Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period:
The Need for Compliance with Global Best Practices

David Tarh-Akong Eyongndi ♣

Abstract

In Nigeria, the limitation period begins to run from the date the dispute leading to the arbitration arose instead of when the award was rendered. While highlighting the rationale and effect of limitation period to the jurisdiction of court, I argue that the period set out in the Arbitration and Conciliation Act (ACA) for enforcement of arbitral awards fails to countenance the inherent delays in Nigeria's justice system which can be exploited to render the enforcement of an award nugatory. The operationalisation of limitation period unless amended, can be a dissuading factor for choosing Nigeria as a seat of international arbitration which rubs her of the attendant benefits. It is further argued that, anyone, wishing to enforce an award in Nigeria, must ingeniously act timeously to avoid untoward outcome due to the repressive limitation period. This article identifies registration of award pursuant to Foreign Judgment (Reciprocal Enforcement) Act as a leeway to enforce foreign arbitral awards. It compares the practice in Nigeria with jurisdictions like India, Canada, United Kingdom and Ethiopia and draw lessons for Nigeria. It makes a case for amendment of the existing legal framework to bring the law on limitation of time *in tandem* with global best practices.

Key terms:

Arbitration · Award · Dispute · Jurisdiction · Limitation Period · Nigeria.

DOI http://dx.doi.org/10.4314/mlr.v15i1.4

Received: 11 January 2021 **Accepted**: 1 July 2021

♣ David Tarh-Akong Eyongndi: LL.B (Hons) UNICAL, LL.M (Ibadan) BL, Lecturer, Private and Commercial Law Programme, College of Law, Bowen University, Iwo-Osun State, Nigeria.
Email: david.eyngndi@bowenuniversity.edu.ng Telephone No: +2347033252212.
ORCID: https://orcid.org/0000-0003-0072-1812

The Author is grateful to Gladys Eyongndi Esq. for the editorial work on the Draft .

Frequently used acronyms:

ACA Arbitration and Conciliation Act
FJREA Foreign Judgments (Reciprocal Enforcement) Act

Suggested citation:

David T. Eyongndi (2021), 'Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices', 15 *Mizan Law Review* 1: 107-138

1. Introduction

Over the years, arbitration has developed and become an appropriate alternative dispute resolution mechanism to litigation.[1] It is particularly suitable for the settlement of commercial and contractual disputes.[2] In arbitration, like litigation, at the end of the proceedings, a final and binding decision known as 'award', is delivered which determines the right and obligations of the disputants.[3] As a result of this, the parties to an arbitration proceedings, are generally expected to give effect to the award having participated in the arbitral proceedings in good faith.[4]

However, it is not unexpected for the unsuccessful party to renege from abiding by the award.[5] Where this happens, the successful party who is desirous of effectuating the award, is left with the option of taking steps to enforce same like it is done to a court judgment.[6] Arbitration by its nature, when compared to litigation, is relatively faster in dispensing justice. However, arbitration is not free from certain inherent dilatory proclivity of the Nigerian justice delivery system which is capable of defeating its

[1] David T Eyongndi & John I. Ebokpo (2018), "The Principle of Taking s Step in the Proceedings under Nigerian Arbitration and Conciliation Act: The Need for Delineation", 7 (3) *Port-Harcourt Law Journal*, 123-124.

[2] Oluseun M. Abimbola (2013), "Prospects in Arbitration: An Overview", *Diverse Issues In Nigerian Law, Essays in Honour of Hon. Justice Okanola Akintunde Boade,* Olatunbosun, I. Adeniyi, and Laoye Luqman., (Eds.) (Ibadan, Zenith Publishers), 27.

[3] Paul O. Idornigie, and Adebanwo Adewopo (2016), "Arbitrating Intellectual Property Disputes: Issues and Perspectives", (7)(1) *The Gravitas Review of Business and Property Law Journal*, 1-19

[4] *Obi Obembe v. Wemabod Estate Ltd.* (1977) All NLR 130 at 139; *BCC Tropical Nigeria Ltd. v. The Government of Yobe State & Anor.* (2011) LPELR-9230 (CA); *Onwu v. Nka* [1996] 7 NWLR (Pt. 458), 1.

[5] David T. Eyongndi, and Olabisi O. Ojuade (2019), "Applicability of Immunity Clause to Arbitration in Nigeria" 1(2) *International Review of Law and Jurisprudence, Afe Babalola University,* 29-37.

[6] Gaius Ezejiofor, *The Law of Arbitration in Nigeria,* (Lagos, Longman (Nig.) Plc. 2005), 115.

fastness.[7] This is so particularly when the Government or its agency is a party to the proceedings and its outcome may be unfavourable.

While a judgment of a court is enforceable within periods of time ranging from six years from the date of its delivery, time begins to count for the enforcement of an arbitral award *from the time when the cause of action accrued* and not when the award was delivered.[8] This state of the law is not only illogical but does not accord recognition to the undisputed fact that, just like litigation proceedings,[9] parties to an arbitral proceedings, may only know when the proceedings commences and not when it may end although arbitration is ordinarily reputed as being time saving and expeditious.[10]

Furthermore, this state of affairs is not in consonance with the fact that an award is only final and binding between the parties subject to the right of recourse to court by an aggrieved party to have the award set aside. This right of recourse to appeal, may in itself, open the floodgate of protracted litigation from the High Court to the Supreme Court. By the time the Supreme Court determines the issue of the validity or otherwise of the award, six years from the time of the accrual of the cause of action would have lapsed. Hence, a successful party may end up with a sterile award (which s/he cannot benefit from) as the period of limitation would have crystallised.[11]

Moreover, even where the respondent waives his/her right to object or is silent to the enforcement, it is trite law that a court can *suo motu* raise the issue of jurisdiction and call upon the parties to address it.[12] Besides, according to the law, any proceedings no matter how well conducted, once the court sieised of the dispute lacks the requisite jurisdiction the proceedings all together (no matter how well conducted) is a nullity *ab initio*

---

[7] Fabian Ajogwu (2013), *Commercial Arbitration in Nigeria: Law and Practice* (Lagos, Mbeyi and Associates (Nig.), Ltd. 12.

[8] Section 7 (1) (d) Limitation Act, 1966; *City Engineering Nig. Ltd. v. Federal Housing Authority* [1997] 9 NWLR (Pt.520) 224.

[9] MacArthur J. N. Mbadugha (2015), *Principle and Practice of Commercial Arbitration* (Lagos, University of Lagos Press & Bookshop Ltd.), 225.

[10] Ezejiofor, G., *supra* note 6, at 115.

[11] *Kayili v. Yilbuk & Ors.* [2015] 2 SCM, 161.

[12] David T. Eyongndi (2019, "Assessing the Judicial Attitude of Court Raising Issues *Suo Motu* in Nigeria" (3) *Orient Law Journal, Nigerian Bar Association, Owerri Branch* 144-152; *Kano State Civil Service Commission & Anor. v. Bashir Abba Sherrif & Anor.* [2013] 9 NWLR (Pt. 1359), 300.

because *ex nihilo nihil fit.*[13] Notwithstanding this state of the law, a possible leeway which parties could adopt to elongate the period of limitation in Nigeria, is to insert a *Scot v. Avery Clause*[14] in the arbitration agreement to the effect that an action in court can only be predicated on an award.[15] This notwithstanding, the period of limitation as applicable to arbitration is capable of making arbitration less attractive especially when the subject matter is complicated and is of a cross border nature.

Unscrupulous disputants can mischievously take unto dilatory tactics and antics through frivolous court action and unmeritorious appeals just to ensure that; by the time the successful party wishes to enforce the award, the limitation period would have expired.[16] This is so since time begins to run from the date the dispute leading to the arbitration arose as opposed to when the award was rendered or the implied duty to abide by same was breached.[17] This perilous situation is further compounded by the fact that there is no time limit statutorily provided for under the Arbitration and Conciliation Act[18] for the conduct of arbitration hence, it becomes a matter at the whims and caprices of the parties and the cooperation of their arbitrator (s).[19]

This article is divided into eight sections. After the introduction. Section 2 discusses the reasons for the preference of arbitration over court litigation. The third section discusses the means/modes of enforcement of arbitral awards (domestic and internal) in Nigeria. Sections 4 and 5 respectively deal

---

[13] *See* the dictum of Lord Denning M.R. in the case of *Mcfoy v. U.A. C.* (1962), AC 152.

[14] (1856) 5 HL Cas. 811. It is a clause in an arbitration agreement which provides that unless and until arbitration has been resorted to the parties may not litigate the matter (named after the very old case of *Scott v Avery* in which the clause and its effects were first examined by the courts. The clause is indeed the preference of the spirit of Art. 8, UNCITRAL Model Law and S. 4 of the Nigerian Arbitration and Conciliation Act.).

[15] Ephraim I. O. Akpata, *Arbitration Clause,* A presentation delivered at the Chief G.O. Sodipo Memorial Lecture held at the Regional Centre for Commercial Arbitration, No. 1 Alfred Rewane Road, Ikoyi, Lagos on 7th December, 2015.

