options in the resolution of such disputes as may be referred to it from time to time by the high court of Lagos, high court of other jurisdictions, etc. this legal framework is to give a soft landing for arbitration in Lagos.

It is pertinent to state here that there are several internation arbitration legal instruments which serve as a strenuous regime for the thriving of the practice of arbitration in Nigeria. These legal instruments include; United Nations commission on international trade law (UNCITRAL) model law on international commercial arbitration, international chamber of commerce (ICC) Rules, Geneva Protocol on Arbitration Clauses of 1923.

3.1.4 Court of Appeal Rules 2021

Court of Appeal Rules 2021 incorporates the need for parties to explore any of the ADR mechanisms. To this effect, Order 16 Rule 1(1) of the Court of Appeal Rules 2021 which provides that:

> At any time before an appeal is set down for hearing, the court may in appropriate circumstances upon the request of any of the parties refer the appeal to the Court of Appeal Mediation Programme (CAMP); provided that such appeal is of purely civil nature and relates to liquidated money demand, matrimonial causes, child custody or such other matters as may be mutually agreed by the parties.

All these legal frameworks point to the fact that ADR encompasses a dispute resolution mechanism apart from litigation. This is to decongest the court, avert delay in adjudication, and promote unity amongst the disputing parties.

3.2 Institutional Framework

3.2.1 Arbitral Tribunal

Arbitral tribunal plays pivotal roles in the conduct of arbitration in Nigeria. Where the disputing parties fail to make adequate provision for the constitution of the arbitral tribunal, and there are no applicable institutions or other rules, the intervention of the court is usually required. In the conduct of arbitration proceedings in Nigeria, arbitral tribunal shall be independent of the court as it reflects fully the disputing parties' autonomy.

By section 20 of the Arbitration and Mediation Act 2023 provides that the arbitral tribunal may at the request of a party, grant interim measures. This interim measure is a temporary measure, whether in the form of an award or in another form, which at any time before the award which decides the dispute is issued, the arbitral tribunal orders a party to do any of the following:

(a) Maintain or restore the status quo pending the determination of the dispute

(b) Take action that may prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied, or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute or preserve the subject matter of the arbitration itself.

At the end of the arbitral proceedings, the arbitral tribunal shall give the arbitral award which is binding on the disputing parties and upon application to court is enforcement like judgment of the court except it is set aside. This is an area the court can intervene in arbitration. By section 48 of the Arbitration and Mediation Act 2023, the arbitral proceedings at the arbitral tribunal shall terminate when the final award is made or when an order of the tribunal is issued.

3.2.2 Court

In the art of sophisticated dispute resolution, the strategic fusion of the available means of dispute resolution is indispensable, it will be naïve to think otherwise. The various issues with regards the high litigation rates and expensive access to justice are a problem for policymakers and a nightmare for litigants and this has made people opt for an alternative means of dispute resolution. As arbitration grew worldwide, it began to gain the preference of most businessmen in Nigeria as a way of settling their dispute and the attitude of the courts began to change to a positive one towards arbitration.

The Nigerian courts enforce arbitral awards and recognize it as a valid and good mechanism of alternative dispute resolution. In the case of *C.N. Onuselogu Ent. Ltd v Afribank (Nig) Ltd*[32] It was held by a court of competent jurisdiction that arbitral proceedings are a recognized method of dispute settlement and should not be taken lightly by both counsel and the disputing parties. Known that arbitration as an alternative to litigation has its benefits such as cost-effective amongst others. The purpose of arbitration is not to cause the court to give up its power to hear and determine issues that can be referred to arbitration. The courts have powers and functions specified by our statutes which may be exercised in support of the process of arbitration. The powers and functions of the court in this regard, is to facilitate and supervise the arbitral process. The essence of this collaboration with the arbitral tribunal is to resolve the party's dispute. An instance is when the court calls on an arbitrator to decide a question of law during the arbitral proceedings. Also, the arbitrator may refer to the court for determination of any question of law arising during arbitral proceedings other than the ones agreed upon by the parties.

