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Introduction

The Nigerian Legal System is modelled after the English legal system, by virtue of colonisation and the reception of English law through the process of legal transplant. English Common Law and legal tradition influenced the development of the Nigerian legal system.

As the *grundnorm*, the Constitution of the Federal Republic of Nigeria 1999 (as amended) is the bedrock of the Nigerian Legal system[1]. It provides the ultimate principles and rules upon which other statutes and laws obtain their validity and legitimacy. Other sources of Nigerian laws are Acts of the National Assembly[2], received English Laws[3], subsidiary legislations, customary laws, judicial precedents and international law.

Court process in Nigeria

The Nigerian Courts uphold the principles of rule of law and equality before the law. Equal opportunities are available to litigants for the presentation of their cases. Nigeria practises an adversarial system, where two advocates present the litigants' case or position before an impartial judge or judges, based on applicable laws, the rules of evidence and court procedural laws. The judges determine the truth by placing the evidence on imaginary scales.

Nigerian laws ensure free and easy access to courts. A person is empowered by law to approach the courts for the determination of his civil rights and obligations, including any question or determination by or against any government or authority. Such persons are entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality[4].

A party who elects to approach the court must observe all the rules of commencement of legal proceedings. The law in Nigeria frowns at springing surprises or overreaching an opponent. Consequently, a party initiating an action in court is expected to comply with the applicable frontloading system[5] whereby copies of documents sought to be relied upon are filed and served in advance. Essentially, the party is to file alongside the writ of summons: the Statement of Claim, which sets out the facts of the case; statements on oath of proposed witnesses; documents to be relied on at trial and other processes which will leave no doubt in the opponent's mind that the said party is the initiator of the suit; what the party is claiming; and the evidence it intends to rely on to prove its claim. The adverse party is to be served, and the rules for such service must be strictly complied with.

Upon service, the defendant intending to defend the case is expected to enter appearance by filing a memorandum of (conditional) appearance, statement of defence and other accompanying processes in compliance within a specified time[6].

Barring any preliminary challenge or objections to an action in court, a case will normally progress through a pre-trial/case management conference (this will be discussed below) and where required, into a plenary trial.

Pre-trial / Case Management Conference

In Nigeria, the rules of courts have aided effective and speedy dispensation of justice, through the machinery of Pre-trial or Case Management Conference procedure[7]. This procedure is designed to enable a judge to aid or guide the parties through possible options to effectively resolve their disputes or create a proper framework upon which the trial of a case may progress. Interlocutory applications are usually determined at this stage. In addition, the judge may issue such orders and directions as are necessary to the future course of the action.

Discovery and inspection[8] are also done at this stage. This is a procedure whereby a party makes a formal request on oath from the other party, to make available certain documents in its possession. A party may also give notice to the adverse party, who pleaded some documents, to provide such documents for inspection.

The courts and ADR

Nigerian courts encourage litigants to resolve their disputes by adopting Alternative Dispute Resolution ("**ADR**") mechanisms. The court may, with the co-operation and consent of the parties, refer the parties to ADR centres of the courts[9], and the parties are expected to report back to the courts for adoption of agreed Terms of Settlement where ADR is successful or, where the ADR proceedings fail, for trial. Under the Lagos Civil Procedure Rules (CPR), cases are screened by the relevant registry official, and suitably qualified cases may be designated for amicable resolution, and referred to the Lagos Multi Door Courthouse or other appropriate ADR institutions[10].

Integrity of the process

The bedrock of the legal process in Nigeria is engraved on the twin arms of natural justice. Courts in Nigeria uphold the provisions of section 36 (7) of the 1999 Constitution of Nigeria (as amended) which provides that in the determination of civil rights and obligation of persons, a trial must be conducted according to all the legal rules formulated, to ensure that justice is done to all the parties. It requires the observance of the twin pillars of the rules of natural justice, to wit: *audi alteram partem* and *nemo judex in causa sua*. The principle of fair hearing is not only a question of whether a party is heard, but whether the party is availed of the opportunity to be heard[11].

The effect of the rule of natural justice in Nigeria is that a court shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case. The court gives equal treatment, opportunity, and consideration to all concerned. Court proceedings are constitutionally required to be held in public[12]. In every material decision in a case, justice must not only be done but must manifestly and undoubtedly be seen to have been done[13].

The test usually adopted in determining the impartiality of a court is the common law 'reasonable man' test, which envisages that any member of the public, sitting in the courtroom, should be able to observe the entire proceedings from beginning to end and leave with the impression that justice was done.

Electronic case filing/searching

The Nigeria legal process is still developing and the various courts are continually putting in place machineries that will enhance the effective and speedy delivery of justice. The

legal system is still at a stage where judges take evidence manually. Although some of our courts have embraced the electronic filing[14] of court processes, we have yet to develop an effective electronic service mechanism for court process.

Privilege and disclosure

The "lawyer-client privilege" or "attorney-client privilege" is one of the oldest principles under common law. Its importance is embedded in the role it plays in the professional functions of a lawyer. In Nigeria, attorney-client privilege operates not only as a rule of evidence but also as a rule of ethics, and is grounded in confidentiality.