[16] MacArthur J. N. Mbadugha, *supra note* 9, at 227.

[17] Agih S. Isaac "Statutes of Limitation under the Nigerian Legal System: A Case for Legal Reform" available online at <https://komplexkonceptz.wordpress.com/2018/11/22/statutes-of-limitation-under-the-nigerian-legal-system-a-case-for-legal-reform/#_ednref1> accessed 28 December 2019.

[18] Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2010.

[19] Ephraim, I. O. Akpata (1997), *The Nigerian Arbitration Law in Focus* (Lagos, West African Book Publishers Ltd.), 19.

with the rationale and effects of limitation period on the jurisdiction of courts, and the effects of section 7(1)(d) of the limitation law on the growth of arbitration in Nigeria. Section 6 contains discussions on the limitation law and foreign arbitral awards in Nigeria; and Section 7 briefly examines the practice of limitation period in selected jurisdictions in a bid to determine global best practice which Nigeria can align her law to. The last section contains the conclusion.

2. Preference of Arbitration as Dispute Resolution Mechanism

Prudent businessmen have favoured arbitration in settling their disputes particularly those of commercial and contractual nature.[20] The advantages of arbitration as an amicable dispute settlement mechanism, gives it preference over court litigation.[21] Arbitration has been globally accepted as a suitable method of commercial disputes settlement as almost every nation and some international organizations have laws and rules[22] regulating its practice.[23] The universal legal framework of arbitration makes it attractive[24]

The fact that the arbitrator or tribunal, in the event of any challenge to its jurisdiction, can (pursuant to the doctrine of competence-competence) determine its jurisdiction makes it preferable than other alternative dispute settlement mechanisms.[25] In other mechanisms save litigation, it is doubtful if the umpire has the *vires* to determine any challenge to its jurisdiction.[26] Arbitration awards are final and binding on the parties to the proceeding and

[20] Dele Peters (2006), *Arbitration and Conciliation Act Companion,* (Lagos: Dee-Sagee Nig. Ltd.), 465.

[21] Oluseun M. Abimbola, *supra note* 2: 27

[22] For example in Nigeria at the federal level, the Arbitration and Conciliation Act, 1988, Cap. A18 LFN, 2010 as well as the various Arbitration Laws of the various States regulates Arbitration in Nigeria.

[23] Abdulrazaq Daibu and Lukman Abdulrauf (2015), "Challenges of Section 20 of the Admiralty Jurisdiction Act to International Arbitration Agreements" 6(4) *The Gravitas Review of Business and Property Law,* 14-23.

[24] David T Eyongndi (2018), "An Appraisal of Perennial Hurdles in the Enforcement of Arbitral Awards in Nigeria and India" 10 *Ram Manohar Lohiya National Law University Journal,* 84-113.

[25] Emilia Onyema (2009), "The Doctrine of Separability under Nigerian Law" 1(1) *Apogee Journal of Business Property and Constitutional Law,* 65.

[26] Michael O. Adeleke, "Lagos State Multi-Door Courthouse: An Appraisal of its Machinery, Structure and Impact" (2008-2009) 1(2) *Lead City University Law Journa*l, 298.

can only be set aside by an order of a competent court on grounds enumerated under the ACA.[27] However, the same cannot be said of mediation or negotiation. The result of this is that, the time and resources expended by parties in arbitrating, is secured as they are bound by the outcome since same is final and binding on them and their privies.[28]

Over the years, arbitration has generally developed; and it has been duly argued that it has acquired a distinct status as a dispute resolution mechanism independent of Alternative Dispute Resolution.[29] Thus, today dispute resolution mechanisms, are classified into: litigation, arbitration and ADRs.[30] Under both international and domestic legal frameworks, once delivered the fact that arbitral awards are recognised and enforced globally makes it preferable to all other mechanisms.[31] The effect of this is that upon successfully arbitrating a dispute in a particular forum, if there is no or enough assets to satisfy the award the successful party can simply have the award registered in any jurisdiction as a judgment of the domestic court of that jurisdiction and have same satisfied once the award suffers no defect.

When arbitration is compared to litigation as a means of resolving disputes it is speedier.[32] Litigation is prone to several dilatory tactics such as unjustifiable adjournments, undue technicalities, frivolous interlocutory appeals and arrest of judgment, inability of the court to sit questionable absence of parties in court, etc.[33] However, arbitration is generally regarded

[27] *Onwu v. Nka* [1996] 7 NWLR (Pt. 458) 1.

[28] Alero E. Akeredolu, "Duel to Death or Speak to Life: Alternative Dispute Resolution Today and Tomorrow" 7th Inaugural Lecture of Ajayi Crowther University, Oyo, Oyo State delivered on the 11th day of January, 2018), 18.

[29] Jide Olakanmi (2013), *Alternative Dispute Resolution: Cases and Materials,* (Abuja: Law Lords Publications), 5.

[30] Andrew I. Chukwuemerie (2010), "An Overview of Arbitration and the Alternative Dispute Resolution Methods (ADRs)*", A Journal of the Civil Litigation Committee of the Nigerian Bar Association*, Lagos, Pearls Publishers, 100.

[31] *See* generally sections 31 and 51 of Arbitration and Conciliation Act, 1988, Cap. A18, LFN, 2004.

[32] Solomon A. M. Ekwenze (2010), *Arbitration Agreement: Nature and Implications"* (4) *University of Ado-Ekiti Law Journal*, 317. David Ike (2016), "Arbitration in Nigeria- A Review of Law and Practice" 7(3) *The Gravitas Review of Business and Property Law,* 67-67.

[33] David Ike (2017), "An Examination of the Role of International Arbitrators", 8(2) *The Gravitas Review of Business and Property Law,* 61-71.

as informal due to the operation of the doctrine of party autonomy.[34] This doctrine enables the parties to determine important issues regarding the proceedings such as the applicable law, seat of the arbitration, number of arbitrator, the language of the arbitration, the mode of conducting the proceedings, evidential matters, the qualification of the arbitrator, the possible duration of the proceedings, mode of presenting evidence, etc.[35] Arbitration has the potential of fostering relationship unlike litigation. No special dressing is required to attend the proceedings and the atmosphere is generally friendly. The tone and language in which the proceedings are conducted is usually informal and simple devoid of legal formality and jargons which characterizes court proceedings and culminates in removing the disputants from the process of resolution as they depend solely on their lawyers in the conduct of the proceedings.

3. Mode and Mechanisms for the Recognition/Enforcement of Arbitral Awards in Nigeria

At the end of the arbitral proceedings, it may become expedient for the successful party to resort to the court for the purpose of enforcing the arbitral award where the other party has failed or neglected to abide by the award.[36] Thus, Sections 31 and 51 of the ACA[37] contain provisions for the recognition and/or enforcement of both domestic and foreign arbitral awards in Nigeria. The options (briefly discussed below) are available to a party who wishes to have an arbitral award either recognized or recognized and enforced in Nigeria.

3.1 Application under Sections 51 and 52 of the ACA

Before the Arbitration and Conciliation Decree, 1988, there were only two methods of enforcing foreign awards in Nigeria. This is by registration under the Foreign Judgment (Reciprocal Enforcement) Act, and under the New

[34] Sunday A. Fagbemi (2015), "The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality*"?* 6(1) *Journal of Sustainable Development Law and Policy,* 224.

[35] David T. Eyongndi (2016), "International Arbitration Agreement under Nigerian Law: Form, Content and Validity", (1) 5 *Babcock University Socio-Legal Journal*, 107-122.

[36] MacArthur J. N. Mbadugha (2015), *Principle and Practice of Commercial Arbitration,* Lagos, University of Lagos Press & Bookshop Ltd.,), 224.

[37] 1988, Cap. A18, LFN, 2010.

York Convention, 1958.[38] The relevant sections of the Foreign Judgments (Reciprocal Enforcement) Act[39] provide that a foreign award may be registered in the High Court at any time within six years after the date of the award if it has not been wholly satisfied and if at the date of the application for registration, it could be enforced by execution in the country of the award. Thus, the period within which an award must be registered under the FJREA (or else becomes statute barred) is six years. Section 51 of the ACA provides that:

> An arbitral award shall, irrespective of the country in which it is made, be recognized as binding, and subject to this section and subsection 32 of this decree, shall, upon application in writing to the court, be enforced by the court. The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, the original arbitration agreement or a duly certified copy thereof ...[40]

The procedure for enforcement under this section is similar to the one outlined under section 31 of ACA which deals with domestic awards and the requirement of fair hearing guaranteed by the Constitution.[41] Thus, an applicant makes a formal application to have the foreign award registered as the judgment of the High Court in Nigeria for the purpose of its recognition or enforcement. Same must be made in good faith and any factor that may affect the way and manner the court can exercise its discretion, must be fully disclosed. The grounds for refusal of recognition and or enforcement are as set out in section 52 of ACA. These grounds include: (i) incapacity of a party to the arbitration agreement; (ii) the award is beyond the scope of the submission; (iii) the composition of the tribunal or the procedure adopted is contrary to law; (iv) the award is contrary to public policy, and the arbitration agreement is invalid; (v) misconduct on the part of the arbitrator or tribunal;[42] (vi) absence of proper notice of appointment of an arbitrator or tribunal[43] subject matter not arbitrable,[44] and (vii) lack of jurisdiction.[45]

---

[38] Olakunle J. Orojo, and Michael A. Ajomo, *supra note* 29, at 304.