The intervention of the court in an arbitral process which provides that 'a court shall not intervene in any matter governed by this Act except where so provided in this Act.'[33] This limits the powers and jurisdiction of the court to entertain arbitral matters.

[32] [2005] 1 NWLR (Pt 940) 577
[33] See Art 5 of the UNCITRAL Model Law.

CHAPTER FOUR

ARBITRATION: THE PREFERRED DISPUTE RESOLUTION METHOD IN NIGERIA

4.1 Comparison of Arbitration with Other Forms of ADR Methods

Arbitration as an ADR mechanism can either be mandatory or voluntary, although arbitration can be compulsory when it comes from the statute such that the law directs the parties to go through the arbitral process or from the contract entered into by the disputing parties of which the parties had earlier agreed to take future disputes to arbitration. The arbitrator or arbitral tribunal who reviews the evidence brought before him/them imposes a decision called an award on both parties such that would be enforced by the courts. Arbitration agreements could be written or made orally.

The arbitration agreement must be related to the dispute that can be resolved by the arbitrating parties concerned who must have legal capacity under the law and the agreement to arbitrate must be valid under the applicable law. Arbitration has a lot of differences with other mechanisms of ADR. These differences include:

a. In arbitration, the person hearing the dispute acts as an adjudicator. In other words, he decides for the parties which they are bound to obey. In other forms of ADR like mediation and conciliation, the third party who intervenes only facilitates parties to settle. He does not take a decision for them. While the outcome of arbitration is determined by the adjudicator's decision, the outcome of other forms of ADR is determined by the parties' decision or agreement.
b. Like litigation, arbitration is adversarial and there is usually a winner or a loser. Other forms of ADR, on the other hand, are more collaborative and parties could have a win-win

outcome. In other words, these ADR forms would preserve business relationships more than arbitration.

c. In arbitration, the arbitrator gives a written award which is similar to a judgment of court whereas in other forms of ADR, the agreement reached by parties may be enforced as a contract between them.

d. Because of the binding force of arbitral awards, arbitration is more result oriented than other forms of ADR since parties cannot easily renege from their obligations unlike a contract-based settlement in which parties may impute certain conditions entitling them to renege.

4.2 Comparison of Arbitration with Litigation in Nigeria

Arbitration as one of the ADR mechanisms share a lot of similarities with litigation especially as it has to do with the bindingness of arbitral awards and court's decisions. However, there are a lot of differences between the two as it has to do with amicable settlement of disputes between the disputing parties.

These differences are succinctly discussed below:

(a) Privacy of arbitral tribunal: Arbitration is a private law system whereby disputing parties agree to settle their differences by referring those differences to a person appointed by them. In the case of litigation, it is a public law system of dispute resolution by a judge appointed by the state; disputing parties do not choose the judge and no agreement to the choice of the umpire is required before disputing parties approach the court for resolution.

(b) Removal of judge/arbitrator: a court consists of a judge duly appointed by the governor/president on the recommendations of the National Judicial Council and can only be removed by the governor/president after necessary procedures have been followed. In arbitration, an arbitral tribunal consists of a single arbitrator or such number of arbitrators as may be agreed by the disputants. The disputing parties appoint the arbitrator(s) and can also remove him if circumstances reveal that he lacks independence and impartiality.[34]

(c) Conduct of proceedings: court proceedings are publicly conducted and in accordance with the rules of court. However, arbitral proceedings are held in private and the party autonomy ensures flexibility allowing parties to adopt rules convenient to the disputing parties. This gives the disputing parties the assurance of justice delivery and maintenance of confidentiality.