Under Nigerian law, a legal practitioner is not permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment[15].

The attorney-client privilege can be involuntarily waived and has limits, such as when the communication is made in furtherance of any illegal purpose, or where the legal practitioner discovers in the course of his employment any fact, showing that any crime or fraud has been committed since the commencement of his employment[16]. The attorney-client privilege continues even after the attorney-client relationship has been terminated[17], and the obligation extends to the legal practitioner's employees such as associates, clerks and interpreters[18].

Cost

In Nigeria, each party funds and bears its own cost of the litigation and the professional fees of the legal practitioner. However, the court may, at the end of the proceedings, make cost orders.

In addition and in appropriate cases, a party (usually the defendant) may make an application to court to order the adverse party to give security for cost of the litigation. Having regard to all the circumstances of the case, where the court thinks it is just to do so, it may order the plaintiff/claimant to give such security for the defendant's costs of the action or other proceedings[19]. In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been unnecessarily put in the proceedings, as well as compensated for his time and effort in coming to court. Therefore, the award of cost is not to be a means of punishing the unsuccessful party. It should not be arbitrary or unreasonable[20].

Litigation funding

Litigation is most commonly funded by parties to the proceedings in Nigeria, as the concept of third party funding has not been institutionalised. This is due to the continuous application of the common law principles of *champerty and maintenance* which: (i) prohibit a third party from funding litigation between disputants (in which the funder has no legitimate interest); and (ii) render an agreement to provide such funds illegal and void, on the ground of public policy.

It is important to note that principles of common law are applicable in Nigeria, unless and until they are abolished (or to such extent that they are modified) by Nigerian legislations and/or case law (**A. O. Obilade, *The Nigerian Legal System* (Sweet and Maxwell, London, 1979) p 79**). Since no legislation is yet to abolish or modify the common law principle of *champerty and maintenance* in Nigeria, it is applicable.

The Court of Appeal affirmed the application of the principles of *champerty and maintenance* to the Nigerian legal system in the cases of ***Egbor & Anor v. Ogbebor (2015) LPELR –*** CA/B/136/2006; and Oloko v Ube (2001) 13 NWLR (Part 729) CA 161 at 18, although (based on the facts and circumstances of the cases) the principle was not specifically applied in the cases.

In **Oloko v Ube** (*supra*), *per* Edozie JCA held thus:

> *"At common law, Champerty is a form of maintenance and occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit or other contentious proceedings where property is in dispute. An agreement by a solicitor to provide funds for litigation or without charge to conduct litigation in consideration of a share of the proceeds is champertious. The solicitor cannot recover from his client his own costs or even his out of pocket expenses (Chitty on Contracts 23rd edition, volume 1 p.391 articles 843-844)."*

However, legal practitioners are allowed to provide their services in consideration of a contingency arrangement to cover their professional fees[21]. Yet, they are not allowed to fund the litigation, *per se*. Also, it appears that Non-Governmental Organisations (NGOs) are allowed to provide funds in support of litigation by or against indigent people, since this will not be based on commercial arrangement. For example, Olusoji O. Elias claims that he has established a legal funding firm in Nigeria called *AetasLF*, with the initiative of providing such support[22].

Cross-border litigation

Cross-border litigation should be viewed from two (2) perspectives, namely: (i) where there is an agreement of the parties as to the forum for litigation and the applicable law; and (ii) the position in the absence of such agreement.

Except where there is an agreement of the parties to the contrary, a Nigerian court will typically assume jurisdiction and apply Nigerian law where: (i) the cause of action arises within its territory; (ii) a contract is required to be performed in the court's territory; (iii) the defendant resides or carries out business in the territory of the court; or (iv) in an *action in rem*, jurisdiction is activated if the property proceeded against is within the territory of the court.

On the other hand, parties are generally bound by their agreement to use a foreign forum and/or application of foreign law, on the basis of the doctrine of *pacta sunt servanda*. However, where a suit is instituted in Nigeria in breach of foreign jurisdiction clause but the defendant counter-party submits to the jurisdiction of the Nigerian court, such submission overrides the foreign jurisdiction clause.

Conversely, upon an application of an aggrieved defendant that a suit should be stayed pending determination by a foreign court in the agreed forum, the Nigerian court will typically adopt the approach of the English court – which is essentially that the court has discretion to stay its proceedings. It is the law that such discretion is readily exercised in favour of stay of proceedings except if the contrary is shown.

In the case of ***Sonnar (Nigeria) Limited & Anor v. Partenreederi M.S. Nordwind & Anor*** (1987) NWLR (Pt. 66)520: (1987) LPELR-SC.38/1986 (the "**Norwind Case**") the Supreme Court of Nigeria accepted the test laid down by Bradon J in "**The Eleftheria**" (1969) 1 Lloyd's Rep.237. In the **Norwind Case**, the plaintiff filed an action at the Federal High Court, Lagos, Nigeria, seeking general and special damages for breach of contract arising out of non-delivery of goods shipped to Lagos, Nigeria, from Bangkok, Thailand, on board

the vessel "MV Norwind". The defendant brought an application for stay of proceedings on the ground that the bill of lading containing the contract of affreightment had a foreign jurisdiction clause to the effect that any dispute should be resolved in Germany, under the German law. The trial court granted a stay of proceedings and the Court of Appeal affirmed the decision. The Supreme Court reversed the decisions and remitted the matter to the trial court for determination, on merit.