[39] Sections 2 and 4 Foreign Judgment (Reciprocal Enforcement) Act.

[40] This section is *pari materia* with the provision of Article 35 of UNCITRAL Model Law, 1985.

[41] *Tulip (Nig.) Ltd. v. N. T. M. S. A. S.* [2011] 4 NWLR (Pt. 1237) 254.

[42] *Triana Ltd. v. U. T. B. Plc.* [2009] 12 NWLR (Pt. 1155) 313.

[43] In the case of *Continental Sales Ltd. v. R. Shipping Incorporated* [2013] 4 NWLR (Pt. 1343) 67, it was held that notice of appointment of an arbitrator through email is a proper notice of appointment.

[44] MacArthur J. N. Mbadugha, *supra note* 32, at 239.

3.2 Application under Section 31 of ACA:

Section 31 of the ACA provides that "An arbitral award shall be recognized as binding and subject to this section and section 32 of this Decree, shall, upon application in writing to the Court be enforced by the Court …" and "An award may by leave of the Court or a judge be enforced in the same manner as a judgment or order to the same effect.[46] Under this mechanism, a party desirous of having an award recognised and enforced in Nigeria, shall make an application to the Court for its enforcement.

The Court of Appeal in *Ebokan v. Ekwenibe & Sons Trading Co.*[47] approved of this procedure for recognition/enforcement of arbitral awards in Nigeria. The Applicant under this procedure makes an application to the court for leave to enforce the award.[48] However, the *lacuna* in this procedure is the directive that, the application shall be in writing without specifying what is meant by "in writing" thereby lacking precision and clarity on how the application is to be made. The issue is whether a letter written to the judge would suffice; or if there is the need for a formal application whether *ex parte* or on notice.[49] This is not clear from the reading of the Act.

Despite the shortcoming of the provision of the ACA above, it is advisable that an Applicant brings the application in accordance with the Rules of the particular Court to which the application is brought. Where the application is made through motion *ex parte* –as it is usually done– it is worthy to note that the court has the power to order that the party against whom the order is sought be put on notice. This is done in accordance with the dictates of overriding interest of justice based on fair hearing as was decided in *Kotoye v. Central Bank of Nigeria.*[50]

As a rule, the applicant is duty bound to make full disclosure of any matter(s) within his/her knowledge capable of affecting the Court in exercising its discretion in granting the leave sought to enforce the award.[51] The Court of Appeal in *Imani & Sons Ltd. v. Bill Construction Co. Ltd.*[52]

---

[45] *Araka v. Ejeagwu* [2000] 15 NWLR (Pt. 692) 684.
[46] Olakunle J. Orojo, and Michael A. Ajomo (1999), *Law and Practice of Arbitration and Conciliation in Nigeria,* (Lagos, Mbeyi & Associates (Nigeria) Limited) 298.
[47] [3001] 2 NWLR (Pt. 696) 32. At 41, Paras. F-G.
[48] Arbitration and Conciliation Act, 1988, Cap. A18, LFN, 2010.
[49] MacArthur J. N. Mbadugha, *supra note* 36, at 227.
[50] [1989] 1 NWLR (Pt. 98) 419.
[51] *Curacao Trading Co. B. v. Harkisanda & Co.* (1992) 2 Lloyds's Rep. 186.
[52] [1999] 12 NWLR (Pt. 630) 254 at 263, Para. E.

interpreted Section 31(1) of the ACA and held that a careful perusal of the same, reveals that it does not require that the respondent be put on notice. However, since the procedure is such that it may culminate in the granting of an order which may affect the respondent's proprietary interest, it must therefore be construed that a party against whom the order is sought ought to be put on notice. The justification of the above position is that the granting of an order pursuant to Section 31 of the ACA *ex parte* carries legal consequences which is an inhibition of the right to fair hearing provided for under the 1999 Constitution. As a result, the said provisions of the ACA must not be accorded any application for it defeats the course of justice and erodes the confidence which all law abiding citizens must have in the administration of justice which is essential to social order and security.[53]

In *Ebokan v. Ekwenibe & Sons Trading Co.*[54] the court laid down conditions which an applicant must fulfil to have his application granted. These factors, in no particular order, are that there must be a contract in which there is a submission to arbitration; the dispute arose within the terms of the submission; the arbitrators must have been appointed in accordance with the clause which contains the submission; there must be a valid award; and that the amount awarded has not been paid. However, it is to be noted that Section 31 of the ACA is subject to Section 32 which contains grounds for refusing granting an order that gives recognition and/or enforcement of an award whether domestic or international. These grounds are discussed in the subsequent sub-section of the article.

3.3 Recognition and Enforcement under New York Convention

Nigeria is a signatory to 1958 New York Convention (known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards) having assented to it on the 17 of March, 1970. It is an international legal framework that makes provisions for the recognition and enforcement of foreign arbitral awards amongst member States. Every State that has assented to it has an obligation to give effect to its provisions as far as recognition and enforcement of foreign arbitral awards is concerned. Article 1 of the Convention renders it applicable "to the recognition and enforcement of territorial awards made in the territory of a State other than the State where the recognition or enforcement of such awards are sought and arising out of difference between persons, whether physical or legal." [55]

---

[53] *Id.* at 265, Paras. H-A.

[54] [3001] 2 NWLR (Pt. 696) 32, at 41, Paras. F-G.

[55] *See* section 54(1) (a) of Arbitration and Conciliation Act, 1988, LFN, 2010 for reciprocity provision.

Article 2 makes it mandatory for each acceding State to recognize an arbitration agreement concluded under the Convention by parties for the settlement of any dispute. Where a party disregards an arbitration agreement/clause in a contract by instituting legal proceedings, domestic courts of member States to the Convention are enjoined in the event that the other party makes an application for stay of proceedings to enable the parties arbitrate and refer them to arbitration.[56]

Article 3 thereof provides that "each contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon." The procedure for recognition or enforcement of an arbitral award is spelt out in Article 4. When an application is being made, the applicant shall "provide the duly authenticated original award or a duly certified copy of it; the original arbitration agreement or a duly certified copy of it; and a translation of the above if they are not in the official language of the country where enforcement is sought."[57]

This is to validate the authenticity of the award being sought to be recognised or enforced. It is worthy to note that the grant of an application under the Convention is not automatic. Under certain conditions an application may be refused. The grounds for refusal of an application for recognition/enforcement of an award includes the fact that the award is *ultra vires*; misconduct on the part of the arbitrator or tribunal; arbitrator or tribunal exceeding its jurisdiction or lack of jurisdiction; public policy of the recognizing state;[58] absence of proper notice of appointment of arbitrator or tribunal to a party; dispute not susceptible to settlement through arbitration;[59] invalidity of the arbitration agreement; or any other disabling factor.

---

[56] Section 4 and 5 of the ACA achieves the same purpose.

[57] This requirement are the same as the ones under Section 51(2) of the ACA.

[58] *See* Kojo Yelpala (1989), 'Restraining the Unruly Horse: The Use of Public Policy in Arbitration, Interstate and International Conflict of Laws in California' Pacific McGeorge Scholarly Commons, p. 380. Available at http://digitalcommons.mcgeorge.edu/edu/cgi/viewcontent.cgi?article=10437context=facultyarticles. Assessed 25 October 2019.

[59] Pallavi Bajpai, Law Mantra Journal, "Limitations of Party Autonomy in International Regime of Arbitration *"Online Law Mantra Journal.* Available online at <http://www.thecanvasscolumn.com/2015/04/party-autonomy-and-its-limitation-in-dispute-resolution/> or <http://journal.lawmantra.co.in/?p=162>. Accessed on 24 November 2019.