(d) Venue: In litigation, the location of the court's proceeding is fixed. While in arbitration, arbitral proceedings are held at venues agreed to by the parties which may even be outside the country where the parties reside or carry on business. Section 32 of Arbitration and Mediation Act 2023 clearly provides that the seat of arbitration will be as agreed by the parties to the arbitration agreement or by an arbitral or other institution or person authorized by the parties with powers in that regard. In the event where the disputing parties fail to designate the location of the arbitration proceedings and the parties have not given authority to any arbitral tribunal or any institution to decide the seat of the arbitration, the location shall be any place in Nigeria as the arbitral tribunal

[34] See s 7 of AMA.

may determine, unless the tribunal decides that a place in another country should be the seat of the arbitration having regard to all the relevant circumstances.[35]

(e) Legal representation: In legal proceedings before a court, a party may only be represented by a legal practitioner.[36] In arbitral proceedings, a disputing party may be represented by any person other than a legal practitioner.

(f) Language: In court proceedings, the language applicable which is the official language of the court is English language. In the event a disputing party does not understand English, his or her statement must be translated to English language. In arbitral, parties are free to choose the applicable language. In fact, section 35 of the Arbitration and Mediation Act 2023 provides that the parties are free to agree on the language or languages to be used in the arbitral proceedings and where there is no agreement, the language to be used is English. To ensure that arbitral proceedings are entirely parties' driven, section 35(2) of Arbitration and Mediation Act 2023, provides that any language(s) agreed upon by the disputing parties or determined by the arbitral tribunal under subsection 1, shall, unless the parties or the tribunal state otherwise, be the language or languages to be used in any written statements by the parties, in any hearing, award decision or any other communication in the course of the arbitration.

(g) Format of the procedure: procedure before the court as seen in litigation is formal, and dressing is formal including the use of wig and gown by lawyers and judges in the superior courts. The judge is the master of the proceedings subject to the rules of the court. Parties cannot confer any powers on the judge exceeding the jurisdiction conferred by the law. While in arbitration, proceedings before arbitral tribunals are informal. No

[35] See s 32(2) of AMA.
[36] See s 36(6) of the 1999 CFRN as amended.

formal dressing is required. The arbitrator is the master of the proceedings subject to the arbitration rules. Parties may confer additional powers on the arbitrator.

4.3 Arbitration as the Best Method for Resolving Disputes in Nigeria

It is a trite knowledge that disputes are bound to occur where people relate with each other at various levels in society. When disputes arise, most recourse is commonly made to litigation which apparently has a lot of delay and technicalities in administering justice to parties who are in disputes. In most cases, especially in commercial sector, parties who have disputes either because of non-performance of any of the terms or by reason of any other issues arising from the contract that could be fundamental or peculiar to their trade or business, would instead of going head-on against each other, would rather settle amicably either because of the lasting business relationship between the parties or the amount of funds or capital put in the business from which the disputes arose. This is because the judgments of the court are known to be very firm in pointing out the defaulting party or declaring the right of either of the party over the other strictly based on the weight of evidence presented before the court and judicial precedents.

The legal battle afterward does not ensure that the parties are brought to the same state as they were before they brought their matters to be litigated upon. This is why alternatives to litigation spring up. The best and appropriate method of resolving dispute especially in the business sector is arbitration.

The law that governs the process of arbitration is usually the law that the parties to the dispute do agree upon to be bound by or that law that the arbitral tribunal chooses to be applicable where the parties did not agree as to the applicable law. There are reasons why arbitration is most preferrable to other mechanisms of Alternative Dispute Resolution. These reasons are as follows:

1. In arbitration, the person hearing the dispute acts as an adjudicator. In other words, he decides for the parties which they are bound to obey. In other forms of alternative dispute resolution, the third party who intervenes only facilitates settlement. He does not decide for them. In other words, while the outcome of the arbitration is determined by the adjudicator's decision, the outcome of other forms of ADR is determined by the parties' decision or agreement.
2. Like litigation, arbitration is adversarial and there is usually a winner or a loser. Other forms of ADR, on the other hand, are more collaborative and parties could have a win-win outcome. In other words, these ADRs would preserve business relationships more than arbitration.
3. In arbitration, the arbitrator gives a written award which is similar to a judgment of court whereas in other forms of ADR, the agreement reached by parties may be enforced as a contract between them.
4. Because of the binding force of arbitral awards, arbitration is more result-oriented than other forms of ADR since parties cannot easily renege from their obligations, unlike a contract-based settlement in which parties may impute certain conditions entitling them to renege.

