TOPE ADEBAYO LP

INDUSTRY OVERVIEW

DISPUTE RESOLUTION

NEWSLETTER – 2024

PARTNER'S NOTE

Dispute is almost inevitable in every human relation. It is in recognition of this that modern societies have established systems of dispute resolution and evolved rules that make dispute resolution both efficient and effective. Disputes may be resolved by way of litigation or any other alternative system, chief of which is arbitration.

In this newsletter, we examine major developments in 2023 which have the capacity to shape dispute resolution dynamics in 2024 and beyond. These developments cut across decisions of the Supreme Court on established and novel principles of law, and legislative enactments on vital subjects of procedural laws in litigation and arbitration. Specifically, seminal pronouncements have been made by the apex court on our electoral jurisprudence which have left a segment of the political class in a fix on potential remedies. Whereas the protagonists appear to be left to freeze in the cold on how to reap the fruits of the decision, the real antagonists are still basking in the protection that the finality of the Court of Appeal decision in State House or National Assembly election cases affords.

The newsletter also reviews the P&ID arbitral award which has been set aside by the English Court. Whilst Nigeria and the arbitration community erupted in wild jubilation following the set aside of the arbitral award, the last is yet to be heard as P&ID may exercise options within the New York Convention to enforce the otherwise annulled award in a liberal, pro-arbitration jursidction. What defences are available to Nigeria should P&ID decide to enforce in France, for example?

On legislative enactments, novel introductions have been made by the Evidence (Amendment) Act and the Arbitration and Mediation Act. The report interrogates many issues traversing electronic depoisition of affidavit, affixing of digital signature and how to authenticate same, electronic communication of arbitration agreements in relation to international best practices, arbitral award review tribunal – whether such review constitutes an appeal on the merit, and limitation of time in arbitral proceedings.

The essence of this report is to stir a healthy debate on harnessing the gains of the legislative developments in real time, the legitimacy of arbitration as a credible alternative to litigation in modern commerce. Again, it is intended to push the frontiers of our electoral jurisprudence with a view to seeking amendment of the electoral laws to prevent the ugly situation that is already seething through the volatile peace in Plateau State.

Harrison Ogalagu
Partner, Dispute Resolution

IMPORTANT LEGAL DECISIONS

In 2023, Nigeria witnessed the handing over of the baton of power in the aftermath of the 2023 general elections, and specifically the Presidential election. With 2023 being an election year, there were many election petition cases, some of which have been concluded while others remain pending. We are hopeful there will be a drop in cases of this ilk as we look forward to the next general elections. The jurisprudence and the decisions rendered by the courts in these cases have mostly been consistent with the extant position of the law.

APPELLATE PRACTICE

Of note is the decision of the Supreme Court in ***P.D.P. v. Uche (2023) 9 NWLR (Pt. 1890) 523***, delivered on the 6th of January 2023. In the lead Judgment of Agim, JSC, His Lordship considered the constitutionality of an established judicial practice, wherein the Court of Appeal steps into the shoes of the trial court and pronounces on the merits of matters which the trial court – exercising its original jurisdiction as the court of first instance – fails to determine on its merits. In a powerful statement of the law, Agim, JSC opined that from the tenor of ***Sections 239 – 248*** of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), the jurisdiction of the Court of Appeal is primarily appellate. His Lordship accordingly determined that where a trial court fails to pronounce on the merits of a dispute, the Court of Appeal cannot purport to determine the merits of the matter.

Interpreting ***Section 15*** of the Court of Appeal Act Cap. C36, LFN 2004, Agim, JSC opined that the Court of Appeal was imbued with the power to re-hear a matter, which presupposes that there must have been an initial hearing which the Court of Appeal is reviewing. While acknowledging that this established practice of the Court of Appeal was geared towards securing the right to justice of the litigating parties, Agim, JSC opined that this noble objective does not cure the unconstitutionality of the Court of Appeal exercising the original jurisdiction of the trial court. The decision in ***P.D.P. v. Uche*** supra is an important decision, as it appears to be a departure from the previous position of the Apex Court as enunciated in ***Inakoju v.***

***Adeleke* (2007) 4 NWLR (Pt. 1025) 423,** which approved the now castigated practice of the Court of Appeal on the premise that it was designed to ensure speedy administration of justice and avoid multiplicity of action. Again, it remains to be seen whether the dictum of Agim JSC has sounded a death knell on the liberty to raise and argue fresh issues on appeal, with leave of the appellate court.