3.4 Enforcement by Action on the Award

Intrinsic in an arbitration agreement is the belief that parties undertake to be bound by the outcome of the proceedings in good faith.[60] The implication of this is that upon the delivery of an award and if the unsuccessful party fails to abide by it, it is a breach of an implied term of the arbitration contract which the successful party, is permitted to enforce through an action.[61] The justification of the procedure of enforcement of an award by action on same has been stated as follows:

> Parties to an arbitration agreement impliedly agree to perform a valid award. If the award is not performed, the successful [award creditor] can proceed by action in the ordinary courts for breach of this implied promise and obtain a judgment giving effect to the award. ...[62]

This action is a common one. A party seeking to enforce an award through an action upon the same must plead and prove some critical elements. Accordingly, the plaintiff must prove "[t]he existence of the arbitration; that a dispute has arisen which falls within the ambits of the arbitration agreement; the appointment of an arbitral tribunal in accordance with the agreement; the making of the award pursuant to the arbitration agreement; and failure of the defendant to perform the award".[63] However, where there is a breach of natural justice in the process culminating to the award or if it is demonstrably clear that enforcement will be unjust; these will become defences to the action.[64]

It is to be noted that section 34 of the ACA specifies the extent to which Courts can intervene in arbitral proceedings. The restriction in section 34 of the ACA is an offshoot of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985[65] (as amended in 2006) per Article 5 thereof. The said Article 5 provides that "in matters governed by this law, no court shall intervene except where so provided in this law" and this provision is the same as section 34 of the ACA. This restriction on the way, manner and extent to which courts can intervene in arbitral proceedings have witnessed

---

[60] Olufemi Abifarin (2010), "Resolving Domestic Violence through Alternative Dispute Resolution in Nigeria*",* 6 *University of Ilorin Law Journal*, 163-164.
[61] *Id*. at 302.
[62] *Ibid*.
[63] Russell on Arbitration, 21st ed., p. 398.
[64] Olakunle J. Orojo, and Michael A. Ajomo, *supra* note 46, at 304.
[65] Official Records of the General Assembly, Fourteen Session, Supplement No. 17 (A/40/17), annex 1.

overwhelming scholarly interrogation with some arguing that the provision is an affront on the inherent power and jurisdiction of Nigerian courts established under section 6(1) (2) of the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN),[66] and others have argued that it is not.[67] Despite the provision of section 34 of the ACA, Nigerian Courts have intervened in arbitral proceedings beyond the bounds statutorily provided as exemplified in *Statoil (Nigeria) Ltd. & Anor. v. Federal Inland Revenue Service and Anor.*[68]

4. Rationale and Effect of Limitation Period on the Jurisdiction of Court

Usually, where a person has a legal right or has suffered a wrong, the law permits the aggrieved party to seek remedy because the law does not envisage a wrong without a concomitant remedy.[69] If an aggrieved party is unable to seek judicial remedy through the court, it may lead to resort to self-help which may have inimical outcome.[70] Although the law permits and encourages seeking judicial remedy (as opposed to resort to self-help), the right to do so where a wrong has been or is about to be suffered does not subsist in perpetuity.[71] Thus, where a party is aggrieved by the action or omission of another, he or she must take steps to seek redress timeously so that the right to redress will not expire by virtue of limitation period.[72]

---

[66] Mohammed M Akanbi, "Contending without being Contemptuous Arbitration, Arbitrators and Arbitrability" Being the 152th Inaugural Lecture of University of Ilorin. Available online at <www.unilorin.edu.ng/UIL/152.PDF> accessed 18 July 2020, David Ike (2016), "Arbitration in Nigeria: A Review of Law and Practice" 7(3) *Gravitas Review of Business and Property Law*. 57 & 62.

[67] Joseph Mbadugha (2017), "Section 34 of the Arbitration and Conciliation Act: Issues Arising", 8(1) *The Gravitas Review of Business and Property Law* 88-100; David T. Eyongndi, and Akin O. Oluwadayisi (2018), "An Appraisal of Section 34 of Arbitration and Conciliation Act and the Role of the Court in Arbitral Proceedings in Nigeria", 5 *Rivers State University Journal of Jurisprudence and International Law,* 102-118.

[68] [2014] LPELR-23144 CA.

[69] *Bello v. A.G. Oyo State & Anor* [1986] 5 NWLR (Pt. 45) 828.

[70] *Ojukwu v. Governor of Lagos State* [1986] 1 NWLR (Pt. 18) 621.

[71] *Ekele v. Iwodi* [2014]15 NWLR (Pt.1431) 557 at 578, Paras. D-F. *See* also the cases of *Egbe v. Adefarasin (No. 1)* [1985] 1 NWLR (Pt. 3) 549; *Dantata v. Mohammed* [2000] 7 NWLR (Pt. 664) 176, *Thamos v. Olufosoye* [1986] 1 NWLR (Pt. 18) 689.

[72] *Sosan v. Ademuyiwa* [1986] 3 NWLR (Pt. 27) 241; *Elebanjo v. Dawodu* [2006] 15 NWLR (Pt. 10001)76.

Thus, limitation period ensures that an aggrieved person approaches the court within a specified reasonable time to seek redress and not give an impression of condonation.[73] It makes time of the essence.[74] This position is buttressed by the Court of Appeal decision in *Unity Bank Plc. v. Nwadike,*[75] in determining the rationale of limitation law. It held that:

> The jurisprudence of the doctrine of statute bar as encapsulated in the various limitation laws is that no matter how creditable or good[76] a claim is, when it is not brought timeously, it abates and no relief can validly be sought to enforce a stale claim. Thus, the persons with reasonable cause of action ought to pursue them with reasonable diligence.

Hence, there must be a time frame within which a person who has a cause of action can stretch the time to seek redress.[77] The Limitation Law has adequately provided against the digging up of long standing grievances that have been left to drag for an unnecessary long period without taking action within the reasonable period from when the cause of action accrued as provided by the law.[78] Once a party has allowed a cause of action to linger beyond the prescribed timeframe for seeking redress it becomes stale or statute barred.[79] The consequence of an action becoming statute barred is that the party in whose favour the action had accrued loses the right to have the action adjudicated upon by a court of competent jurisdiction.[80] In effect, the party also irretrievably loses the right to judicial remedy and is left with an empty cause of action which no court can adjudicate upon.[81] The party against whom the action is brought, can successfully challenge the suit as

[73] *Chukwu v. Amadi* [2009] 3 NWLR (Pt.1127) 56 at 75, Paras. B-D.
[74] *Amodu v. Ajiboye* [2000] 14 NWLR (Pt.686) 15.
[75] [2009] 4 NWLR (Pt. 1131)352 at 375, Paras. E-F.
[76] *See* generally the cases of *Oba Aremo II v. Adekanye* [2004] 13 NWLR (Pt. 998) 477'; *Nwadiora v. Shell Petroleum Development Co. Ltd.* [1990] 5 NWLR (Pt.150) 332.
[77] Ese Malemi (2017), *Nigerian Constitutional Law,* 3rd Edn. (Lagos, Princeton Publishers Ltd), 69.
[78] *P. N. Udoh Trading Company & Ltd. v. Abere* [2001] 11 NWLR (Pt. 723) 114.
[79] Jacob A. Dada, *Administrative Law in Nigeria* (Calabar, University of Calabar Press, 2011), 260-262.
[80] Danladi, M. Kabir (2012), *Outline of Administrative Law and Practice in Nigeria* (Zaria, Ahmadu Bello University Press Ltd.), 53-62.
[81] *Daudu v. University of Agriculture, Makurdi* [2002] 17 NWLR (Pt. 796) 363.

well as the jurisdiction of the court to entertain same as the condition of a suit being statute barred rubs the court of jurisdiction.[82]

In *Ekele v. Iwodi,*[83] the Supreme Court of Nigeria (SCN) stated the implication of an objection to a suit on the ground of its being statute barred:

> When objection is taken to a suit that such a suit is statute barred, it implies that though the plaintiff had a cause of action upon which he could exercise a right of action, he however exercised his right of action outside the prescribed time for such right of action to be exercised and was consequently barred from doing so.[84]

Thus, where the Court finds that an action is statute barred the only option left is to make an order dismissing the action because it is regarded as dead on arrival.[85] In *Attorney General of Adamawa v. Attorney General of the Federation,*[86] the Supreme Court of Nigeria stated what the court must do once there is a finding that a suit is statute barred.

> Where an action is statute-barred, it does not come within the jurisdiction of a court. An action which is statute-barred cannot confer jurisdiction on a court. This is because such an action has lost its right of initiation as it no longer comes within recognition, but it is an empty cause of action which cannot confer any right to judicial relief.[87]

From the foregoing discussions, it is not enough that a person feels aggrieved and has a cause of action thereto.[88] Where the desire of the aggrieved person is to seek legal remedy for the grievance it must be noted that time is of the essence.[89] Any inordinate delay could be detrimental to the cause to the extent of extinguishing same and leaving the person with an empty cause of action which is in-actionable at law. Diligence is the hallmark of a serious litigant. The interest of the public would be better served where cause of actions are adjudicated timeously and stale causes and

---

[82] Miracle Akusobi "Understanding the Basic Concepts of Limitation Statutes under the Nigerian Legal System" <https://thenigerialawyer.com/understanding-the-basic-concepts-oflimitation-statutes-under-the-nigerian-legal-system-miracle-akusobi-esq/> Accessed 9 December 2020.

[83] [2014]15 NWLR (Pt.1431) 557 at 578, Paras. B-C.

[84] *Egbe v. Adefarasin (No. 1)* [1985] 1 NWLR (Pt. 3) 549.

[85] *N.P.A. Plc. v. Lotus Plastics Company* [2005] 19 NWLR (Pt. 959) 158.

[86] [2014] 14 NWLR (Pt.1428) 515 at 567, Paras. D-F.

[87] *Daudu v. University of Agriculture, Makurdi* [2002] 17 NWLR (Pt. 796) 363.

[88] *Esuwoye v. Bosere* [2017] 1 NWLR (Pt. 1546) 256 at 293 Paras C-D.