Commercial arbitration is a way of settling disputes arising from parties by referring them to a neutral person or an arbitrator nominated by parties to the dispute for a resolution based on the evidence and arguments offered to the arbitration tribunal. The parties agree earlier before time for arbitration, that the decision will be acknowledged as absolute and binding.

It is pertinent to state that there are forms of arbitration, these include:

Domestic Arbitration

Domestic Arbitration is the kind of commercial arbitration that is between parties who live in the same country, doing the same type of trade or business, and such trade carried out or contracted is subject to the local statutes or laws. The terms of the contract must have been performed in the same country where the parties reside. The basic source of law to domestic and foreign arbitral proceedings is the Arbitration and Conciliation Act, LPN 2004 which contains the UNCITRAL Arbitration and Conciliation Rules and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

International Commercial Arbitration

The international commercial Arbitration is regulated by several laws such as international trade laws, international conventions and treaties even laws governing corporations. In a concise way, arbitration is deemed international if it involves international trade issues. The place of business of the disputing parties is very paramount in determining whether or not an arbitration is international. The nature of dispute was accepted by the rules of international chamber of commerce in 1923 and 4 years later, it amended the rules to include that the dispute must necessary have some foreign characters,[37] In other words, the transaction in question must have been one that included another country either by way of having the terms of contract being performed in another country or that the resultant effect of the dispute is relative to a different country from where the parties come from.

Several countries have different views of what international commercial arbitration could be construed to mean; for example, according to the laws of Austria, an arbitration agreement is

[37] I.C.C Rules, Article 1

considered foreign only when it is made and award given outside Austria and the Austrian Court can hear such matters if both countries are signatories to a multi- lateral convention or that Austria is bound by a bi-lateral treaty for the recognition and enforcement of any arbitral award within the territory of the other country.[38]

Switzerland as well as Belgium adopted the use of the place of residence and nationalities of the parties as a viable method of deciding if an agreement is international or not. According to Swiss law, a party must have his corporate office in Switzerland before or at the end of the arbitration agreement.[39] According to the European Convention of 1961[40], "International arbitration agreements are such agreements concluded to settle dispute arising from international trade between a physical or legal person having their habitual place of residence or the seat in different contracting states when concluding the agreement".

In the view of Nwakoby,[41] the use of residence as a way of deciding whether or not the arbitration agreement is international or not, may not be entirely correct in that the parties may decide that the agreement should be domestic since this is a right available to both parties. However, the idea of residence is a factor in considering what amounts to international arbitration.

Institutional Arbitration

This is a type of international commercial arbitration even though it does not resolve disputes, it provides facilities and rules for dispute resolution. All arbitration institutions may as required have the same principles of arbitration, features but not the same rules. Some arbitration

[38] W Melis, *A Guide to Commercial Arbitration in Austria*, (Vienna Press, 1983), 28.
[39] Cap 12 Art 176, Swiss Act on Private International Law, 18 December, 1987
[40] Art 1(1) (a)
[41] G.C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria.* 2nd Edition, (Iyke Ventures Production, 2004) 12.

institutions attend to general commercial disputes while some are restricted to a range of matters for dispute or perhaps one subject matter. There are some viable facilities for arbitration which are well known and permanent, they are as follows:

