



TOPE ADEBAYO LP

DISPUTE RESOLUTION NEWSLETTER



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PARTNER'S NOTE

Disputes are an unavoidable aspect of human interaction, whether in business, commerce, or everyday life. In acknowledging this, modern societies have established robust systems of dispute resolution designed to handle conflicts efficiently and fairly. While litigation has long been the traditional route, alternative mechanisms, particularly arbitration, have risen to prominence due to their speed, flexibility, and effectiveness in resolving disputes.

The year under review has been a transformative one for dispute resolution, defined by landmark judicial decisions, progressive legislative reforms, and the increasing integration of technology-driven solutions. Notably, the apex court among other things delivered a landmark judgment on local government autonomy, granting the Federal Government the authority to directly disburse allocations from the Federation Account to Local Government Councils. Similarly, the legislature took proactive steps in legislative advancements in amending enactments which no longer represent the socio-economic realities.

Furthermore, at the international level, the Zhongshan's case which led to the attachment of three (3) presidential aircraft belonging to Nigeria underscores the growing importance of investor-state arbitration as a mechanism for resolving investment disputes between foreign investors and host governments. Additionally, the case highlights the increasing resort to asset seizures as a powerful enforcement tool for obtaining redress in international investment disputes

Penultimately, as businesses and legal practitioners navigate this dynamic environment, staying informed of emerging trends and regulatory developments is crucial. This Industry Overview on Dispute Resolution offers key insights into the major shifts defining the field, equipping stakeholders with the knowledge to make strategic decisions in an ever-evolving legal framework.

I invite you to explore this report and trust that it will serve as a valuable resource for understanding the present and future of dispute resolution.



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INTRODUCTION

The year 2024 has been a transformative period in the Nigerian legal landscape – defined by significant judicial pronouncements and pivotal legislative reforms. From landmark judgments redefining the boundaries of constitutional law, fundamental rights enforcement, labour law amongst others, to groundbreaking amendments addressing cybersecurity and financial accountability, both the judiciary and legislature have been instrumental in transforming the nation's dispute resolution framework.

The introduction of the Supreme Court Rules, 2024, for example, marked a leap towards modernizing procedures, while lawmakers also tackled complex issues with renewed vigour in other enactments made within the year in review. These strides not only refined the processes of dispute resolution but also bolstered public confidence in the justice system's ability to adapt and deliver.

In this edition, we shall consider some pivotal changes and briefly explore their impact on Nigeria's dispute resolution landscape. Whether you are a legal practitioner, stakeholder, or keen observer of the Nigerian legal system, we invite you to explore the progress and potentials that abound pursuant to these changes or developments. Let's navigate this exciting journey of progress together!





A. AG OF THE FEDERATION V. AG OF ABIA STATE & ORS (2024) LPELR - 62576 (SC)

The Attorney General of the Federation (“the Plaintiff”), on behalf of the Federal Government of Nigeria (FGN), instituted this suit against the thirty-six States of the Federation before the Supreme Court (otherwise known as the Apex Court). The Plaintiff sought among other things, a declaration that by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (“CFRN”), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria was unlawful, unconstitutional, null and void. The suit was geared towards addressing the alleged non-remittance of allocations designated for Local Government Councils by State Governments. Consequently, the FGN invoked the interpretative powers of the Supreme Court regarding Section 162 of the Constitution of the Federal Republic of Nigeria 1999, (as amended) (“CFRN”) on the disbursement of constitutional allocations to Local Government Councils from the Federation Account.

Essentially, a key question presented to the court for determination was whether the FGN could directly disburse allocations from the federation account to the Local Government Councils. This question arose in light of the provision of Sections 162 (5), (6), and (8) of the CFRN which provide that such allocations must first be paid into the State Joint Local Government Account and thereafter disbursed to local Government Councils by the State Governments.

On 11th July 2024, the Apex Court delivered a groundbreaking judgment. It held that the FGN is empowered to disburse the Local Government allocations from the Federation Account either directly to Local Government Councils or through the States. The Court further reasoned that given the failure of the States to effectively disburse funds to the Local Government Councils, the justice of the case warranted direct disbursement from the Federation Account going forward. By this decision, the Supreme Court departed from the strict literal interpretation of Section 162 of the CFRN and adopted a more purposeful interpretation to safeguard the financial autonomy of Local Government Councils.