The reason for the Supreme Court's decision in the Norwind Case was that the subject matter of the dispute was already statute-barred under German law and a stay in Nigeria for litigation in Germany would be prejudicial to the plaintiff. The 'Bradon test' adopted by the court was that the following factors must be considered:

(a) In what country the evidence on the facts is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the Nigerian and foreign courts.

(b) Whether the law of the foreign court applies and, if so, whether it differs from Nigerian law in any material respects.

(c) With what country either party is connected, and how closely.

(d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages.

(e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would: (i) be deprived of security for that claim; (ii) be unable to enforce any judgment obtained; (iii) **be faced with a time-bar not applicable in Nigeria; or** (iv) for political, racial, religious or other reasons, be unlikely to get a fair trial.

Having said that, the burden of proving the existence of any of the factors highlighted above lies on the plaintiff who desires that the proceedings should be allowed in breach of the parties' agreement. In the case of ***Nika Fishing Co. Ltd. v. Lavina Corporation*** (2008) LPELR-SC162/2002: (2008) 16 NWLR (Pt.1114) 509, the bill of lading contained a foreign jurisdiction clause and the claimant did not file a counter-affidavit to challenge the defendant's application for stay of proceedings. The Supreme Court held that the burden of proving a "strong cause" why parties should not be held to their agreement in the bill of lading as to the forum for the trial of disputes arising from the bill of lading was to be firmly placed on the plaintiff. Thus, the plaintiff having failed to adduce affidavit evidence, the Supreme Court rejected the decision of the lower Courts refusing stay of proceedings and the Supreme Court granted stay of proceedings.

It should be noted at this juncture that in respect of admiralty matters, **Section 20 of the Admiralty Jurisdiction Act (AJA)** provides that an agreement which purports to oust the admiralty jurisdiction of the Federal High Court of Nigeria shall be null and void where: (a) the place of performance, execution, delivery, act or default is or takes place in Nigeria; (b) any of the parties resides or has resided in Nigeria; (c) the payment under the agreement (implied or express) is made or is to be made in Nigeria; (d) in action *in rem*, the *rem* is within the jurisdiction of the court; (e) it is a case involving the Federal Government or a State Government which has submitted to the court's jurisdiction; (f) the court has a mandate or discretion to assume jurisdiction under a treaty to which Nigeria is a party; or (g) the court is of the opinion that the matter ought to be adjudicated upon in Nigeria.

In the case of ***JFS Inv. Ltd v. Brawal Line Ltd*** (2010) 18 NWLR (Part 1225) page 495 SC at page 531, Adekeye JSC observed that **Section 20 of the AJA** 'has almost removed the court's discretion in deciding whether or not to uphold a foreign jurisdiction clause' in

respect of admiralty matters. However, the issue of proper interpretation of Section 20 of the AJA was not in contention in that case. It was a case in which the plaintiff/Appellant's suit was eventually dismissed on the ground that same was statute-barred. So, His Lordship's statement was an *obiter* and did not particularly constitute a legal pronouncement on this point.

Although **Section 20 of the AJA** has been heavily criticised in the case of ***Owners of MV Lupex v Nigerian Overseas Chartering and Shipping Ltd*** (1993–1995) NSC 182, where Uwaifo (JCA, as he then was) described the provision as "walking on its head, a section that was wrongly thought out and badly drafted, an inappropriate provision of the law whose meaning cannot be comprehended", stay of proceedings has been refused by the Court of Appeal in some cases involving admiralty matters on the basis of **Section 20 of the AJA**. Indeed, there are cases in which the Court of Appeal has refused to grant a stay of proceedings pending arbitration involving foreign forums[23].

However, in the subsequent case of *Onward Enterprises Limited v MV Matrix* (2010) 2 NWLR (1179) 530 CA at 555-556, the Court of Appeal disapproved the decision of the earlier cases and held that an arbitration clause with foreign forum does not oust the admiralty jurisdiction of the Federal High Court. Thus, the court held that on a proper construction of **Section 20 of the AJA** together with Section 10 of the AJA and in light of the decision in **MV Lupex's Case** (*supra*), such arbitration clause is not void and indeed ought to be enforced in appropriate cases. In that case, the Court of Appeal enforced a clause contained in the bill of lading, for arbitration in London, and stayed proceedings pending arbitration.

Enforcement of judgments

When a judgment has been given, the process of enforcement depends on whether the decision is a domestic or a foreign judgment. In the case of a domestic judgment, a line of distinction is further drawn between enforcement in the state where the judgment is obtained, and inter-state enforcement. Enforcement of domestic judgments is governed by the Sheriffs and Civil Process Act[24] ("**SCPA**") and the rules made pursuant thereunder[25]. On the other hand, enforcement of foreign judgments is governed by: (i) the Reciprocal Enforcement of Foreign Judgments Ordinance, 1922, contained in Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 (the "**Enforcement Ordinance**"); and (ii) the Foreign Judgment (Reciprocal Enforcement) Act, Cap F35, LFN, 2004 (the "**Enforcement Act**"). It is to be noted that principles of the common law apply in the event of any inadequacy in the above laws, with respect to both domestic and foreign judgments.