American Arbitration Association (AAA), court of international chamber of commerce (ICC), Asian-African Legal Consultative Committee with Regional Centre at Caso and Kuala lumpur (AALCC). The parties are deemed to be bound by the rules of any institution that they agreed upon, unless it was amended by putting a different name in place of the previous institution. One of the advantages of institutional arbitration is that, it provides rules which very importantly act as guide in providing solutions to any issues that may arise in the course of an arbitration proceeding. Also, most institution arbitrations have arbitrated that are well trained with arbitral tribunal are appointed, time of arbitration proceeding is monitored and the fees paid earlier before the process commences. The advantage of institutional arbitration is that it is not cheap especially where the subject matter is of a high value. The institutional arbitration is different from ad hoc arbitration where in that institutional arbitration, there are laid down rules or procedure while in ad hoc arbitration, there are no laid down rules, parties are the ones who make rules for themselves, this occurs where the arbitration clause that was included in the contractual agreement of the parties' states that, where disputes arise an arbitration should be done without referring to any institution or institutional rules. This could be beneficial in that it is specifically meant to achieve the purpose for which they came to arbitration in the first place.

The challenge with ad hoc arbitration is that rules agreed upon by the parties to the dispute may not cover all the areas of the proceeding of the arbitration and that the appointed arbitrator may be

untrained. Also, it might take a lot of effort and time to draft the rules for an ad hoc arbitration.[42] the rules of an international arbitration organization that is not commercial since the bedrock of this kind of arbitration is cooperation between the parties.

Another form of international commercial arbitration other than institutional arbitration is arbitration between states. This inter-state arbitration in some cases is non-commercial yet produced treaties and conventions. Here, the two states agreed to refer their disputes to an arbitral tribunal. For example, there was an arbitration between Ecuador and Columbia in 1907. There have been more often, situations where private persons in the form of a corporation or company have business dealings with a state or government. Such disputes could also be between a state and non-state party as between the government of Egypt and the Suez Canal Company.

There are also cases where there are joint investments between a state and a company, for example; joint ventures or business between Nigeria and NNPC. In this situation, the parties make the rule and the arbitration proceeding is conducted ad hoc. Lastly, a type of arbitration different from the ones earlier mentioned is arbitration between private parties or between private persons and corporations, possible disputes that may arise could result from importing and exporting commodities or services, and parties can decide what procedures should be used in these types of arbitration whether or not it is parties choose institutional arbitration that has wide scope for any dispute that arises. There is no issue of sovereign immunity between private persons.

4.4 The Need for a Clearer Guideline on Arbitrator Qualifications in Nigeria

The parties to an arbitration agreement may decide on the number of arbitrators to be appointed under the agreement, but where no such determination is made, section 6 of the ACA provides

[42] G Ezejiofor, *The Law of Arbitration in Nigeria*, (Longman Publication, 1997) 137.

that the number of arbitrators shall be deemed to be three. Where the arbitral tribunal is deemed to be three and the parties fail to appoint a third arbitrator within 30 days, any party to the arbitration agreement may apply to the court to appoint an arbitrator to beside over the arbitral proceedings.

Furthermore, where it is agreed by both parties that there will be a sole arbitrator and the parties fail to agree on an arbitrator, any party can apply to the court within 30 days to appoint an arbitrator to preside over the arbitral proceedings. According to section 8(3) of the Arbitration and Mediation Act 2023, an arbitrator can be challenged and replaced with another if there are circumstances that raise justifiable doubts as to his or her impartiality or independence and, if so, he or she does not possess the required qualification agreed by both parties.

Section 55(4) of the Arbitration and Mediation Act 2023 provides that a party challenging the arbitrator must make such application within three months from the date on which the party making the application had received the arbitral award and a statement will be written stating the reasons why the award is being challenged. On the occurrence of death, an arbitrator can be replaced if he or she resigns in the course of proceedings or where there is a failure to act or in the event of the desire or de facto impossibility of performing his or her functions. The arbitrator is required to be independent and unbiased. Section 8 of the Arbitration and Mediation Act 2023 and Article 9 of the Arbitration Rules require a potential arbitrator to reveal to the parties any information likely to give rise to doubts as to his or her impartiality.