[89] *Nwaonu v. Osuchukwu* [2007] All FWLR (Pt. 313) 329.

matters are forgotten or abandoned and not allowed to linger and be used to the annoyance of persons who have reasonable cause to believe that their wrongdoing has been condoned. In fact, if a person is allowed to wake from slumber at any time to litigate a matter, the possibility that evidence which the defendant could have used to defend the case would have been lost cannot be overruled.[90] He who wishes to go to court must do so at the earliest opportunity without inordinate delay howsoever.

The foregoing notwithstanding, while it is conceded that equity aids the vigilant and not the indolent, it is to be noted that where the indolence is predicated on jurisdiction, anytime the indolent litigant wakes (even if it is at the Supreme Court) he/she is allowed to raise the issue. The reason is that the issue of jurisdiction is germane and goes to the root of the proceedings and its fundamental nature leaves the court with no option but to entertain the case at whatever time or stage of the proceedings same is raised.[91]

5 Effects of Section 7(1)(D) of the Limitation Law on the Growth of Arbitration in Nigeria

From the discussions above it is trite that the application of statute of limitation brings about certain consequences. Once the prescribed time has lapsed, the cause of action becomes staled or statute barred and cannot be litigated. The party is left with an empty, sterile cause of action without any hope of legal remedy. Therefore, any action that is commenced after the period stipulated by the statute has lapsed, is totally barred as the right of the plaintiff or the injured person to commence the action can no longer be maintained in a court of law.[92]

The effect of Section 7(1)(d) of the Limitation Law on the dire need of the growth of arbitration in Nigeria is inimical. It fails to take into cognizance the peculiarities of Nigeria's justice administration system which is bedevilled by several hassles. By this section of the ACA, an unscrupulous disputant who does not have any defence to the arbitral proceedings can resort to dilatory techniques to scuttle and make redundant an arbitral award since the limitation period is activated from the time the cause of action accrued and not even from the time the arbitration proceedings commenced

[90] *A.G., Adamawa v. A.G., Federation* [2014] 14 NWLR (Pt.1428) 515 at 551-552, Paras. G-A.

[91] *Gaji v. Paye* [2003] 8 NWLR (Pt. 823) 583.

[92] *Ibrahim v. Judicial Service Commission, Kaduna State* [1998] 14 NWLR (Pt.584) 1; *Obiefuna v. Okoye* [1961] NLR 357; *Fadare v. A. G., Oyo State* [1982] 4 SC (Pt. 3) 459; *Abubakar v. Governor, Gombe State* [2002] 17 NWLR (Pt. 797) 583.

or when the award was rendered which is now sought to be enforced. Thus, any award sought to be recognised or enforced as a judgment of the court which is more than six years from the time the original cause of action accrued is legally unsustainable.

Therefore, any prudent businessperson especially businesses of trans-border nature who is aware of this disadvantageous position of the law in Nigeria yet desirous of arbitrating in the event of a dispute would prefer a forum which guarantees a more realistic limitation period than that which is currently obtainable in Nigeria. The law on limitation period in Nigeria is capable of dissuading persons from choosing Nigeria as a forum for arbitration as well as coming to seek enforcement in Nigeria. At present, several disputes that have a Nigerian element are arbitrated in other jurisdictions like the US, UK, Singapore, Hong Kong, South Africa, etc. where the law on limitation of time is friendlier and more realistic.

The Supreme Court of Nigeria has given judicial fortification to section 7(1)(d) of the Limitation Law in *Murmansk State Steamship Line v. The Kano Oil Millers Limited*[93] wherein the court interpreted the section to mean that the period of limitation starts to run for the recognition and enforcement of an arbitral award from the date the cause of action which led to the arbitration culminating into the award accrued and not the date the award was rendered nor its breach occur. The trial court reasoned and held that since the cause of action was deemed to have accrued on the 28th day of February 1964 and the award was rendered on 28th February 1966, the action brought on the 2nd of February 1972 to enforce the arbitral award was statute barred by the provisions of the Limitation Law which requires that civil actions must be brought within six years of the accrual of the cause of action. On appeal to the Supreme Court the position was affirmed in the following pathetic manner:

> We think that there is force in these submissions of learned counsel for the respondent. The present case is one of a simple reference of any dispute to arbitration and contains no clause making an arbitration award a condition precedent to the bringing of an action … the period of limitation is deemed to run after the date of the award only when a party has by his own contract expressly waived his right to sue as soon as the cause of action has occurred. If there is no such *Scott v. Avery* clause, the limitation period begins to run immediately.[94]

[93] (1974) 12 SC 1.
[94] (1974) 12 SC 1 at 5, Line 20 and 6 line 25.

The court here failed to countenance the fact that an arbitral award is final and binding and as such failure to abide by it thereby necessitating an action for its recognition and or enforcement is an independent cause of action actionable just as the original cause of action from which the award originated from. In *Agromet Motorimport Ltd. v. Maulden Engineering Co. (Beds) Ltd.*[95] with facts that are similar to *Murmansk Case,*[96] the English Court came to the conclusion that:

> It is an implied term of an agreement to submit to arbitration dispute arising under a contract that any award made on a submission will be honoured. A breach of that implied term arising out of the failure to honour an award gives rise to an independent cause of action, to enforce the award distinct from the original cause of action for breach of contract which give rise to, the Limitation Law 1980, namely that 'An action to enforce an award must be brought within six years from the date the cause of action accrued,' begins to run from the date of the breach of the implied term to perform the award, and not the from the date of the accrual of the original cause of action giving rise to the submission, since the 'action' and the cause of 'action' referred in section 7 are the independent cause of action for breach of the implied term to perform the award and not the original cause of action.

The above pro-arbitration position of the English Court accords with common sense and logic; and it countenances an implied obligation of a party to an arbitration award to abide by the award and failure to do so gives right to the aggrieved party to seek for specific performance through an action for recognition and or enforcement of the award.

In the subsequent case of *City Engineering Nig. Ltd. v. Federal Housing Authority*[97] –which takes after the similitude of the former cases– the issue was whether the period of limitation under section 8(1)(d) of the Lagos Limitation Law[98] began to run from the 12th day of December 1980 when the cause of action from the main contract arose or November 1985 (when the arbitral award was rendered so as to determine if the application brought in 1988 seeking recognition and enforcement of the award is statute barred)? The Supreme Court had no hesitation in relying on decision in *Murmansk State Steamship Line v. The Kano Oil Millers Limited*[99] and held that "…

[95] (1985) 1 WLR 762.
[96] (1974) 12 SC 1.
[97] [1997] 9 NWLR (Pt.520) 224.
[98] 8(1) (d) of the Lagos Limitation Law Cap. 70 Laws of Lagos State 1956.
[99] (1974) 12 SC 1.

limitation period runs from the date of the accrual of the cause of action in the arbitration agreement and not from the date of the arbitral award."

The Court came to this conclusion despite the fact that it was referred to the English Court decision in *Agromet Motorimport Ltd. v. Maulden Engineering Co. (Beds) Ltd.*[100] and a host of others. Rather, the court distinguished the decision in the following regrettable manner:

> … a distinction must be drawn between an action to enforce an arbitral award … the relief that can be granted … is an order enforcing the award as if it were a judgment of the court. And an action for damages for breach of an implied promise to perform a valid award where it is opened to the court to order damages for the failure to perform the award or decree, in appropriate cases, specific performance of the award or grant an injunction restraining the losing party from disobeying the award or grant a declaratory relief. In my respectful view, the statutory period of limitation in respect of the former form of action runs from the breach that gave rise to the arbitration. The action leading to the appeal before us belongs to that category of action. In respect of the latter category of action, limitation period runs from the date the losing party refuses to obey the arbitral award. In either case, the date of the award does not apply. To the extent, therefore, that Otton J. in *Agromet Motorimport* adopted the approach in Mustill and Boyds on Commercial Arbitration, I find myself, unable to go along with him.[101]

It is rather regrettable that the Supreme Court of Nigeria rightly dichotomized the types of cause of action that are accruable from an arbitration agreement and an arbitral award, but concluded that the same limitation period applies to the two. The importance of arbitration to Lagos State (indisputably a commercial hub in Africa) and to that of Nigeria cannot be overemphasized. A foreign investor invests with the hope that in the event of a dispute there will be opportunity for a neutral dispute settlement mechanism other than the national court with its several inhibitions.

Being aware of the dragnet of limitation period as contained in its Limitation Law as well as the Federal Act and decided cases in 2009, Lagos State enacted its Arbitration Law.[102] The law regulates arbitration

[100] (1985) 1 WLR 762.
[101] *City Engineering Nig. Ltd. v. Federal Housing Authority* [1997] 9 NWLR (Pt.520) 224 at 245 Paras. E-G.
[102] Lagos State Arbitration Law, 2009.

proceedings in Lagos State and has cured the defect in sections 62 and 63 of the Lagos State Limitation Law.[103] The Lagos Arbitration Law provides that limitation period does not run from the date of the accrual of the cause of action that led to the arbitral proceedings but from the date the award was rendered. In particular, section 35(3) and (5) of the law provides as follows:

> Notwithstanding any term in an Arbitration Agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of Limitation Laws, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement. In computing time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.