1.0 SOME LANDMARK JUDGMENTS

While many have celebrated this landmark decision calling it a watershed moment in the development of the country's constitutional democracy,¹ others have not been more celebratory in their remarks.² Irrespective of the mixed reactions, the decision remains binding until same is overturned by the Supreme Court itself. In the aftermath of the decision, some States have reportedly begun enacting laws aimed at undermining the efficacy of the Apex Court's decision.³ This sets the stage for potential "legislative-judicial Combat" in 2025 and beyond, as tensions between State Governments and the judiciary over the interpretation and implementation of constitutional provisions will continue to unfold.

B. TOTAL EXPLORATION & PRODUCTION (NIG) LTD V.OKWU & ORS (2024) LPELR-62623(SC)

In this case, the 1st – 6th Respondents ("as Applicants" at the trial court) instituted an action against the 7th – 10th Respondents and Appellant (as "Respondents" at the trial court), seeking declarations affirming their rights to personal liberty and freedom from inhuman and degrading treatment. Additionally, they sought the release of the 2nd Respondent and the 1st Respondent's vehicle, both of which were allegedly unlawfully detained on the Appellant's premises; and damages in the sum of N250,000,000. After the hearing, the trial court delivered its judgment in favour of the 1st – 6th Respondents and awarded N230,000,000 in damages. This judgment was affirmed by the Court of Appeal, precipitating a further appeal by the Appellant to the Supreme Court.

A critical issue raised by the Appellant, for the first time, was the alleged incompetence of the fundamental rights application jointly instituted by the 1st – 6th Respondents at the trial court. The Appellant argued that under Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) ("CFRN"); Order 1 Rule 2 and Order 2 Rules 2 & 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 ("FREP Rules"), only individual applicants can institute fundamental rights actions. The Appellant contended that the singular terms "any person", "applicant" and "application" in the provisions necessitate individual filings. To support this position, the Appellant relied on cases of the Court of Appeal such as Opara Vs. SPDC (2015) 14 NWLR (Pt 1479) 307, Udo Vs Robson (2018) LPELR 45183(CA), Kporharor Vs Yedi (2017) LPELR 42418(CA), Finamedia Global Services Ltd Vs Onwero Nigeria Limited (2020) LPELR 51149(CA) amongst others.



^[1] "LG Autonomy: Tinubu, Atiku, Akpabio, others hail S'Court as tension grips 21 governors". Daily Post – 12 July 2024. Available at <https://dailypost.ng/2024/07/12/lg-autonomy-tinubu-atiku-akpabio-others-hail-scourt-as-tension-grips-21-governors/> accessed on 15th July 2024.

^[2] "LG autonomy: S'Court judgment conspiracy against democracy – Afenifere". Punch – 13th July 2024. Available at <https://punchng.com/lg-autonomy-scourt-judgment-conspiracy-against-democracy-afenifere/> assessed on 15th July 2024.

^[3] Anambra State's Defiance of Supreme Court Judgment on local Government Fiscal Autonomy: Why Nigerians Must Challenge this illegal law, <https://thenigerianlawyer.com/anambra-states-defiance-of-supreme-court-judgment-on-local-government-fiscal-autonomy-why-nigerians-must-challenge-this-illegal-law/> accessed on 6th January 2025.

1.0 SOME LANDMARK JUDGMENTS

In its judgment, the Supreme Court rejected the Appellant's argument. It held that the phrase “any person” in section 46 of the CFRN and Order 2 Rule 1 of the FREP Rules should not be narrowly interpreted to mean only one individual. Thus, it should be broadly construed to include multiple persons, aligning with the overarching objectives of the FREP Rules. Furthermore, the Supreme Court held that the joint application filed by the 1st – 6th Respondents before the trial Court (which arose from a common ground) was proper as there is no express provision in the FREP Rules prohibiting them from such filings and that the authorities relied on by the Appellant suggesting the opposite does not represent good law.