The arbitrator must not be biased or unduly influenced and should be objective in his decisions. Both parties have the right to an opportunity to present their case and, both parties must be present when the hearing is ongoing. When information is received by the arbitrator from a

party, the arbitrator has a duty not to disclose it to the other party, see *Arenson v Areson*.[43] There are certain restrictions as to who can become or act as an arbitrator. These restrictions include the following:

(a) Judges cannot act as arbitrators while serving, but retired judges can act as an arbitrator.

(b) The Arbitration and Conciliation Act did not provide for any qualifications as to who can act as an arbitrator. However, before persons can be appointed as arbitrators, the following are usually considered: the relationship of the intended arbitrator to the issues and parties, the nature of the dispute, the ability to take charge and to conduct the proceedings expeditiously, arbitral experience about reasonable legal knowledge and special qualifications or expertise as stipulated in the arbitration agreement.[44]

4.5 The Need for Increased Enforcement Mechanisms for Arbitral Awards in Nigeria

Every arbitration proceeding ends with an award usually based on the evidence brought before the arbitral tribunal. If the arbitral tribunal is more than one person, a decision made by a majority among the members makes an award except if the parties agree otherwise.[45]

However, if it is just an arbitrator that makes the tribunal, his decisions constitute an award. The parties on their own can decide and settle on their own and ask the tribunal to record it as the award or part of it. This is well known as consent award. As soon as the arbitral tribunal gives its award, it loses its power to entertain that matter again, this means the arbitral tribunal becomes *functus officio* expect in the event of correction and interpretation of award which comes in the

[43] See the case of *Arenson v Areson* (1977) AC 405, 410-411
[44] See ss 7 & 8 AMA 2023.
[45] Section 44 of the AMA 2023.

form of and additional award.[46] The award made by the tribunal in accordance with the Act must be in writing and the reasons stated except where the parties agree that the reason should not be given. The award must be signed by the arbitrators. Where there is more than one arbitrator, a majority of the signatures is appended and reasons are given for the absence of the other.

By section 47 of Arbitration and Mediation Act 2023, arbitral award must have the following features:

(a) The award must be in writing.

(b) The award must be duly signed the arbitrator or arbitrators.

(c) In the event the arbitral proceeding is made up of more than an arbitrator, the arbitral award must be duly signed by all the arbitrators.

(d) The arbitral award must state the reasons upon the arbitrators arrived at the decision except where the parties agreed otherwise.

(e) The arbitral award must state the date it was made.

(f) The arbitral award must also state the seat of the arbitration.

It is pertinent to state here that upon the making of the arbitral award, the arbitral proceedings come to an end and the arbitral tribunal becomes functus officio.[47] The gamut of arbitration does not stop at making arbitral awards, the benefits of amicable settlement of disputes can only be realized if the awards are enforced. At the point the award is being handed down by the arbitrators, the next important move by the parties is act of compliance by the party against whom the award was made or the enforcement of the award by the winning party where the other party fails to obey voluntarily. In Nigeria, in most cases a lot of challenges arise when it involves

[46] Section 49 of AMA 2023.
[47] See s 48 of AMA 2023.

obeying the award made by the arbitrators, these challenges are cut short with the provisions of the Arbitration and Mediation Act 2023.

Section 57(2) and (3) of the AMA 2023 provides for the process for enforcing an arbitral award stating the documents specified to be attached to the application before the high court. They are as follows:

a. The duly authenticated original copy of the award or duly certified copy thereof.
b. The original arbitration agreement or a duly certified copy thereof,
c. In the circumstance where the arbitral award or arbitral agreement is not made in English, a certified copy of the translation of the language of the award or arbitral agreement is made.

Thereafter the party shall apply to the court for leave to enforce the award. The court treats as a judgment an award that is recognized. Judgments will be given according to the award by arbitrators, subsection (3) of section 57 of AMA 2023 provides that "an award may by the leave of the court judge be enforced in the same manner as a judgment or order to the same effect. In international arbitral awards, the procedures for recognizing and enforcing an award are like that of Nigeria. it is binding and final. Where the agreement is not written in the English Language, a translation duly certified must be accompanied by the applicant for leave.