For domestic judgment, a decision of the court takes effect immediately, except where the judge directs otherwise. Thus, a domestic judgment is enforced through any of the modes available under the SCPA such as garnishee, *writ of fifa, writ of sequestration* and *writ of possession.* However, a domestic judgment cannot be enforced in another state in Nigeria outside the state where the judgment is issued, except if and after it has been registered in that other state. A certificate of judgment is issued by the court giving the judgment and same is transmitted to the registry of the court in the state of enforcement where the judgment will be registered and enforced[26].

With respect to foreign judgments, the Enforcement Ordinance was initially applicable to judgments of courts in England, Ireland and Scotland but it was extended (by a proclamation issued under Section 5) to judgments of courts of the Gold Coast Colony (now Ghana), Sierra Lone, Gambia, Barbados, Bermuda, British Guinea, Gibraltar, Grenada, Jamaica, Leeward Islands, Newfoundland, New South Wales, St. Lucia, St. Vincent, Trinidad and Tobago and Victoria.

On the other hand, the Enforcement Act applies to judgments of the courts of Commonwealth countries and other foreign countries. By virtue of **Section 3(1)** of the Enforcement Act, the Nigerian Minister of Justice has the power to make an order extending the application of the Enforcement Act to any foreign country with substantial reciprocity of treatment with respect to enforcement of foreign judgments. However, the Minister of Justice is yet to issue any such order. Thus, the Enforcement Act is yet to be made applicable to any specific country. It should be noted that there is a pending suit filed earlier this year, before the Federal High Court of Nigeria, Abuja judicial division; seeking to compel the Minister of Justice (by *mandamus*) to issue the aforementioned Order, to extend application of the Enforcement Act to both Commonwealth and non-Commonwealth countries[27].

Under the Enforcement Ordinance, the procedure for recognition and enforcement is by an application made by way of Petition seeking for the leave of court to register the foreign judgment. Such Petition may be brought *ex-parte* or on notice and it is supported by an affidavit of facts exhibiting a duly authenticated or certified copy of the judgment sought to be registered. Under the Enforcement Ordinance, the following conditions must be satisfied before the court can recognise the foreign judgment:

(a) the application is brought within 12 months after the date of the judgment unless the court allows a longer period;

(b) the original court acted within its jurisdiction;

(c) the judgment debtor voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of the foreign court;

(d) the judgment debtor was duly served with the court process leading up to the judgment;

(e) the judgment was not obtained by fraud;

(f) there is no appeal pending or the judgment debtor is not entitled to appeal and if entitled, has not shown any intention of appealing; and

(g) the judgment is not in respect of a cause of action which, for reasons of public policy or for some other similar reasons, the courts would have refused to entertain.

Where the Petition is brought *ex-parte*, the court may direct that the judgment debtor be put on notice. In any event, the order granting leave to register shall be served on the judgment debtor, who is also allowed a specified time within which he can apply to set the proceedings aside. Upon successful recognition, either due to lack of objection by the judgment debtor or after resolution of such objection in favour of recognition, the judgment creditor can take steps to enforce the judgment by any of the recognised modes such as *fifa* or garnishee.

Where the foreign judgment is issued by a court of a country to which the Enforcement Ordinance does not apply, the judgment can be enforced under the principle of common law. The procedure is to file a fresh suit making the judgment the cause of action. The option open to the judgment creditor to avoid delay is to file the suit under the summary judgment or undefended list procedure. This procedure is applicable to any suit involving a liquidated sum of money, in which the claimant has reasonable ground to believe that the defendant does not have a good defence and should not be allowed to defend just for the sake of delay[28].

Interim relief

Typically, a Nigerian court would grant an interim relief at its equitable discretion either to protect the rights of the applicant or preserve the subject matter of a dispute referred to as the *res*, pending the determination of a case[29]. See C. I. Umeche and P. N. Okoli: *Between use and abuse: An examination of the efficacy of interim and interlocutory injunctions in Nigeria*[30].

There are various preliminary reliefs that can be granted by the courts in Nigeria to preserve the *status quo ante* or protect the legal right of the applicant from imminent risk of infringement. The order is put in place to forestall irreparable injury to the applicant's legal or equitable right, which a final judgment at the end of the proceedings may not redress.[31] These include, without limitation, interim injunction, interlocutory injunction, mandatory injunction, Anton Pillar order and Mareva order.

International arbitration

Legal framework for arbitration in Nigeria

The Arbitration and Conciliation Act 1988[32] ("the **ACA**"), is the governing law for both domestic and international arbitration in Nigeria. The ACA largely adopted the provisions of the UNCITRAL Model Law 1985 and incorporates the UNCITRAL Arbitration Rules with respect to international arbitration agreements.[33] Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and as such, Nigeria's treaty obligations arising under the New York Convention are domesticated under the ACA. Some states, however, have enacted their own arbitration laws. For example, in Lagos State, the Lagos State Arbitration Law 2009 applies to all arbitrations in the absence of another specified law.