ELECTORAL JURISPRUDENCE

Also, a pivotal moment unfolded in Nigeria's electoral jurisprudence with the judgment delivered on 7th November 2023 by the Court of Appeal as touching appeals from the State Houses & National Assembly and Governorship elections in Plateau State - a seismic shift from well-established principles in our electoral jurisprudence. The judgment overturned the Election Petition Tribunal's decisions in Plateau State that had affirmed the election of Mr. Caleb Muftwang as the Governor of Plateau State, as well as the elections of certain individuals as members of the National and State House of Assembly . The Court of Appeal's pronouncements and/or decisions were complex and multifaceted, triggering diverse reactions and legal commentaries. The stakes were high, and the implications of these judgments have far-reaching consequences on the political landscape of Plateau State.

In its judgment, the Court of Appeal found irregularities in the nomination and sponsorship procedures for candidates of the Peoples Democratic Party (PDP) in the primary elections. The Court held among other things that PDP's structure collapsed in 2020 and that the party had no structure to sponsor any candidate for an election. The court firmly established that, as they did not legitimately secure their candidacy under the platform of PDP, it logically followed that their absence from the ballot rendered the majority of votes they received futile. Under these circumstances, the candidates who secured the second highest number of votes in the Plateau State gubernatorial election, National and State House of Assembly elections were declared the winners.

At the heart of this legal earthquake was the setting aside of the decision of the Court of Appeal in respect of the governorship election by the Supreme Court whilst endorsing that of the Election Petition Tribunal. On 12th January 2024, the apex court's five-man panel led by Hon. Justice Emmanuel Akomaye Agim JSC, meticulously reviewed and unanimously

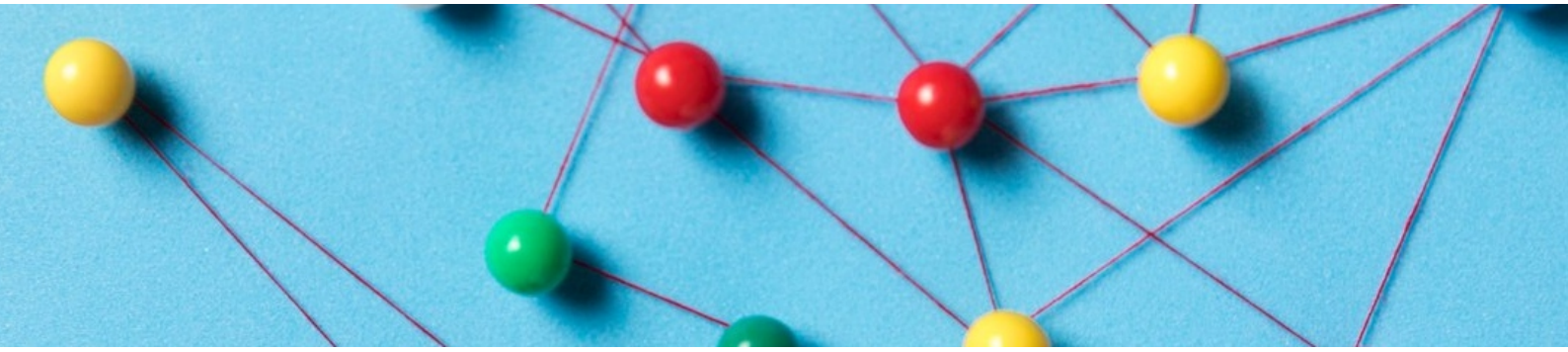
set aside the Court of Appeal's decision that sacked Governor Muftwang. This Supreme Court's judgment not only reversed the Court of Appeal's judgment concerning the contentious Governorship Election Petition, but also upheld/restated the established principle of electoral law and/or jurisprudence (which the Court of Appeal deviated from). This principle posits that the Election Petition Tribunal (and indeed the Court of Appeal) does not have the jurisdiction to entertain a pre-election matter (to deal with or pronounce on the issue of candidates of a political party. This is because sponsorship of a candidate for election is an internal affairs of a political party) such as the instant case of Plateau State. See the case of ***A.P.P. v. Obaseki (2022) 13 NWLR (pt. 1846) 1 (SC)*** and ***Okadigbo v. Emeka (2012) 11 NWLR (pt. 1311) 237 (sc).*** For emphasis , a pre-election matter was used as a criterion by the Court of Appeal to nullify the lawful votes cast for the PDP candidates in a post-election/election petition matter, same which has now been set aside by the Supreme Court to preserve the electoral jurisprudence on this issue. Post-election disputes only contemplate actual election which is challengeable on the ground of undue election or undue return albeit on specific grounds prescribed under ***Section 134 of the Electoral Act, 2022.***