This stance of the Lagos State Arbitration Law is not only a positive development but accords with sincere expectations of prudent disputants who resort to arbitration to resolve their dispute; it is *in tandem* with the decision of the English court in *Agromet Motorimport Ltd. v. Maulden Engineering Co. (Beds) Ltd.*[104] Section 2 of the law provides that from the commencement of the law, all arbitrations in Lagos State shall be governed by its provisions, except where the parties have expressly agreed that another arbitration law shall apply. In *Stabilini Visinoni Ltd. v. Mallison & Partners Ltd.*[105] (where the issue was whether it was the ACA that was applicable or the Lagos Arbitration Law in the determination of the suit), the Court of Appeal held that the ACA is a federal legislation that governs arbitration in Nigeria but that the Lagos Arbitration Law alongside the rules made thereunder governs arbitration in Lagos State.[106]

It is hoped that all States will follow the example of Lagos State as "the centre of excellence" to enact their own arbitration law with the same provisions on limitation of time as a means of whittling down the tyranny of the ACA. While the decision in *Stabilini Case*[107] is laudable, the potential confusion caused by the dual system of arbitral legislation in Nigeria is not without concern to foreign investors who may be constrained to either

---

[103] Lagos State Limitation Law Cap. L 67, Laws of Lagos State, 2003.
[104] (1985) 1 WLR 762.
[105] [2014] 12 NWLR (Pt. 1420) 134.
[106] Paul C. Ananaba (2017), *Recognition and Enforcement of Foreign Judgments and Awards in Nigeria,* (Lagos, Jamiro Press Link), 187.
[107] [2014] 12 NWLR (Pt. 1420) 134.

choose Nigeria as the seat of arbitration or seek the recognition and or enforcement of an award in Nigeria. It is safer where there is just one legal regime which is arbitration friendly regulating arbitration as it prevents unnecessary conflict of laws confusion cropping up.

6. Limitation Law and the Enforcement of Foreign Arbitral Awards in Nigeria

A foreign arbitral award is not considered a domestic award by the State where its enforcement and or recognition is being sought. It has also been described as an award made in a state other than the one its enforcement/ recognition is being sought.[108] The New York Convention as well as the procedural rules of the State where enforcement/recognition of an award is being sought contain rules for doing so. The ACA governs the recognition and enforcement of foreign arbitral awards in Nigeria and it is an amalgamation of the UNCITRAL Model Law on international commercial arbitration and the New York Convention. These international legal instruments, enjoin all contracting States to recognize and enforce foreign arbitral awards in their jurisdictions subject to certain conditions due to which enforcement or recognition may be denied.

The New York Convention in making provisions for the recognition and enforcement of foreign awards, did not specify time limit within which recognition and or enforcement could be sought. However, its Article III makes the issue of limitation period subject to the Rules of the place where recognition/enforcement is being sought. By this liberty, the Convention permits contracting States to impose time limit within which recognition and enforcement of foreign arbitral awards can be sought if they so wish. It must be noted that the Convention provides grounds pursuant to which recognition and enforcement of a foreign award can be denied; and limitation period is not one of the grounds.[109]

Since the Convention recognizes the right of contracting States to impose limitation period, the limitation period contained in Section 7(1)(d) of the Limitation Law of Nigeria applies *mutatis mutandis* to foreign arbitral award where their recognition and/or enforcement is sought. This is so despite the fact that failure to abide by an arbitral award is tantamount to breach of contract which in itself is an independent cause of action which has or

[108] *See* Article I (i) New York Convention, 1998.
[109] Article V New York Convention, 1998.

should have extinguished the original cause of action which generated the arbitral proceedings that culminated in the award.

The failure to abide by an arbitral award is a breach of contract. At the time the parties opt to insert an arbitral clause or execute a separate agreement to arbitrate any or all disputes that might arise from the main contract, they did so with an implied agreement to abide by the outcome of the arbitration. Thus, where there is a dispute and they proceed to arbitrate as already agreed, it is expected that they give effect to their implied obligation to effectuate the award. This understanding or conclusion is easy to come by because if it were to be otherwise, parties will use the agreement to arbitrate as a sham to placate the order and this will be inimical to the growth of arbitration as well as commerce. Moreover, it is generally accepted that arbitration is a contract and contract has both express and implied terms.

Thus, it is also correct that the law as espoused in *Murmansk State Steamship Line v. The Kano Oil Millers Limited*[110] and reiterated in *City Engineering Nig. Ltd. v. Federal Housing Authority*[111] remains the position of the law in Nigeria with the exception of Lagos State. It is therefore necessary for anyone who engages in arbitration with the possibility of subsequently seeking enforcement of the award in Nigeria to beware that 'time is of the essence' is true. Thus, dilatory tactics must be vehemently opposed and where the need arises, enforcement must be sought timeously to avoid a situation where the losing party may capitalize on delay to frustrate the victor from reaping the fruit of the arbitration via limitation period.

It is important to note that a foreign arbitral award sought to be enforced through registration pursuant to the Foreign Judgment (Reciprocal Enforcement) Act[112] (FJREA) may not be subject to the hassles of Section 7(1)(d) of the Limitation Law. Under the Act, a judgment includes an arbitral award if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place.[113] Thus, where enforcement is by registration, the issue is, will Section 7(1)(d) of the Limitation Law and decisions such as *Murmansk State Steamship Line v. The Kano Oil Millers Limited*[114] and *City*

[110] (1974) 12 SC 1.
[111] [1997] 9 NWLR (Pt.520) 224.
[112] Foreign Judgment (Reciprocal Enforcement) Act Cap. F35 LFN 2004.
[113] Section 2 (1) Foreign Judgment (Reciprocal Enforcement) Act Cap. F35 LFN 2004.
[114] (1974) 12 SC 1.

Engineering Nig. Ltd. v. Federal Housing Authority[115] delivered pursuant to it apply?

Under the provisions of Sections 4(1) and 10(a) of the FJREA, the time limit for enforcement of foreign award is six years, if the award was rendered after the order of the Minister of Justice that the Act be extended to the Country of the award or twelve months or such longer period as a superior court in Nigeria may allow, if the award was rendered before the order of the Minister of Justice. The six years period starts to run from the date of the judgment and where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings. Assuming (but not conceding) that there is conflict between the provisions of the Limitation Law and the Foreign Judgment (Reciprocal Enforcement) Act, it is a trite canon of interpretation that *generalia specialibus non derogant.* Since the Limitation Law deals generally with limitation period for various cause of actions, the specific provisions of the FJREA on limitation of time for enforcement of foreign arbitral awards in Nigeria through registration supersedes.

The Court of Appeal in *Tulip (Nig.) Ltd. v. N. T. M. S. A. S.*[116] held that limitation time for the enforcement of the award starts to run from the date the award was rendered instead of the date the cause of action leading to the arbitration accrued. In the case, an arbitral award was rendered on the 3rd day of June 1998, and on the 2nd day of December 2003 the Respondent sought the leave of the court to enforce the award as the judgment of the court. The issue was whether pursuant to section 8(1)(d) of the Limitation Law of Lagos State 2003, the application was not statute barred? While this decision accords with logic, it is regrettably at variance with the letter and spirit of section 8(1)(d) of the limitation law of Lagos State.

The court interpreted it as if the law provides that time begins to run from the date of the accrual of the cause of action in the original agreement and not the date the award was rendered. Interpretation of similar provisions in the federal law in *City Engineering Nig. Ltd. v. Federal Housing Authority*[117] had the outcome that time starts to run from when the main agreement was breached which instigated the arbitration and not the time the breach of the implied term to obey the award rendered occurred. Based on the hallow doctrine of *stare decisis,* the Court of Appeal reached its decision

[115] [1997] 9 NWLR (Pt.520) 224.
[116] [2011] 4 NWLR (Pt. 1237) 254.
[117] [1997] 9 NWLR (Pt.520) 224.

per incuriam and therefore not legally sustainable in view of the decision of the Supreme Court in earlier cases which are at logger head with it.

7. Limitation Period for the Enforcement of Arbitral Award in Selected Jurisdictions

Limitation period is a phenomenon that can be regarded as universal. This section of the article examines the practice in some other jurisdictions as far as arbitral award is concerned. Some of these jurisdictions, have limitation period that is regarded as arbitration friendly and measured as acceptable global standard which Nigeria can glean from in bringing its law into conformity with global best practices.

7.1. India

In India, various High Courts have given conflicting and diametrically opposed decisions regarding limitation period for the enforcement of foreign arbitral awards. However, recently, the Supreme Court of India, on the 16th day of September 2020 put to rest the vexed issue in *Government of India v. Vedanta Ltd. & Ors.*[118] Part II of the India Arbitration and Conciliation Act, 1996 deals with the issue of enforcement of foreign arbitral awards in India. Sections 47 to 49 thereof are the relevant sections on the issue.