Section 60 of AMA provides that the New York Convention applies to Nigeria relating to reorganization and Enforcement of Foreign Arbitral Awards. It states circumstances where the convention will be applicable in Nigeria. A foreign award can be enforced in Nigeria under the Foreign Judgment Reciprocal Enforcement Act. However, it must have been recognized as a judgment of the court at the place the arbitration was held before it was brought for registration.

The process for enforcing an award although seen as easy but could be rigorous. A party against whom an award is given may do the following: He may either commence legal proceedings challenging the award or he gets himself prepared to oppose any action the other party may bring to enforce the award.

The enforcement of an arbitral award may not be simple. Opposing parties while in the process open again points which had already been discussed or dealt with by the parties and the arbitral panel during the proceedings and raise them as issues for litigation. This process of enforcement could be long and tasking and so defeats the advantages the parties sought out for as they opted for arbitration. The court is not quick to turn the award of any arbitral proceedings until it is properly considered. Also, until it is necessary, the court does not interfere with an award. The importance of an award is that it is binding on the disputing parties and will accept it.

However, in *Adwork Ltd v Nigeria Airways Ltd,* the losing party in the arbitration has the right to seek impeachment if he is not satisfied with the award.[48]

4.6 Recommendations for Improving the Arbitration Process in Nigeria

Administration of justice is an essential part of governance in every polity. A major consequence of this thinking is that individuals desirous of resolving disputes and in search of justice tend to see the court as the first port of call to resolve same. This has made the court highly congested so much that matters linger for years. To ensure quick dispensation of justice, the arbitration process in Nigeria needs a lot of reformation. The following recommendations are the ways that arbitration as an amicable means of dispute resolution will be reformed in Nigeria:

[48] [2000]2 NWLR (pt 645) 415 at 433

1. There should be public awareness so that members of the public cannot only know that there is such a thing in existence as an alternative to litigation but that they have a right to an option of arbitration or any other alternative method depending on the nature of the dispute in question.
2. The court system should in the spirit of the objective of Arbitration and other forms of ADR treat all applications arising from arbitration and ADR proceedings as crucial and deserving of urgent attention.
3. That the executive should appreciate the need to cause the nuances
4. Some disputes, should be categorized as disputes only heard and resolved by arbitration and not heard by the court and later referred to arbitration.
5. An award made by an arbitral tribunal should be treated as final and binding without any form of appeal to the court. In other words, this research suggests that the AMA be amended to expunge the provision regarding the award review tribunal.
6. There should be a provision for minimum qualification for arbitrators just as it is with just as it is with the judges of the regular court of law.

CHAPTER FIVE

CONCLUSION

5.1 Summary of Findings

The general nature of litigation and its practice by lawyers especially in the Nigerian legal environment have made litigation less suitable for resolving disputes, especially disputes arising from commercial transactions. Hence, need for a viable alternative where parties will happily resolve their disputes. One such viable alternative is arbitration. It is a trite knowledge that disputes are bound to occur where people relate with each other at various levels in society. When disputes arise, most recourse is made to litigation which has a lot of delay and technicalities in administering justice to parties who are in disputes. In most cases, especially in the commercial sector, parties who have disputes either because of non-performance of any of the terms or because of any other issues arising from a contract that could be fundamental or peculiar to their trade or business, would instead of going head-on against each other, would rather settle amicably either because of the lasting business relationship between the parties or the amount of funds or capital put in the business from which the disputes arose. This is because the judgments of the court are known to be very firm in pointing out the defaulting party or declaring the right of either of the parties over the other strictly based on the weight of evidence presented before the court and judicial precedents.

The legal battle afterward does not ensure that the parties are brought to the same state as they were before they brought their matters to be litigated. This is why alternatives to litigation spring up. The best and most appropriate method of resolving disputes, especially in the business sector is arbitration.