However, the repercussions of this judicial thunderclap by the Supreme Court extend far beyond the gubernatorial election. The Supreme Court's pronouncement ripples through the fabric of electoral justice, directly challenging the Court of Appeal's stance on the National and State House of Assembly elections in Plateau State. This is so because the Court of Appeal is the final arbiter on appeals arising from National and State Houses of Assembly Election Petitions as provided in ***Section 246(3) of the 1999 Constitution of the Federal Republic, as amended*** ("1999 Constitution"). Since the very basis upon which the Court Appeal sacked the Governor of the State and 23 Federal and State lawmakers who were elected on the ticket of the PDP was struck down by the Supreme Court, it begs the question as to what becomes of the individuals who contested various seats in the National and State House of Assembly elections but who were sacked by the Court of Appeal, individuals who by law do not have the liberty of appealing beyond the said Court of Appeal. What is clear, without any iota of doubt, is that these individuals save for the Governor have suffered grave injustice. This was aptly captured by the head of the five-member panel of the Supreme Court who was noted to have said his only worry is that a lot of people have suffered as a result of the Court of

Appeal's decision. The position of the sacked individuals has ignited impassioned discussions, not only within legal circles but also among the general populace. Social media platforms have become virtual arenas where opinions clash, and analyses abound especially as to the consequences of the Supreme Court's decision on the affected individuals sponsored by the PDP.

Questions abound! Are these individuals truly without a remedy at this moment? Can any step be taken within the remit of the law to give any form of reprieve to these individuals or they should just go home and bemoan their losses and probably wait for the next four years? In seeking to provide remedy for the wrong done to these individuals, reports made the rounds that the PDP petitioned the National Judicial Council (NJC) to review all judgments involving Plateau State that were delivered by the Court of Appeal. The issue with this approach is that, in light of the provisions of the 1999 Constitution, the NJC is not empowered to review and or reverse judgments of Courts. Could the individuals then approach the Supreme Court to review the decision of the Court of Appeal? Again, it appears that route is fraught with legal fetters in light of the provision of ***Section 246 (3) of the 1999 Constitution*** which makes the Court of Appeal the final court for these individuals on this sui generis proceedings. Could the individuals approach the same Court of Appeal which delivered the decision to review the judgment? This route again does not seem feasible on the strength of the provisions of ***Order 23 Rule 4 of the Court of Appeal Rules 2021*** which is to the effect that the Court of Appeal cannot review any judgment once given and delivered save for certain cases expressly provided for in that provision. Could it be possible for the Plateau State Government to approach the Supreme Court to ventilate the grievances of these affected individuals? If this route is adopted, it is obvious that the jurisdictional issue of *locus standi* would raise its head. This, no doubt, would be anchored on the principle of the law as espoused in ***Attorney General of Anambra State v. Attorney General of the Federation (Reasons) (2007) LPELR-24343(SC)*** that, no other person excepting the person on whom is vested the aggregate of the enforceable rights in a cause has the standing to sue.

As we collectively reflect on this pivotal moment in Nigeria's legal history, we anticipate that the implications of the Supreme Court's judgment will continue to unfold. This might necessitate an amendment to the 1999



Constitution to forestall a scenario wherein a party is entirely precluded from recourse, guided by the principle encapsulated in the Latin maxim - **"ubi jus ibi remedium"** (signifying where there is a right, there is a remedy). This amendment may take the form of removing the limit as to appeal on all election petitions appeals from reaching the Supreme Court.

CRIMINAL TRIALS: CONFESSIONAL STATEMENTS

In criminal jurisprudence, the Supreme Court's decision in ***Charles v. State of Lagos (2023) LPELR-60632 (SC)*** was delivered on the 31st of March 2023. This case afforded an opportunity for the Supreme Court to weigh in on the innovation of the Administration of Criminal Justice Law (ACJL) of Lagos State to wit; Section 9(3), which requires that confessional statements must be taken in the presence of a legal practitioner or using video recording facilities. Hitherto, there had been conflicting decisions of the Court of Appeal regarding the admissibility of confessional statements taken in breach of the provisions of the ACJL and its sister provisions in Sections 17(2) and 15(4) the Administration of Criminal Justice Act, 2015.