This decision is significant as it acknowledges the collective nature of certain rights violations, enabling a more efficient and cohesive approach to seeking justice. The decision represents a landmark in the dispute resolution legal landscape, affirming that the phrase “any person” in the context of fundamental rights causes extends to multiple applicants with a shared cause. By adopting a liberal interpretation, the Supreme Court reinforced the accessibility and inclusivity of legal recourse in fundamental rights matters. This judgment not only allows individuals with similar grievances to consolidate their claims, but also strengthens the judiciary's commitment to protecting human rights and ensuring justice. It is a landmark precedent that strengthens the Nigerian dispute resolution framework, making it more efficient and cohesive.

C. N.I.W.A. V.L.S.W.A (2024) 14 NWLR (PT. 1959) 435

In this case, the 5th – 6th Respondents (as Plaintiffs at the trial court) commenced an interpleader action vide Originating Summons against the Appellants and the 1st – 4th Respondents (as Defendants at the trial Court). The action arose from persistent multiple levies, taxes and regulatory demands by both the Federal and Lagos State agencies on their operations. In the originating process, the Plaintiffs sought clarity from the court on which agency is saddled with the authority to issue operational certificates, permits/licenses, impose taxes, issue regulations, superintend and administer their operations.

The Federal High Court (as the court of first instance), in its judgment held in favour of the Federal Government by pronouncing that it was the National Inland Waterways Authority (NIWA) that had the regulatory authority over these issues. However, the Court of Appeal overturned this decision, precipitating a further appeal to the Supreme Court by the Appellant.

The Supreme Court in its judgment held that, the legislative authority over inland waterways, including those within Lagos State, falls exclusively under the legislative jurisdiction of the National Assembly as outlined in the Nigerian Constitution. It declared that Lagos State lacks the authority to legislate or regulate these waterways, invalidating State laws, including the Lagos State Waterways Authority (LASWA) Law of 2008, to the extent of their inconsistency with the NIWA's regulations. The Apex Court affirmed that NIWA holds exclusive regulatory and licensing authority over all inland waterways, including those in Lagos, and declared that NIWA's enabling Act supersedes any inconsistent State legislation.



KEY IMPLICATIONS:

This landmark decision solidifies NIWA's position as the sole regulatory authority for inland waterways in Nigeria. It provides much-needed clarity to stakeholders operating within this sector and underscores the principle of covering the field in constitutional matters whilst also re-affirming the supremacy of the grundnorm.

For businesses and operators in the inland waterways sector, this judgment eliminates the confusion of multiple levies and conflicting regulations, streamlining compliance under NIWA's framework. This development is a significant step towards fostering uniformity, consistency, and ease of doing business across Nigeria's waterways.

LOTTERY REGULATION REVISITED: SUPREME COURT LIMITS FEDERAL AUTHORITY

In a landmark decision, the Supreme Court redefined the boundaries of Federal and State legislative powers concerning lottery operations in Nigeria. The Attorney General of Lagos State initiated SUIT NO. SC/01/2008 between ATTORNEY GENERAL OF LAGOS STATE V. ATTORNEY GENERAL OF THE FEDERATION & ORS,⁴ at the Supreme Court in 2008, seeking several declaratory reliefs seeking to affirm that the regulation of lottery operations falls exclusively under the purview of State governments.

Central to Lagos State's argument was that under sections 4(2), 4(3), and 4(7)(a) & (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) ("CFRN"), State Houses of Assembly have the authority to legislate on matters outside the Exclusive Legislative List, and that the National Assembly lacks the power to regulate or control lottery operations nationwide, as "lottery" is a residual matter reserved for the States. Consequently, the

⁴ Suit No. Sc/01/2008 – Attorney General of Lagos State V. Attorney General of The Federation & Ors – (Unreported – Judgment delivered on 22nd November 2024)

1.0 SOME LANDMARK JUDGMENTS



Consequently, the Plaintiff argued that the National Lottery Act 2005 (the “Lottery Act”) should be nullified as it conflicts with the provisions of CFRN and for exceeding the National Assembly's legislative powers.