In addition, some important investment statutes such as the Petroleum Act[34], the Nigerian Investment Promotion Commission Act[35] and the Public Enterprises (Privatization and Commercialization) Act[36] contain arbitration provisions for settlement of disputes arising under those Acts.

Judicial support for and interference in the arbitration process

In recognition of the nature of arbitration as final and binding on parties, and in order to ensure that faith in the arbitration process is not diminished, the position of the law in Nigeria is that judicial interference in the arbitration process be kept to a minimum.

The foregoing position has been further buttressed by a recent circular dated 26th May, 2017 and issued by the Chief Justice of Nigeria, Walter Onnoghen, to all Heads of Court ("the **Circular**"). In the Circular, the Honourable Chief Justice proposed that heads of the courts issue Practice Directions with respect to the courts' jurisdiction in breach of contract matters arising from contracts with arbitration clauses. The CJN proposed that the courts should not encourage or entertain actions instituted to enforce a contract or claim damages arising from a contract in which the parties have by consent, included an arbitration clause, without first ensuring that the clause is invoked and enforced.

While the courts have no inherent jurisdiction to supervise arbitration, the ACA makes provision for the courts to support the arbitral process in the following instances:

1. The grant of a stay of court proceedings pending arbitration

   Where a party to an arbitration agreement brings an action before a court, the court is empowered to stay proceedings pending arbitration, provided the applicant has not taken steps in the proceedings before making the application[37]. Although the power of a court to order a stay of proceedings pending arbitration is discretionary, the discretion must be exercised judiciously. The court in ***The Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd***[38] held the circumstances where a court may refuse to order a stay of proceedings to include instances where a party establishes that he would suffer injustice from the arbitration tribunal, or that the agreement between the parties is null and void.

2. Compelling the attendance of a witness before an arbitrator

   The court has the power on the application of a party to arbitral proceedings, to issue a subpoena against any person in whose possession are relevant documents necessary for the determination of the dispute between the parties[39]. The court may order the subpoenaed person to produce those documents and/or testify at the hearing before the arbitral tribunal.

3. Enforcement and setting aside of an arbitral award

   In Nigeria, a party seeking to enforce an arbitral award, irrespective of the country in which the arbitral award is made, has recourse to the courts[40]. Upon application by said party, the court may enforce an arbitral award in the same manner as a judgment or order to the same effect. However, the enforcing court has no power over the underlying dispute or its subject matter.[41]

   It is settled that an arbitral award is final and binding on the parties. However, section 48 of the ACA further empowers the courts to set aside an arbitral award. The losing party in arbitration may choose to bring an action to challenge the award and the court may set aside an arbitral award on any of the grounds stipulated by ACA, which include:

   (i) that a party to the arbitration agreement was under some incapacity;

   (ii) that the arbitration agreement is not valid under the law which the parties have indicated should be applied or, failing such indication, that the arbitration agreement is not valid under the laws of Nigeria;

   (iii) that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case;

   (iv) that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or

   (v) if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under laws of Nigeria; or that the award is against public policy of Nigeria.

However, a court should not completely set aside an award unless it is satisfied that it would be inappropriate to send it back to the arbitrators.

Arbitration bodies in Nigeria

As of today, we have in existence, the following arbitration bodies in Nigeria:

1. **The Lagos Court of Arbitration**

   The Lagos State Government enacted the Lagos Court of Arbitration Law 2009, creating the Lagos Court of Arbitration ("**LCA**"). The LCA is an independent, private-sector-driven, international centre for the resolution of commercial disputes via arbitration and other forms of ADR. The LCA is a significant arbitration institution and facility with immense capacity to accommodate and resolve a wide range of multi-party disputes. It was established to resolve domestic and transnational commercial disputes arising within its ambits.

   It is noteworthy that the LCA maintains a database of neutrals, which comprises highly experienced, qualified and prominent arbitrators, mediators and ADR professionals from around the world. The proceedings at the LCA are governed by the Lagos Court of Arbitration Rules, 2013.

2. **The Nigerian Branch of the Chartered Institute of Arbitrators (UK)**

   The Chartered Institute of Arbitrators ("**CIArb**") is recognised as the professional

body for training and examination of those seeking to become qualified arbitrators, mediators and other ADR Practitioners. CIArb also maintains a register of qualified arbitrators and mediators, and monitors the professional conduct of its members while also providing continuing professional development to ensure that progressive training is undertaken. The Nigeria Branch is one of the branches of the CIArb, having fulfilled the requirements to be granted Branch Status in 1999.

3. **The Nigerian Institute of Chartered Arbitrators (formerly Arbitrators Association of Nigeria)**

   Founded in 1979, under the leadership of His Excellency, Judge Bola Ajibola, SAN, KBE, the Nigerian Institute of Chartered Arbitrators is the first body of Professional Arbitrators in Nigeria. It is a professional body dedicated to promoting and facilitating determination of disputes by arbitration, mediation, conciliation and other forms of ADR.