Ruling on the admissibility of a confessional statement obtained in breach of the provisions of the ACJL, Ogunwumiju, JSC opined that the mischiefs which the ACJL seeks to cure are: (a) curbing the incidence of torture and duress in obtaining confessions; (b) reducing the need for trial-within-trials; and (c) avoiding miscarriages of justice. His Lordship opined that this provision of the ACJL vindicates the suspect's constitutional right to consult a legal practitioner before making a statement to the police. Ogunwumiju, JSC concluded that any confessional statement obtained in breach of the provision of the ACJL is impotent and worthless, approvingly citing several decisions of the Court of Appeal to this effect. Although the decision of Ogunwumiju, JSC in ***Charles v. State of Lagos*** supra was given obiter, it indicates the Supreme Court's position on this critical issue. What this portends is that confessional statement that does not comply with the set requirements may fail the admissibility test or, in the least, will not attract any probabtive value.

INTERNATIONAL COMMERCIAL ARBITRATION

On the international front, albeit with local flavour, the dispute between Nigeria and

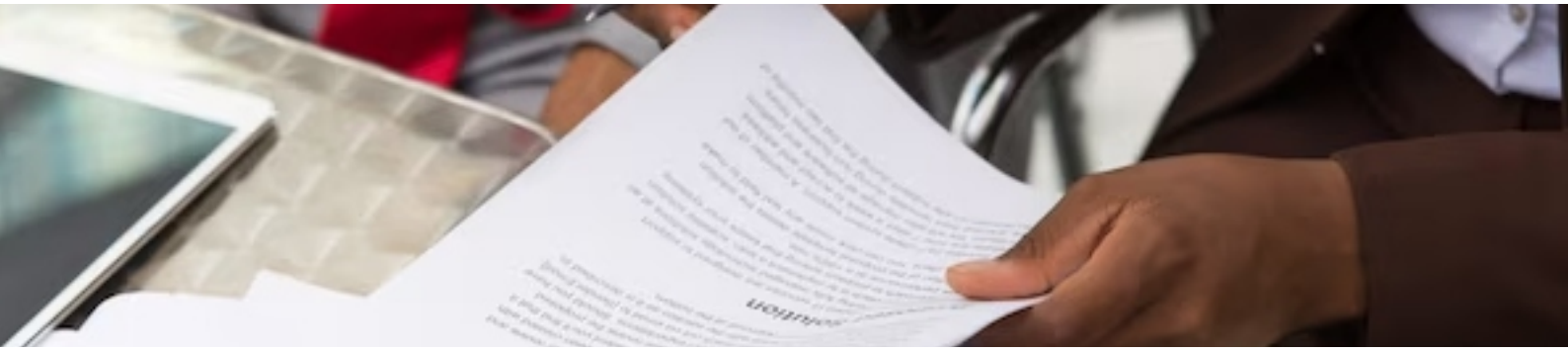
Process & Industrial Developments Limited (P&ID) has finally come to an end. In ***The Federal Republic of Nigeria v. Process & Industrial Developments Limited [2023] EWHC 2638 (Comm)***, a judgment handed down on 23rd October 2023, Mr. Justice Knowles determined that the entire arbitral process was marred by P&ID's fraud, including: intentionally providing false information to the arbitral tribunal and corruptly obtaining privileged documents pertaining to Nigeria's defence during the arbitral proceeding. Nigeria's challenge to the $11 billion award succeeded on the grounds that the award was obtained by fraud and was contrary to public policy.

In The Federal Republic of Nigeria v. Process & Industrial Developments Limited [2023] EWHC 3320 (Comm), a further ruling delivered on 21st December 2023, the arbitral awards made in favour of P&ID were vacated, while P&ID was denied leave to appeal against the judgment of Knowles J. This means that at present, in the words of Knowles J, Nigeria does not have to pay "a sum so vast that it is material to Nigeria's entire federal budget".