While Section 47 contains the procedure for filing an application/petition for enforcement of an award, Section 48 contains limited grounds pursuant to which an application for enforcement may be refused and Section 49 provides that an award enforceable pursuant to Section 48, shall be deemed to be the decree/judgment of the court making same. The Limitation Act of 1963 regulates the period of limitation for instituting legal proceedings in India. However, both the Limitation Act and Part II of the Arbitration Act, do not provide the limitation period for filing an application to enforce a foreign arbitral award in India.

Articles 136 and 137 of the Schedule to the Limitation Act contain varied limitation periods. The former provides a twelve years limitation period for the execution of any decree or order of a civil court while the latter provides two years limitation period for any other application for which no period of limitation is provided. The Bombay High Court in *Noy Vallesina Engineering SPA v. Jindal Drugs Ltd.*[119] held that the limitation period for the enforcement of a foreign award under Section 48 of the Arbitration Act is in two stages. Stage one is governed by Article 137 of the Schedule to the

[118] CIV. APP. No. 3185 0f 2020. (SLP (Civil) No. 7172 of 2020).
[119] 2006 (3) ARBLR 510 Bom.

Limitation Act which is three years from when the right to apply for registration accrued. Upon the court determining the enforceability of the award, same is deemed to have become a decree of the court and execution would then be in accordance with the provision of Article 136 of the Limitation Act which provides for a limitation period of twelve years.

However, the Madras High Court in *M/S Bharat Salt Refineries Ltd. v. M/S Compania Naviera "SODNAC" & Anor*[120] held that the limitation period of twelve years under Article 136 of the Limitation Act is applicable both to the enforcement as well as recognition of the foreign award. This decision was based on the India Supreme Court decision in *Fuerest Day Lawson v. Jindal Export*[121] where it was held that a foreign award is already considered as a decree and can therefore be enforced and executed in one composite proceeding. The Bombay High Court subsequently followed the *M/S Bharat Salt Refineries Ltd. v. M/S Compania Naviera "SODNAC" & Anor*[122] in *Imax Corporation v. E-City Entertainment Pvt Ltd. & Ors*[123] thereby abandoning its decision in *Noy Vallesina Engineering SPA v. Jindal Drugs Ltd.*[124]

The Supreme Court decision in *Government of India v. Vedanta Ltd.*[125] stated that the limitation period for the enforcement of a foreign arbitral award pursuant to the Limitation Act shall be regulated by the provision of Article 137 which countenances a period of three years starting from the time when the right to apply accrues. It considered Article 136 inapplicable under Part II of the Arbitration Act since such an award is not a decree of a civil court in India; by virtue of Section 5 of the Arbitration Act, a court can condone a delay where it is satisfied that there is a reasonable cause for application within the prescribed time; and a party in whose favour a foreign award subsists, can seek recognition and enforcement via a composite proceeding under Part II of the Arbitration Act.[126]

---

[120] AIR 2007 MADRAS 251.
[121] AIR 2001 Supreme Court 2293.
[122] AIR 2007 MADRAS 251.
[123] 2019 Comm. No. 414 Bom.
[124] 2006 (3) ARBLR 510 Bom.
[125] CIV. APP. No. 3185 0f 2020. (SLP (Civil) No. 7172 of 2020).
[126] Aayog Doshi "Limitation Period for Enforcement of Foreign Awards: Supreme Court of India Finally Answers" 18th October, 2020. Available online at arbitrationblog.kluwerarbitration.com/2020/10/18/limitation-period-for-enforcement-of-foreign-award-supreme-court-finally-answers/ accessed 9 January 2021.

7.2 Canada

In Canada, time begins to run from the time the award was rendered as opposed to when the dispute arose. This position, recognises the implied condition to abide by the award inhered in the act of the parties agreeing to submit to arbitration. The Supreme Court of Canada in *Yuhraneft Corporation v. Rexx Management Corporation*[127] upheld the decision of two lower courts that the plaintiff brought its application to enforce a Russian arbitral award two years after the expiration of the applicable provincial limitation period. The Appellant had entered into a contract with the Respondent which contained an arbitration clause. Upon the ensuing of a dispute, the parties submitted same to arbitration before the International Chamber of Commerce and Industry at the Russian Federation. The tribunal issued its award on the 6th day of September, 2002.

The Appellant applied to an Alberta Court of Queen's Bench for recognition and enforcement of same on the 27th day of January 2006 more than three years after the award was rendered. The Court was called upon to interpret Article 3 of the New York Convention which provides that recognition and enforcement of an award shall be regulated by the rules and procedure of the forum where same is being sought. In 1986, Canada with the consent of the provinces, ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and adopted the UNCITRAL Model Law on International Commercial Arbitration.[128]

The Court based on its earlier decision in *Tolofson v. Jensen*[129] held that the limitation law of Alberta is what is applicable. By the provisions of Section 3(1)(a)(iii) of the Alberta Limitation law, aside claims based on a judgment or order for payment of money, arbitral awards shall be enforced within two years from the time they are rendered hence, the application was statute barred.

While the two years period seems inadequate, the court held that the two years period, will not begin to run unless and until the plaintiff discovers, or should have discovered, that the defendant has assets in the place where the

[127] 2010 SC 19.

[128] McCarthy Tetrault "Supreme Court of Canada decision a Wake-Up Call for Tardy Visitors in International Arbitration Proceedings" 27th May, 2010. Available online at htpps://www.mccarthy.ca/en/insights/articles/supreme-court-of-canada-decision-a-wake-call-tardy-visitors-intrnational-arbitration-proceedings/ accessed 9 January 2021.

[129] [1994] 3 S.C.R. 1022.

enforcement is sought.[130] This notwithstanding, given the increasing need to encourage the growth of arbitration and insulate it from abuse, the two year limitation period for the enforcement of award under the Alberta statute, is short particularly when the fact that there is no provision for enforcement of foreign awards is taken into cognizance.[131]

Under the New York Convention as well as the UNCITRAL Model Law (which Canada ratified with the consent of Alberta and other provinces), limitation period, is not a ground for refusing recognition and or enforcement of a foreign award. But both international legal frameworks permit the application of the domestic law of the concerned jurisdiction in deciding the issue of limitation time. As seen in *Tolofson v. Jensen*[132] in Alberta, based on its limitation law, the limitation period is two years from the date the award was rendered; and it is argued that a period of three or four years from the time the award is delivered is considered as ideal.

7.3 United Kingdom

In the United Kingdom (UK) the limitation period starts to run six years from the time the cause of action accrues based on the provision of the English Limitation Act of 1980. The cause of action here referred is not the cause of action pursuant to which the arbitral proceedings ensued (as may be erroneously assumed) but the cause of action arising from the failure of the defendant to abide by the implied condition to give effect to the arbitral award. This was the position taken by the English Court of Appeal in *Agromet Motorimport Ltd. v. Maulden Engineering Co. (Beds) Ltd.*[133] where it held that limitation period for the enforcement of an award is six years from the year the award was delivered as opposed to when the original cause of action arose.

This position is laudable and logical. Inherent in parties' agreement to submit to arbitration, is their undertaking to give effect to the outcome of the proceedings. Failure to abide by this inherent undertaking, constitutes an independent cause of action entitling an aggrieved party to seek the coercive power of the court relating to the benefit which has accrued from the award. The period of six years is reasonably adequate for any serious plaintiff, to

[130] *Yuhraneft Corporation v. Rexx Management Corporation* 2010 SC 19 at P. 49.
[131] Stephen Pitel "Limitation Period for Enforcing Foreign Arbitration Award" 1st June, 2010. Available online at htpps://conflicttoflaws.net/2010/limitation-period-for-enforcement-of-foreign-arbitration-awards/ accessed 9 January 2021.
[132] [1994] 3 S.C.R. 1022.
[133] (1985) 1 WLR 762.

take steps to seek recognition and or enforcement of the award. If the period is to reckon with the time from which the dispute leading to the arbitral proceeding arose, dilatory antics can be deployed by an unscrupulous defendant to frustrate the sought enforcement by rendering same statute barred. This will be a great disservice to the dire need of growth of arbitration and reposing of disputants' confidence in the process. The law in UK is a global benchmark for assessing arbitration friendly limitation period.

7.4 The United Republic of Tanzania

The Tanzanian arbitration *corpus juris* is flexible and at the whim of the parties as far as limitation period is concerned. The Arbitration Act No. 2 of 2020 and the Law of Limitation Act Cap. 89, 2019 regulate limitation period for the enforcement of arbitral awards in Tanzania. Section 83(1) and (2) of the Arbitration Act which deals with limitation period, provides that:

> The parties may agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Act having effect in default of such agreement. Where there is no agreement of the parties in terms of subsection (1), the provisions of the Interpretation of Laws Act relating to computation of time and reckoning of months shall have effect to the reckoning of period under this Act.