4. **The Maritime Arbitrators Association of Nigeria**

   The Maritime Arbitrators Association of Nigeria is a specialised association which was incorporated in 2005. Its main objective is to enlighten the general public and stakeholders in the maritime industry about arbitration and ADR as a viable alternative to litigation, and to advise on choice of arbitrators. Maritime arbitration has been practised in Nigeria for a long time without a formal association promoting the interests of maritime arbitration. Its membership is made up mainly of admiralty practitioners, lawyers, shipping agents, marine insurers and other professionals with similar interest.

5. **The Construction Arbitrators of Nigeria**

   Construction arbitration in Nigeria requires some specialist knowledge and experience in the construction and building industry. As such, the Construction Arbitrators of Nigeria is made up of mainly professionals in the construction industry in Nigeria: Architects, Builders, Civil Engineers, Structural Engineers and Quantity Surveyors. The Nigerian Institute of Architects and the Nigerian Institute of Quantity Surveyors have provisions for the appointment of arbitrators and the conduct of arbitration in their respective statutes.

Mediation and ADR

Following developments in other fields and global trends, ADR has gained widespread recognition and acceptance in Nigeria. The movement towards ADR has been fuelled by the heavy and oftentimes overflowing caseload of traditional courts, resulting in protracted delays and considerable expenses for litigants. The increasing use and popularity of ADR is especially notable in commercial transactions. It is almost the standard expectation that commercial agreements incorporate a dispute-resolution clause including ADR.

In Nigeria today, mediation tends to take the form of private mediation or court-annexed mediation. Private mediation involves the parties seeking assistance of an independent third party who offers his or her services on a commercial basis, whereas court-annexed mediation involves matters which have already been filed in court, but with directives from the court that parties should explore amicable settlement through mediation. In such cases, the court directs parties to go to mediation and whatever mediation settlement agreement is reached by parties is entered as the judgment of the court. Unlike arbitration and conciliation, there is no harmonised legislation governing the process of mediation in Nigeria. The process is largely governed by the various regulations and rules of the courts.

Court-annexed mediation is available to parties at different levels of court. At the trial court level, the Multi-Door Courthouses and Mediation Centres across the country are the

established fora for mediation. The Multi-Door Courthouses are court-connected ADR centres which aim to provide the necessary framework for the attainment of alternative dispute resolution processes. They also operate as arbitral institutions with their own rules of procedure. The Multi-Door Courthouse system initially began with three Multi-Door Courthouses: Abuja Multi-Door Courthouse ("**AMDC**"); Lagos Multi-Door Courthouse ("**LMDC**"); and Kano Multi-Door Courthouse ("**KMDC**"). Today, in recognition of the successes and advantages of the Multi-Door Courthouse system, Multi-Door Courthouses have been set up in several other states across the country including Akwa-Ibom, Delta and Ogun States of Nigeria. The 2012 High Court of Lagos State (Civil Procedure) Rules provide that all Originating Processes which are accepted for filing at the Registry should be screened for suitability for ADR and referred to the LMDC or other appropriate ADR institutions[42].

There are also the Mediation Centres set up by the government, where disputing parties can request mediators as well as conduct mediation proceedings. Such centres also support the training of mediators. In Lagos, for instance, the **Citizens' Mediation Centre** ("**CMC**") provides a non-adversarial forum for the mediation and settlement of a range of civil disputes between parties who voluntarily agree to mediation of their disputes by trained and seasoned mediators. The services rendered by the CMC are free for indigent residents of Lagos State. To ensure good mediation practice at the CMC, the Attorney-General of Lagos State issued the Citizens' Mediation Centre (Procedure) Guideline Practice Rules 2011.

At the appellate court level, the Court of Appeal Rules 2016 provide for the **Court of Appeal Mediation Program** ("**CAMP**"). Before the appeal is set for hearing, the court may in appropriate circumstances, upon the request of any of the parties, refer the appeal to the CAMP. However, the Rules limit the scope of matters which can be referred to the CAMP to civil appeals relating to breach of contract, liquidated money demand, matrimonial causes, child custody, parental action, inheritance, chieftaincy or personal actions in tort[43]. Once there is reference to CAMP, the appeal is to be adjourned. The parties can also resort to other ADR mechanisms. Where the parties are able to settle, the agreement reached by the parties will be adopted by the Court of Appeal as the decision of the court. If they are unable to settle, the appeal will then be set down for hearing.

Regulatory investigations

The Nigerian economy, particularly the finance and power sectors, has been emboldened by a number of guidelines and regulations. Some of these include the Consumer Protection Framework ("**CPF**")[44]; and the Directive on the Categories of Eligible Customers in the Nigerian Electricity Supply Industry[45].

Overview of some of the recent regulatory controls

The CPF

According to the Central Bank of Nigeria[46], the CPF was introduced to guarantee high standards for efficient customer service delivery, market discipline and to ensure that consumers of financial services are adequately protected and treated fairly by financial institutions ("**FIs**")[47]. Furthermore, the CPF stipulates consumer rights and responsibilities and is geared to ensure timely complaints-handling[48] and dispute resolution.