However, it is possible that we are yet to hear the last of this dispute. In the context of an award involving the sum of $11 billion, P&ID would be incentivized to enforce what it perceives to be its right. In this regard, in certain countries that are signatories to the New York Convention on the recognition and enforcement of arbitral awards (e.g., France and the Netherlands), the legal approach is that since an award is not the product of the judicial system of the court of the seat of arbitration, the decision to set aside the award cannot have transnational effect, see: ***Société Hilmarton Ltd v. Société Omnium de traitement et de valorisation (OTV) Cour de Cassation, 23 March 1994, Bulletin 1994 I N° 104 p. 79.*** Accordingly, P&ID might approach any of the States with a delocalized approach to make another attempt at enforcing the arbitral award. So, it might be a little early to celebrate complete victory. In 2024, the arbitration community waits, with bated breath, to see the likely fireworks that P&ID may introduce in possible enforcement of the award in pro-arbitration jurisdictions.

INNOVATIONS IN THE NEW ARBITRATION AND MEDIATION ACT 2023

In legislative development, the Arbitration and Mediation Act 2023 ("the Act") was finally assented to by President Asiwaju Bola Ahmed



Tinubu. The Act was received with widespread appreciation from the legal community, and its provisions are being analysed continuously. Some of the innovations of the Act include but are not limited to the following:

- **Validity of electronic communication of Arbitration agreements**

The Act expands the scope of a valid arbitration agreement in writing. Thus, Section 2(4) of the Act provides that the requirement for an Arbitration Agreement to be in writing is met where it is by electronic communication and the information contained therein is accessible and usable for subsequent reference. This provision now accords with the international standard in Article 7(4) of the UNCITRAL Model Law as amended in 2006.

- **Empowerment of an Arbitral Tribunal to grant Interim measures pending the determination of a dispute**

Section 20 of the Act now provides that unless otherwise agreed by the parties, an arbitral tribunal may grant interim measures such as temporary measures to maintain or restore the status quo, prevent an action likely to harm or prejudice the arbitral process, preserve the assets by which an arbitral award may be satisfied pending the determination of disputes, amongst others. It is believed that this provision aims to decongest Nigerian courts and reduce the unnecessary delays encountered by parties who have hitherto agreed to arbitration to enjoy the benefit of the speedy resolution of disputes. Impressively, the Act provides for the recognition and enforcement of the interim measures granted by an arbitral tribunal by the courts.

- **The introduction of the Award Review Tribunal**

Section 56(1) of the Act provides that parties may provide in their Arbitration Agreement that an application to review an Arbitral Award shall be made to the Award Review Tribunal (ART). This review is, however, subject to specific grounds set out in Section 55(3) of the Act, which speaks to matters like the legal incapacity of a party to the Arbitration Agreement, improper notice of the appointment of an Arbitrator to a party, composition of the arbitration tribunal or arbitration procedure not in accordance with the agreement of parties, where award contains decisions on matters beyond the

scope of the Arbitration, amongst others. Also, where an Arbitral Award is submitted for review, the Act provides that the ART shall render its decision within 60 days from the date of its constitution.[1] This innovation reflects the provisions of Article 34 of the UNCITRAL Model Law, and international best practices.

The introduction of the ART is an attempt to address the challenge of undue delays suffered by parties in Nigerian courts in a bid to resist the enforcement of an International Arbitral Award on the one hand and set aside a local Arbitral Award on the other hand. However, it is unlikely that the provision has the potential to affect the right of access to courts as guaranteed by the provisions of section 36 of the 1999 Constitution of the Federal Republic of Nigeria. To this extent, enforcement of foreign arbitral awards in Nigerian Courts may be resisted on similar grounds in accordance with Article V of the New York Convention, and the decision of the ART does not afford the defence of res judicata.