The Supreme Court in its judgment agreed with the position of the Lagos State Government, granting all the reliefs sought and affirming that the Lottery Act applies exclusively to the Federal Capital Territory, Abuja (FCT). The judgment effectively overruled the position of the law espoused by the Court of Appeal in the case of NIGERIA EMPLOYERS CONSULTATIVE ASSOCIATION (NECA) & ANOR V. A.G. FEDERATION & ORS (2021) LPELR-54042 (CA) which was to the effect that the National Assembly has powers under the legislative arrangements provided by the Constitution to enact the National Lottery Act of 2005 with nationwide application.

This judgment has far-reaching implications. The operations of the National Lottery Regulatory Commission (a body established pursuant to the Lottery Act) are now solely restricted to the FCT as opposed to the whole Federation.

Consequently, States without lottery laws and/or regulatory commissions are now at liberty to enact their own laws to regulate lottery activities within their territories.

The judgment underscores the Supreme Court's commitment to upholding constitutional federalism and has set a clear precedent for States to exercise their residual legislative powers. As stakeholders navigate this transition, the onus lies on States to develop robust regulatory frameworks that will govern lottery operations and ensure compliance within their jurisdictions.

This judgment is yet another example of the evolving interpretation of Nigeria's federal structure and the balance of power between the Federal and State governments.

2.0 WORKPLACE COERCION AND CONSTRUCTIVE DISMISSAL

In a recent judgment in **SUIT NO. NICN/LA/182/2019 – MR. OLAWALE NATHANIEL ADEWUNMI V. ATLAS COPCO NIGERIA LIMITED (Unreported)**, the National Industrial Court of Nigeria reinforced employee rights and protections against workplace coercion. In this case, the Defendant employed the Claimant as an Order Processor on 12th January 2017. During his employment, the Claimant temporarily served as Acting Logistics Manager while the substantive Logistics Manager was assigned temporarily to EPIROC Sweden. On 6th February 2019, the Claimant after returning to work from a 17-day leave was coerced to resign from his position by the Defendant in the presence of other company officials. The Claimant was presented with an ultimatum to either resign voluntarily or face an outright termination of his employment. Consequently, the Claimant commenced this action against the Defendant.

Delivering its judgment on 16th July 2024, the National Industrial Court, per Hon. Justice M.N. Esowe held that the Claimant's employment was wrongfully terminated. The Court found that the resignation of the Claimant was not voluntary but was as a result of undue pressure from the Defendant's managers and supervisors, thereby constituting constructive dismissal. The Court further held that the Claimant's resignation letter was a direct outcome of the meeting held on 6th February 2019, during which he was given the ultimatum to resign or face termination of his employment.



Judgments of this nature serve as critical safeguards in the employment and labour industry. It offers several benefits such as protection against workplace coercion, upholding employee rights, encouraging accountability, strengthening legal recourse, promoting ethical and best labour practices amongst others. Employers are encouraged to ensure that all actions relating to termination of employment relationships are lawful, transparent, and in alignment with best practices to avoid potential legal disputes.

3.0 SUPREME COURT AFFIRMS MANDATORY COMPLIANCE WITH SECTIONS 15(4) AND 17(2) OF THE ACJA IN CRIMINAL TRIALS

In a pivotal decision - **F.R.N. V. NNAJIOFOR (2024) 10 NWLR (PT. 1947) 443**, the Supreme Court reinforced the rights of suspects during criminal investigations and trials, setting a new standard for admissibility of extra-judicial statements under the **Administration of Criminal Justice Act 2015 (ACJA)**.

The case involved the Respondent and two others, who were arraigned before the Federal High Court on charges of conspiracy and aiding in the failure to declare \$102,885 to Nigeria Customs in violation of the Money Laundering (Prohibition) Act 2011 (as amended). During trial, the Respondent objected to the admissibility of his extra-judicial statement on grounds that it did not comply with Sections 15(4) and 17(2) of the Administration of Criminal Justice Act 2015 (ACJA).