Section 84(1) of the Arbitration Act provides that unless the parties otherwise agree, the court may by order extend any time limit agreed by the parties in relation to any matter relating to the arbitral proceedings or specified in any provision of the Act having effect in default of such agreement. A party interested in seeking extension of time, can make same to the High Court after giving notice to the other party as well as the arbitrator or tribunal.[134] Where an application for extension of time is made, the court, shall only grant same upon being satisfied that the party making the application, has exhausted local or internal remedy in seeking the extension; and a substantial injustice would otherwise be done if the application is not favourably considered.[135]

An application for extension of time under this section, could be made before or after the expiration of the time for performing the act for which the extension is being sought and the court reserves the power to grant the

[134] Section 84 (2) (a) and (b) Arbitration Act No. 2 of 2020.
[135] *Ibid*.

application based on terms it deems fit in the circumstance of the case.[136] Where a party is aggrieved by the decision of the court pursuant to its exercise of its discretion under this section, the leave of the court must first be sought and obtained before an appeal can be lodged.[137] The High Court is the court with the requisite jurisdiction for seeking recognition and or enforcement of an arbitration award be it domestic or foreign.[138]

Section 40 of the Law of Limitation Act Cap. 89, 2019 which applies to arbitration, does not specify a limitation period within which an arbitral award can be enforced. Rather, the section bestows on the parties the power to determine the period. The effect of this rather flexible position of the law in Tanzania is that same can be exploited to cushion the effect of an undue hardship that could have been occasioned in the event that a specific period is provided bearing in mind the effect of statute bar to an action. In fact, where the parties have provided a limitation period (where it is meritorious to do so), the High Court, can exercise its discretion, in the overall interest of justice, to extend the time. Despite the plausibility of this position, we are not unmindful of abuse by unscrupulous persons who might exploit the flexibility to the detriment of an unassuming party. Hence, the court must be vigilant to forestall such at all times.

7.5 Common denominator of the jurisdictions examined above

Gleaning from the practice in the various jurisdictions examined above, the period of limitation starts to run from the time the implied duty to abide by the award is breached as opposed to when the cause of action giving rise to the arbitral proceedings accrued. While the time frame for seeking enforcement differs from one jurisdiction to another, a common denominator is the fact that time starts to run post-award which makes it logical and plausible unlike under the Arbitration and Conciliation Act 1988 of Nigeria.

In fact, the flexibility of Tanzanian law is impressive and capable of encouraging selection of the jurisdiction, subject to some inhibiting factors, as a suitable hub for arbitrating. The timeframe in UK is arbitration friendly and a representation of what could be liken to generally acceptable standard.

---

[136] Liberatus Cosmas Gabagambi (2015), "Critical Analysis on the Challenges Facing Legal and Institutional Frameworks on Recognition and Enforcement of Foreign Arbitral Awards in Tanzania", 39 *Journal of Law, Policy and Globalisation,* 170.

[137] Id., (6).

[138] Ryoba Marwa (2019), "A Review of Law and Procedure Governing Recognition and Enforcement of Foreign Arbitral Awards in Tanzania", 5(2) *International Journal of Law,* 31-42.

In the event of an amendment, it is only logical that the Nigerian legislature, should adopt the UK position and her courts. Pending such amendment, Nigeria should adopt the position of the British Court (England) in interpreting the limitation period and abandon its subsisting anachronistic position as exemplified in cases like *Murmansk State Steamship Line v. The Kano Oil Millers Limited*[139] and *City Engineering Nig. Ltd. v. Federal Housing Authority.*[140]

The effect of limitation period to the jurisdiction of a court in Nigeria and Republic of Tanzania should be noted. It seems that in the latter jurisdiction, unless and until the respondent raises the issue of limitation period, the jurisdiction of the court is ousted, and the court will proceed with the adjudication of the dispute. However, this is not the case in Nigeria. Once the period of limitation has set it, the jurisdiction of the court becomes sterile and ousted hence, the court can *suo motu* raise the issue of its competence to adjudicate over the dispute or the respondent can raise same but the court cannot proceed to adjudicate over the dispute simply because the respondent has not raised the issue.

The reason for this is simple, the court as well as parties, have a duty to ensure that the jurisdiction of the court is intact in the course of adjudication and they (court or party), cannot confer jurisdiction on the court especially substantive jurisdiction like the one pursuant to section 7(1) of the Limitation Act. The principle of law that you cannot put something on nothing and expect it to stand[141] is ingrained in Nigeria's adjudicatory jurisprudence and goes to the effect that where there is want of jurisdiction but neither the court nor the parties raise same, the proceedings will nonetheless be a nullity.[142]

8. Conclusion and the Way Forward

Extrapolating from the above analysis, it is clear that arbitration as a dispute resolution mechanism, evolved as a matter of necessity to compliment and cushion the hardship experienced in litigation especially in disputes that have commercial dimension in which maintenance of relationship is crucial as no two persons return from the court to continue in friendship. Thus, since

[139] (1974) 12 SC 1.
[140] [1997] 9 NWLR (Pt.520) 224.
[141] David T. Eyongndi, "The Legality of Nigerian Courts Endorsement of Nigerian Bar Association's Stamp and Seal and the Principle of *Ex Nihilo Nihil Fit*" (2020) 1(2) *Journal of Tanganyika Law Society,* Tanzania, 182-211.
[142] *Attorney General, Kwara State v. Adeyemo* [2017] 1 NWLR (Pt. 1546) 210.

its evolution, arbitration has enjoyed not only local acceptance but international recognition and usage by prudent businessmen especially in trans-border transactions. Its binding effect on the party insulates it from abuse; and at the end of its proceedings, the arbitrator or panel usually issues an award. However, where the unsuccessful party fails and/or neglects either in whole or part to abide by the award, the successful party desirous of exploiting the fruit of the award, is left with the option of recourse to the court for its recognition and/or enforcement within a particular time frame.

The time a judgment of a court of law will become practically and legally unenforceable starts to run from the date the judgment was delivered up to a particular period of time thereafter. On the other hand, the time for the unenforceability of an arbitration award starts to run from the time the cause of action upon which the arbitration is predicated accrued and not even when the arbitral proceedings commenced.

This state of the law, to say the least, is synonymous to self-denial and not akin to legal and socio-cultural realities of the Nigerian society. The Arbitration and Conciliation Act (ACA) –which is the principal arbitration legislation– does not provide the timeframe within which arbitration proceedings must be commenced and concluded like election petition to justify the limitation period stipulate. The dichotomy between the primary cause of action and the cause of action founded on breach of implied term to abide by an award (necessitating the application for either recognition or enforcement of the award) is like making a difference without a distinction as it cannot be logically argued that there has been a successful arbitration if the successful party has not realized the outcome of the arbitration.

Hence, the limitation as provided under the Limitation Law and equivalent legislation is capable of disrupting the steady growth of arbitration as it makes arbitration susceptible to fraud by unscrupulous disputants who may deploy dilatory tactics and antics to take unjust advantage of the limitation period. This state of the law calls for urgent legislative intervention and judicial rethinking. In the light of the discussions above, the way forward requires amendment of the Arbitration and Conciliation Act with a view to providing for the maximum period of time within which an arbitration proceeding would take as a way of discouraging parties from resorting to dilatory techniques in a bid to unnecessarily elongate the arbitration time. This will help to ensure that the relatively fast characteristic of arbitration proceedings is not defeated as seen with election petition.

For election petition in Nigeria, from the filing of the petition till when the election petition tribunal will deliver its judgment, the time frame of one eighty (180) days is allotted. This is by virtue of section 285(6) of the 1999 CFRN (Fourth Alteration) Act, 2017. Where appeal lies to the Court of Appeal, the appeal must be determined within sixty (60) days of filing of the notice of appeal and a further appeal to the Supreme Court where the petition is allowed, has a timeframe of sixty (60) days to be determined by virtue of section 285(7) by the Supreme Court.[143] In fact, the appellate courts, lack the authority to grant extension of time. Hence, the parties must perform every action expected of them within the allocated time and failure to so do, could be fatal on the defaulting party's case. This has made settlement of election petition disputes in Nigeria speedier and same procedure should be adopted for arbitration bearing in mind its concomitant speed.

Moreover, section 7(1)(d) of the Limitation Law of Nigeria and its equivalent in the various States limitation laws with the exception of Lagos should be amended to provide for the limitation time to start to run from the time the award was delivered as opposed to when the cause of action accrued. In other words, the limitation period for the enforcement of an arbitral award in Nigeria should start counting from the time the arbitrator or tribunal renders the award which the unsuccessful party has refused or failed to give effect to and not when the cause of action that led to the arbitral proceedings arose as it is the case at present.

Furthermore, Section 62 of the Limitation Law which expressly makes inapplicable the leeway of *Scot v. Avery* Clause which postpones the limitation to the time when an award is delivered should be deleted from the Limitation Law. The proposed amendment should provide that the period of limitation for the enforcement of an arbitral award shall commence from the time the unsuccessful party fails to comply with the award (which is an independent action from the primary cause of action) and not from the time the cause of action which led to the arbitration culminating in the award arose. It is also to be noted that all stakeholders, i.e. government, non-governmental organization, arbitration institutes, etc. within Nigeria need to intensify awareness on arbitration while professionals such as lawyers, judges, arbitrators, conciliators, etc. should engage in continuous capacity building. ■

[143] *Wike Ezenwo Nyesom v. Hon. Dr. Dakuku Peterside & Ors.* [2016] 1 NWLR (Pt. 1492) 71.