The highlight of the CPF is the provision of a complaints-management process or procedure which provides that consumer complaints shall first be lodged with the relevant FIs and can only be escalated to alternative dispute resolution organs, inclusive of the CBN's Consumer Protection Department, if the consumer is dissatisfied with the FI's decision or the complaint is not resolved within the time stipulated by the FI's procedures.

The Directive on the Categories of Eligible Customers in the Nigerian Electricity Supply Industry

This directive was issued on May 15, 2017 by the Honourable Minister of Power, Works, and Housing, Babatunde Fashola, SAN, ("**the Minister**") pursuant to his power under section 27 of the Electric Power Sector Reform Act ("**EPSRA**"). The directive is designed to give some redress to the illiquidity issues in the market, especially the crunch experienced by the power generating companies ("**Gencos**"), by specifying four categories of customer who are eligible to purchase electricity directly from the Gencos instead of the Distribution Companies ("**Discos**").

Impact of these developments on the litigation landscape

The CPF

The CPF, especially with the complaints-management process, does not purport to, and indeed cannot, oust the jurisdiction of the court, nor a litigant's access to court in light of his constitutionally entrenched right of access to the court. However, to the extent that this regulation directs FIs to have dispute-resolution channels, one would expect that the court would be inclined to make them conditions precedent to accessing its jurisdiction. It is therefore believed that if the principles of the CPF are incorporated into the consumer's contract, it has the potential to reduce unnecessary litigation.

The Directive on Eligible Customers in the Nigerian Electricity Supply Industry

The Directive on Eligible Customers has created a lot of controversies. While the Discos argue, on the one hand, that they are entitled to be compensated for any reduction in their ability to "earn permitted rates of return on their assets", or "the inadequacy in their revenues as a result of the directive"[49], the Minister, and NERC, on the other hand, hold the view that the Discos were not granted exclusive licences in their respective geographical areas and thus are not entitled to any compensation, as NERC can lawfully grant licences in respect of those areas.

To this extent, the courts may be called upon to: (i) determine whether the Minister and NERC are under mandatory obligations to compensate the Discos for any loss of revenue the directive may engender, especially in light of the discretionary nature of the Minister's duty to issue further directives bringing about the compensatory regime of the competition transition charge; and (ii) whether the situation qualifies as a *force majeure*, which can be relied upon by the Discos to avoid their contractual obligations.

Judicial review of regulatory agencies

Judicial review has been defined by the Nigerian courts[50] as the supervisory jurisdiction of the court exercised in the review of the proceedings, decisions and acts of inferior courts and tribunals and acts of governmental bodies.

In achieving its aim, the court is usually concerned with the legality and not with the merit of the proceedings, decisions or acts of the affected tribunal or governmental body. Thus, in the exercise of its jurisdiction to regulate the actions of the agencies, the courts can declare such acts invalid or *ultra vires* and void for either being unconstitutional, or offending the twin rules of natural justice, i.e. the principles of *audi alteram partem*, or *nemo judex in causa*. The reliefs typically used in the review process include the orders of *mandamus, certiorari*, prohibition and the writ of *habeas corpus.*

For example, in a recent judgment of the Federal High Court[51], sitting in Lagos, in granting an order restraining NERC from proceeding to implement its directive to increase the electricity tariff, the court held that in light of the provisions of the EPSRA[52], the action of the NERC was procedurally *ultra vires*, irregular and illegal.

Conclusion

In conclusion, the Nigerian litigation and dispute resolution landscape is indeed growing to accommodate the commercial realities of this present age and is responding to the call to facilitate quicker, efficient and effective resolution of disputes. However, it could very well be argued that in cases of significant commercial importance to the parties, arbitration may be the more cost-effective option, especially in matters that involve cross-border disputes.

* * *

Endnotes

1. Section 1 of the Constitution.
2. Acts of the National Assembly and the Laws of the State Houses of Assembly.
3. By virtue of section 32 (1) of the interpretation Act Laws of the Federation of Nigeria, 2004, the common law of England, principles of Equity and other statutes of general application in force in England on 1st January 1900 are applicable in Nigeria.
4. Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
5. Order 3 Rule 3 (1) Federal High Court (Civil Procedure) Rules 2009; Order 3 Rule 2 (1) of Lagos State High Court (Civil Procedure) Rules 2012; Order 4 Rule 15 and 17 of the High Court of the Federal capital Territory (Civil Procedure) Rules 2004.
6. Order 7 Federal High Court (Civil Procedure) Rules 2009; Order 9 of Lagos State High Court (Civil Procedure) Rules 2012; Order 12 High Court of the Federal capital Territory (Civil Procedure) Rules 2004.
7. Order 25 of the High Court of Lagos State (Civil Procedure) Rules 2012.
8. Order 26 Lagos State (Civil Procedure) Rules and Order 30 High Court of the Federal Capital Territory (Civil Procedure) Rules.
9. Order 25 Rule 6 of the Lagos State (Civil Procedure) Rules 2012; Order 18 Federal High Court (Civil Procedure) Rules 2009.
10. Order 3 Rule 11 of the Lagos State (Civil Procedure) Rules 2012.
11. *Kantin Kwari Market Traders Association & Ors v Labaran & Ors* (2016) LPELR-41329(CA).
12. Section 36 (1)(3) of the constitution.
13. *Kotoye v. Central Bank of Nigeria & Ors.* (1989) 1 NWLR (Pt.98) 419@ 414 were reiterated by the court in *Baba v. N.C.A.T.C. Zaria* (1991). 7 SC (Pt. 1) 58 @ 81–83.
14. This is still at its infancy in the Court within Nigeria and laden with attendant challenges; it is hopeful that the system will take a common place in due course of time.
15. Section 192 (1) of the Evidence Act 2011; Rule 19 of the Rules for Professional Conduct.
16. Proviso (a) & (b) to section 192 (1); Section 192 (2) of the Evidence Act 2011; Rule 19 (2) (c) of the Rules for Professional Conduct.
17. Section 192 (3) of the Evidence Act 2011.
18. Section 193 of the Evidence Act 2011; Rule 19(4) of the Rules for Professional Conduct.
19. Order 49 of the Lagos State High Court (Civil procedure) Rules; Order 52 High Court of the Federal Capital Territory (Civil procedure) Rules.

