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**The Zhongshan Fucheng  
Industrial Investment Co. Ltd. v.  
Federal Republic of Nigeria  
Arbitral Award – Analysis of  
the issues**

The arbitral award issued in favour of Zhongshan Fucheng against Nigeria by a UK-seated tribunal on 26 March 2021 elicited significant public reactions only after an ex parte order was granted by the Judicial Court of Paris on 14<sup>th</sup> August 2024 for the interim attachment of three presidential aircrafts belonging to Nigeria. The media is awash with the news of several enforcement proceedings being pursued by Zhongshan Fucheng against Nigeria’s assets in multiple jurisdictions such as the UK, US, Belgium, Canada, France, Singapore and British Virgin Island.<sup>1</sup>

There is a growing concern among the Nigerian populace about the avoidable embarrassment that the arbitral award and several enforcement proceedings are bringing to the nation. This has led to blame games or bulk-passing amongst the main actors, and even sponsored attempts to sanctimoniously absolve some people of any wrongdoing. In some quarters, questions are asked on why Nigeria as a country was dragged into the arbitration for what was clearly done by the Ogun State government, a semi-autonomous sub-national government.



This digest summarises several articles which seek to examine the intricate legal issues arising from the case of Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria (“case”). These issues include the hard facts that preceded and indeed enabled the success of the arbitration, how the concept of attribution in international investment law was used to ascribe liability on the Federal Republic of Nigeria in the arbitration, the interplay between preservative orders and sovereign immunity, evaluation of the defence of ‘mistake’ in the underlying contract as sought to be pleaded by the former Governor of Ogun State, and exploring the options available for Nigeria to resist the enforcement of the arbitral award. Each article offers a distinct perspective on the broader implications of international arbitration, considering the subject case and providing readers with a well-rounded understanding of the legal issues involved.

## 01 EXAMINING THE FACTS OF THE ZHONGSHAN’S CASE

We have in this article examined the facts of the case, providing a clear context for the legal analysis that follows. The discussion then explores how the arbitral tribunal assessed the causal link between the wrongful acts of Ogun State and other agents of the Nigerian State, the damages claimed, as well as the varying standards of proof required to establish such claims. Through a thorough review of relevant case law and academic perspectives, the article demystifies the complexities involved and their implications for the arbitration process.

[Read the full article here.](#)

<sup>1</sup> <https://punchng.com/ogun-ftz-deal-chinese-firm-targets-nigeria-assets-in-eight-countries/> accessed on 22 August 2024.

## 02 ATTRIBUTION IN INTERNATIONAL INVESTMENT ARBITRATION

Here, we examined how the actions of Ogun State and other Nigerian authorities were attributed to the Federal Republic of Nigeria, which necessitated the making of the arbitral award in favour of the Chinese company, Zhongshan. It highlights the legal standards and principle of attribution under international law, using case law as a focal point, and emphasizes the need for restraint to avoid liability.

[Read the full article here](#)

## 03 DEFENCE OF SOVEREIGN IMMUNITY IN THE PRE-ENFORCEMENT FREEZING ORDERS

In this article, we seek to explore the dynamics of pre-enforcement freezing orders and defence of sovereign immunity, particularly through the lens of Zhongshan's efforts to seize Nigeria's presidential jets for the enforcement of its \$70 million arbitral award. It discusses how courts in various jurisdictions are increasingly allowing attachment of Nigeria's assets, challenging the traditional notions of sovereign immunity and raising questions about the protection of sovereign assets in international arbitration. For clarity, the article discusses whether such assets, typically used for official functions, are protected under sovereign immunity or can be classified as commercial assets subject to seizure.

[Read the full article here](#)

## 04 THE DEFENCE OF 'MISTAKE' IN THE UNDERLYING CONTRACT

The article critically assesses the viability of using "mistake" as a defence in the Ogun Guangdong Free Trade Zone (OGFTZ) contract, the dispute and resulting arbitral award which led to the seizure of Nigeria's assets and/or presidential jets to enforce a \$70 million arbitral award. Former Governor of Ogun State, Ibikunle Amosun, claims that Ogun State was misled by

Zhongfu International, leading to the wrong company being appointed as manager of OGFTZ. The article concludes that "mistake" is unlikely to succeed either as a belated ground to set aside the award or as a ground for resisting recognition and enforcement of the award under the English Arbitration Act 1996 and the New York Convention, respectively, whilst urging Nigeria to explore alternative legal strategies or settlements. [Read the full article here](#)

## 05 RESISTING ENFORCEMENT OF ARBITRAL AWARDS:

This article evaluates Nigeria's options to resist the enforcement of Zhongshan's \$70 million arbitral award against it. Despite attempts to invoke sovereign immunity, Nigeria faces significant challenges due to missed opportunities to set aside the award and the general pro-enforcement stance of the New York Convention does not appear to brighten the chances of resisting enforcement of the award. However, the article explores potential due-process and public policy-based grounds to resist recognition and enforcement in enforcement jurisdictions such as Canada.

[Read the full article here](#)

These linked series of articles collectively shed light on the complexities of international arbitration and offer insights into the multifaceted legal controversies in the Zhongshan's case. For a more detailed exposition, readers are encouraged to follow the links to the full articles, as provided above.



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