In the course of this research, the following findings were made;

1. That arbitration agreement is a condition precedent to enforce the arbitration award.
2. Nigeria acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 17 March 1970. Therefore, the convention is now applicable to Nigeria by the interposition of domestic legislation under section 12 of the 1999 Constitution as amended.
3. Nigeria is also a party to the Vienna Convention on the Law treaties which acceded to on 23 May 1969 and it could be relied upon as a more favourable regime in the enforcement of the Convention award following Article VII.
4. Third parties who are not part of the arbitration agreement could be joined as parties to the arbitral proceedings subject to the provision of section 40 of AMA.
5. The AMA does not provide extensively for qualifications of someone to act as an arbitrator, but what could likely be considered are; the nature of disputes, the relationship between the parties and the arbitrators or between the issue and the arbitrators, the experience of the arbitrators and their ability to resolve disputes, the knowledge acquired in respect to the subject matter of the dispute.
6. That arbitration agreement under which arbitration proceedings commenced can be communicated electronically.

5.2 Recommendations

The essence of this long essay is to appraise the fact that arbitration is important to the quick administration of justice other than litigation. This research recognizes various challenges one encounters when approaching courts whenever a dispute arises since disputes are inevitable.

The researcher therefore made the following recommendations as the suggestive panacea to these challenges ignited by the complex nature of the litigation process and the speedy decision-making process of alternative dispute resolution systems. This is because of the experience and expertise of the arbitrators who are being appointed by the parties.

1. This research recommends that arbitration and the entire ADR legal framework should be amended to make adequate provisions for the conduct of online arbitration in Nigeria. This is because the world has evolved and commercial transactions are mostly done electronically now.
2. It recommends that the court system should in the spirit of the objective of Arbitration and ADR treat all applications arising from arbitration and ADR proceedings as crucial and of urgent attention.
3. It also recommends that some disputes should be categorized as disputes only heard and resolved by arbitration and not heard by the court and later referred to arbitration.
4. That the award by arbitral tribunal be treated as final and absolute without no form of appeal to the court instead, another panel different from the previous be set up to hear again and review the awards given by the former.
5. That there should be provision for the arbitrators' qualifications as it is with the judges of the regular court of law.

5.3 Contributions to Knowledge

Many scholars have extensively worked on the existing legal frameworks on the conduct of arbitration as an amicable mode of settling disputes between parties in Nigeria.

As extensive as these positions of the scholars are, they fail to discuss the conduct of arbitration in Nigeria alongside the provisions of the new Act; which came up with a lot of innovative provisions and of course repealed the ACA thereby positioning Nigeria as an arbitration hub in Africa.

5.4 Areas for Further Research

In order to promote the sustainability and wide recognition, and usage of ADR in Nigeria especially arbitration, the following areas of further research will be imperative:

(a) An evaluation of the prospects and practice of electronic arbitration in Nigeria

(b) A critical appraisal of the use of technology in the practice of arbitration in resolving commercial disputes in Nigeria.

(c) An overview of the legal framework for the use of artificial intelligence in dispute resolution

(d) A critical examination of the strengths and challenges of the use of arbitration to resolve commercial disputes.

5.5 Conclusion

This research work focuses on issues on Commercial Arbitration in Nigeria, stating the extent of influence, arbitration has in domestic and international disputes, its nature, importance, its advantages, disadvantages, its connection with litigation, applicable laws and awards and its enforcement as well as impeachments of both domestic and international awards, appointments of arbitrators and trending facts connecting to the subject matter of this research.

Even in African society, Arbitration is a more familiar method of resolving any form of dispute, therefore, it is not seen as imported just as litigation is viewed. Arbitration processes do not threaten our income in the sense that the cost of arbitration is not as enormous as that of litigation and because of the increase in the occurrence of disputes in society, members of the public are not afraid to approach arbitration-legal authorities indicate that Nigerian courts appreciate their supportive and supervisory role in the administration of justice. If the right type of investments will increase development in various sectors of the country, reducing unnecessary disputes and most importantly using arbitration as an appropriate means of resolving every dispute arising from any of these sectors of the country.

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