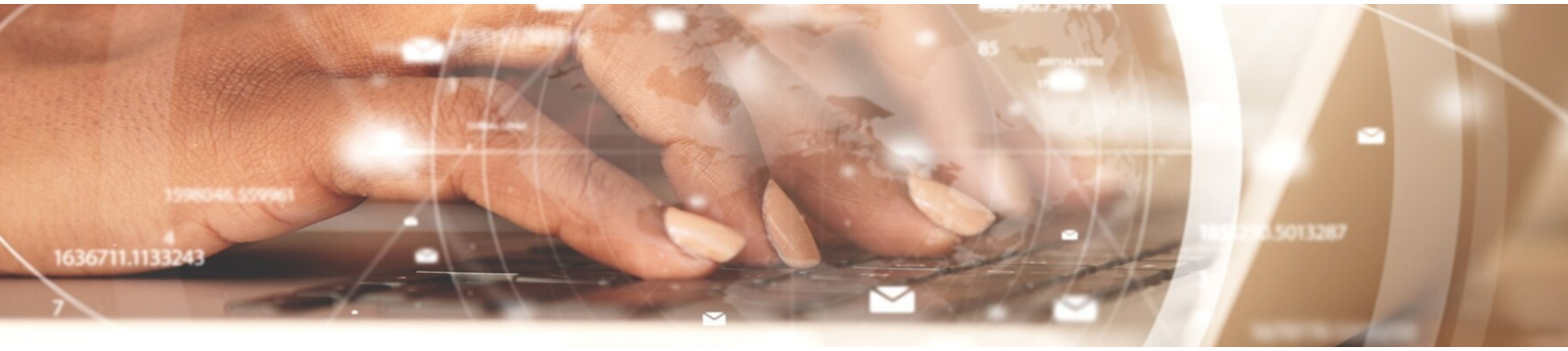
- **Reduction in the number of default arbitrators**

Before the Act, where the parties to an arbitration dispute disagreed on the number of Arbitrators that should preside over their dispute, the position of the law was that a default number of three Arbitrators would be constituted over the dispute, and this puts a huge burden of Arbitral fees on commercial disputes, especially for disputes with small monetary claims. Section 6(2) of the Act addresses this issue by providing that the Tribunal will have a sole Arbitrator where there is no agreement on the number of Arbitrators. This provision thus lifts the burden of excessive fees from parties to arbitration.[2]

- **Expansion of Limitation of Time in Arbitral proceedings**

Under the old regime, as seen in the case of ***City Engineering Nig. Ltd. v. Federal Housing Authority (1997) 9 NWLR (Part 520) 224,*** the statutory period of limitation for the enforcement of arbitral awards begins to run from the date of the accrual of the cause of action and terminates six years after. This position created a lot of hardship in that after an award has been entered, there may be applications to set aside the award, which run from the lower court to the higher courts, with the effect that the award may be incapable of enforcement within the statutory period of six years. Under Section 34, the Act provides that statutes of limitation shall apply to arbitral

[1] https://www.topeadebayolp.com/resources/insightfile/99_THE%20NIGERIAN%20ARBITRATION%20%20AND%20MEDIATION%20ACT,%202023%20-%20%20THE%20DAWN%20OF%20A%20NEW%20ERA%20FOR%20%20ARBITRATION%20AND%20MEDIATION%20%20PRACTICES%20IN%20NIGERIA%202.pdf published 22nd August 2023.
[2] ibid
[3] ibid



proceedings as they apply to judicial proceedings and further provides expressly that in computing the limitation time for the enforcement of arbitral awards, the periods between the commencement of the arbitration and the award shall be excluded.[3] It is important to note that the pendency of a challenge application against an award in international arbitration does not preclude the successful party (award creditor) from applying to enforce the award.

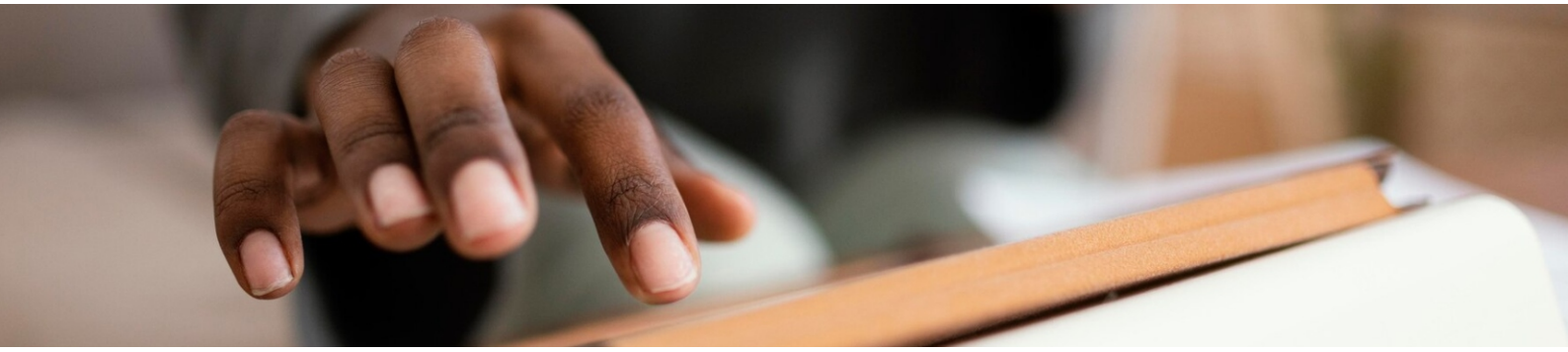
The section implies that in determining the statutory period of limitation for matters stemming from arbitral proceedings, the parties to the proceedings would first ascertain the subject matter of dispute and apply the period of limitation provided by law for that subject matter; however, the application of the general statutory limitation law is limited to the extent that rather than compute from the date the cause of action accrued as with matters arising from judicial proceedings, the computation begins from the date of the award for matters stemming from arbitral proceeding.