20. *ACB Plc v. Ndoma-Egba* (2001) All FWLR (pt. 40) 1780.
21. Rule 50 of the Rules of Professional Conduct for Legal Practitioners, 2007.
22. http://blog.legalfunding.com/litigation-funding-in-nigeria/.
23. *M.V. Parnomous Bay & Ors v. Olam Nigeria Plc* (2004) 5 NWLR (Part 865) 1: *Lignes Aeriennes Congolaises v. Air Atlantic Nig Ltd* (2005) 11 CLRN 55.
24. Cap S6, Laws of the Federation of Nigeria ("LFN"), 2004.
25. Judgments (Enforcement) Rules and Enforcement of Judgments and Service of Process Rules.
26. Sections 104–110 of the SCPA.
27. Suit No. FHC/ABJ/CS/203/2017 – *Emmanuel Ekpenyong v. Attorney General of the Federation*.
28. *Woodgrant Ltd v. Skye Bank Plc* (2011) 12NWLR (Part 1260) page 61 at 97.
29. *Anthony v. Surveyor-General, Ogun State* (2007) ALL FWLR (Pt. 354) 375 at 390.
30. *Commonwealth Law Bulletin* (Vol 37, 2011 – Issue 2) – http://dx.doi.org/10.1080/03050718.2011.570899.
31. *Madubuike v. Madubuike* (2001) 9 NWLR (Pt. 719) 698.
32. Cap. A18, Laws of the Federation of Nigeria 2004.
33. Section 53 Arbitration and Conciliation Act.
34. Cap P10, Laws of the Federation of Nigeria 2004.
35. Cap N117, Laws of the Federation of Nigeria 2004.
36. Cap P38, Laws of the Federation of Nigeria 2004.
37. Section 5, ACA; *Obembe v. Wemabod Estates Ltd* [1977] 11 NSSCC 264 at 271–272.
38. (2003) 15 NWLR (Pt 844) 469 (SC).
39. Section 23 ACA.
40. Section 51 ACA.
41. *Tulip (Nig.) Ltd v. Noleggioe Transport Maritime SAS* (2011) 4 NWLR (Pt 1237) 254 (CA).
42. See Order 3 Rule 11 Lagos State (High Court) Rules 2012.
43. See Order 16 r 1 CAR.
44. The Consumer Protection Framework for Banks and other Financial Institutions was issued by the Central Bank of Nigeria (CBN) on November 7, 2016, in exercise of the powers conferred on it by section 43 of the Central Bank of Nigeria Act of 2007 and sections 57, and 61(1) of the Banks and Other Financial Institutions Act of 2007, as amended.
45. Although the policy directive was issued on May 15, 2017, as at the time of writing this article, we gather that the directive has not yet been implemented because the NERC is still working out the implementation framework for the policy.
46. The Statement was made in a communiqué issued by U. A. Dutse, Director, Consumer Protection Department, issued on November 7, 2017.
47. Financial institutions include Commercial or Merchant Banks, Specialized Banks, Micro-finance Banks (MFBs), Discount Houses (DHs), Development Finance Institutions (DFIs), Finance Houses (FHs), Bureaux-de-Change (BDC), Primary Mortgage Banks

(PMBs), Credit Bureaux, Mobile Payment Companies, Mobile Money Operators or any other institution as may be licensed by the CBN from time to time in line with the relevant provisions of BOFIA.

48. A complaint is defined under paragraph 1.3 of the CPF as a dissatisfaction expressed by a consumer on a financial product or service provided by a FI which may or may not have caused financial loss.
49. This compensation will come by way of competition transition charges pursuant to Sections 28 and 29 of the EPSRA.
50. See *ACB Limited v. Damian Ikechukwu Nwaigwe &*Ors (2011) 7 NWLR 380 (SC).
51. FHC/L/CS/768/2015 *Mr Toluwani Adebiyi v. NERC* – Unreported.
52. Sections 31, 32, and 76 of the EPSRA.

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