- **Recognition of Third-party funding of arbitral proceedings**

Under the old regime, it was deemed an offence for a third party to fund an arbitral proceeding and litigation generally because of the common law doctrines of champerty and maintenance applicable in Nigeria under received English law.

Under Section 61, the Act abolishes the torts of champerty and maintenance in arbitral proceedings and arbitration-related proceedings in courts in Nigeria and provides for third-party funding. Section 62 further provides that where there is a third-party funding agreement, full disclosure of the third-party funder shall be made to other parties and the tribunal or court, providing security as to cost. The Act's express abolition of champerty and maintenance in arbitral proceedings prevents abuse of the established arbitral system. It discourages unscrupulous individuals from interfering in disputes for personal gain.[4]

The above represents some of the developments regarding arbitration in Nigeria, and we expect to witness the viability of the provisions of the Act in 2024. Ultimately, it is expected that court decisions that may expand the frontiers of our jurisprudence will continue to emerge, and arbitration and its process may be a more viable alternative for resolving commercial disputes in 2024.



INNOVATIONS IN THE AMENDMENT TO EVIDENCE ACT, 2011

Another legislative development witnessed the passage of the Evidence (Amendment) Act 2023 ('the 2023 Act). Focus of the new introductions to the Act is incorporation of provisions that now recognise the advancements in information technology and the admissibility of advanced electronic documents.[5] It is important to clarify that the 2023 Act did not repeal the Evidence Act 2011 ("the Principal Act"), it simply amended the Principal Act by inserting Sections 84A – 84D and amending Sections 84, 93, 108, 109, 110, 119, 255 and 258 of the Principal Act. It is apparent that the overarching purpose of these amendments and insertions made by the 2023 Act was to align Nigeria's evidence law with global standards with respect to technological advancements in evidence gathering, processing, and storage. Some of the key innovations of the Act include:

Introduction of Electronic Deposition of Affidavits and Oath-Taking

In a post-COVID-19 world, marked by an increase in virtual transactions and interactions, the 2023 Act amended Section 108 of the Principal Act by introducing an important innovation that allows for affidavits to be deposed to electronically. The new Section 108(1) of the Principal Act (as amended by Section 5 of the 2023 Act) retains the in-person mode of deposing to affidavits, while the new Section 108(2) of the Principal Act (as amended by Section 5 of the 2023 Act) incorporated the innovation with respect to electronic depositions of affidavits.

To give bite to innovation with respect to electronic deposition of affidavits, Section 109 of the Principal Act (as amended by Section 6 of the 2023 Act) now provides for oath-taking through audio-visual means. Accordingly, a deponent can now sign his affidavit electronically, while reciting the statutory oath or affirmation via Zoom, WhatsApp, or any other audio-visual technological application. All that is required, pursuant to the new Section 119(ba) of the Principal Act (as amended by Section 8 of the 2023 Act) is that the electronic record of the affidavit shall state the audio-visual method utilized and the date on which it was used.

As stated above, this innovation is very important, especially in a world that is going online. However, in view of the decision of the Court of Appeal in **Okpa v. Irek & Anor.**

[4] ibid
[5] https://www.topeadebayolp.com/resources/insightfile/108_AN%20OVERVIEW%20OF%20THE%20EVIDENCE%20(AMENDMENT)%20ACT%202023%202.pdf Published 6th September 2023.

(2012) LPELR – 8033 (CA), wherein the court determined that there is a difference between a witness statement and an affidavit, it would be interesting to find out if the courts will apply these new innovations to witness statements, in view of the fact that the procedural rules of most courts mandate that evidence-in-chief must be given via witness statements.

Introduction of Electronic Records

The digitization of documents is now commonplace, nevertheless, prior to the amendments by the 2023 Act, in adducing documentary evidence in courts, a witness was still required to tender the original copy of the digitized document. However, Sections 84 and 84A – 84C of the Principal Act (as amended by Sections 2 – 3 of the 2023 Act) now provide for the admissibility of electronic records. Section 258 of the Principal Act (as amended by Section 10 of the 2023 Act) defines an electronic record as data, record or data generated, image or sound stored, received, or sent in an electronic form or microfilm.

Section 84(2) of the Principal Act includes electronic records into the ambit of electronic documents. Specifically, Section 84A of the Principal Act now provides that information, which is required to be in writing, typewritten, or in printed form would be deemed to be so if it is available or accessible in electronic form. Accordingly, pursuant to Section 84B of the Principal Act (as inserted by Section 3 of the 2023 Act), an electronic record would be deemed to be a document and is rendered admissible once the requirements of Section 84(1) and (2) of the Principal Act are fulfilled. This development is incredibly important for institutions such as banks, where most documents are now digitized. Such organizations would no longer have to incur additional overhead costs to maintain physical copies of said documents.

Authentication of Electronic Records by Affixing Digital Signature

This is an innovation of Section 84C of the Principal Act (as inserted by Section 3 of the 2023 Act). First, Section 93 of the Principal Act (as amended by Section 4 of the 2023 Act) now provides for digital signatures, which Section 258 of the Principal Act (as amended by Section 10 of the 2023 Act) defines as an electronically generated signature which is attached to an electronically transmitted document to verify its content and the sender's identity. It is important to state that Section 93 of the Principal Act provides for digital

signatures in addition to electronic signatures; while Section 258 of the Principal Act defines an electronic signature to include a digital signature. It would be interesting to look at how the courts would interpret these definitions. However, it appears that while an electronic signature would refer to electronic acknowledgments such as ticking the acceptance box with respect to the terms and conditions on a website, a digital signature is an actual signature, either electronically signed or electronically affixed to a document.

Secondly, Section 84C(1) of the Principal Act allows for electronic records – which is now a species of electronic evidence – to be authenticated by a digital signature. Subsections 2 – 3 of Section 84C make extensive provisions with respect to the reliability of a digital signature, specifically that a digital signature would be considered reliable if it is possible to detect any alterations to an electronic record after the affixation of the digital signature. Section 84D of the Principal Act tends to provide that in the situation where the statutory yardstick for determining reliability isn't met, the fact that the digital signature is that of the author of an electronic record must be proved, albeit in a situation where the signature creation data was under the exclusive control of the author at the time in question, the electronic record would be deemed to have been regularly authenticated.

While the innovations in Section 84C – 84D of the Principal Act are commendable, arising from the use of very technical language in drafting its provisions, it is likely to result in conflicting decisions. This situation is not helped by the seeming contradiction in the definitions of electronic and digital signatures. It might be ironic to call for a further amendment to the Principal Act, however, it is necessary to avoid potential injustice in this regard.

Introduction of Electronic Gazette

The 2023 Act has also revolutionized the process of publishing governmental rules, regulations, and notices. Section 255(2) of the Principal Act (as inserted by Section 9 of the 2023 Act) now provides that where these rules, regulations, notices, or other documents are to be published in the Federal Government Gazette, the requirement of the law would be fulfilled if these documents are published in a physical gazette or an Electronic Gazette. Section 258 of the Principal Act defines an Electronic Gazette to be an official gazette published in electronic form.

It therefore follows that once a rule, regulation, notification, or any other matter, is published in electronic form, perhaps on governmental websites, the requirement of due publication will be fulfilled. This innovation is sure to minimize the cumbersome procedure associated with publishing documents and notices in federal gazettes. It also would contribute to achieving Nigeria's environmental commitments on carbon footprint by reducing the wastage occasioned by printing hardcopy gazettes.

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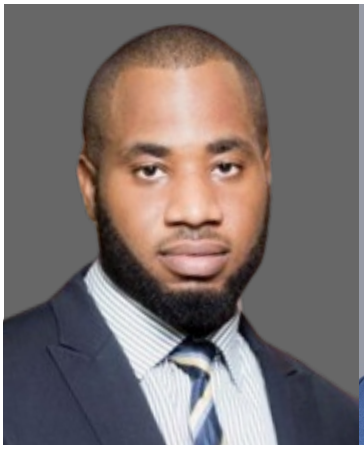

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