Following a trial-within-trial, the Federal High Court admitted the extra-judicial statement as evidence.

Dissatisfied, the Respondent appealed to the Court of Appeal, which allowed the appeal and ordered the case to be reassigned to another judge. The Appellant, dissatisfied with the Court of Appeal's decision, further appealed to the Supreme Court, seeking to overturn the judgment.

The Supreme Court in its decision, held that when a legislative provision assigns a public duty to a public officer, the use of a permissive term like “may” is intended to make the performance of that duty mandatory for the benefit of private citizens. Consequently, the Court held that the term “may” in sections 15(4) and 17(2) of ACJA, which requires a suspect's statement to be recorded

electronically on a retrievable video compact disc or other audio-visual medium or taken in the presence of a Legal Aid Council officer, a Civil Society organization official, a justice of the peace, or another person of the suspect's choice, is obligatory. The Court further held that non-compliance with these requirements renders such statements inadmissible. This is a landmark decision in the Nigerian criminal justice system, aimed at curbing unprofessional practices by some law enforcement agencies, such as coercing innocent citizens into making statements or falsely admitting to offences they did not commit.

IMPLICATION FOR THE CRIMINAL JUSTICE SYSTEM

This landmark decision strengthens the protections afforded to suspects, bringing Nigerian criminal justice procedures in line with international best practices. It underscores the need for law enforcement agencies to adhere strictly to procedural safeguards, promoting fairness and transparency in the administration of justice system.

The judgment also emphasizes the importance of compliance with legislative provisions in safeguarding the rights of individuals, while holding law enforcement agencies accountable for any lapses in procedure.



The arbitration landscape was not left behind as the year under review featured some significant developments in international arbitration, with Nigeria at the center of attention following an *ex parte* order granted by the Judicial Court of Paris on 14th August 2024. The order authorized the interim attachment of three (3) presidential aircrafts belonging to Nigeria in the case of *ZHONGSHAN FUCHENG INDUSTRIAL INVESTMENT CO. LTD. V. FEDERAL REPUBLIC OF NIGERIA*.⁵ This high-profile case and the attachment stems from a contractual dispute linked to Nigeria's Bilateral Investment Treaty (BIT) with China, signed in 2001 to encourage, promote and protect investments between both countries. The dispute underscores the critical interplay between international treaties, sovereign immunity, and enforcement mechanisms in investment arbitration.

Background to the Dispute

Sometime in 2010, Zhongshan Fucheng Industrial Investment Co. Ltd. (Zhongshan) through its parent company (Zhuhai Zhongfu Industrial Group Co. Ltd), agreed with the Ogun State government to develop the Ogun Guangdong Free Trade Zone (OGFTZ). In 2011, Zhongshan set up a local entity - Zhongfu International Investment (NIG) FZE (Zhongfu) which was registered by the Nigeria Export Processing Zones Authority, to manage the development of the free trade zone. In 2013, the Ogun State government entered into a Joint Venture agreement with Zhongfu, appointing it as the permanent manager of the OGFTZ and giving it a majority shareholding in the OGFTZ project.⁶ Thereafter, Zhongfu commenced several works/development activities in line with the agreement.

However, in a sudden turn of events, it was reported that the Ogun State government abruptly terminated Zhongfu's appointment, alleging breach of contract, and also took actions to expel the company from Nigeria, including harassment of its executives and revocation of immigration papers.⁷

⁵ No. 23-7016 (D.C. Cir. 2024)

⁶ Harroson Ogalagu and Nnamdi Ezekwem, "Zhongshan Fucheng Industrial Investment Company Ltd v. Nigeria: How The Concept of Attribution Applies in International Investment Arbitration", <https://topeadebayolp.com/wp-content/uploads/2024/08/ZHONGSHAN-FUCHENG-INDUSTRIAL-INVESTMENT-COMPANY-LTD.-V.-NIGERIA-HOW-THE-CONCEPT-OF-ATTRIBUTION-APPLIES-IN-INTERNATIONAL-INVESTMENT-ARBITRATION.pdf>

⁷ Ogalagu and Nnamdi, Op Cit.

The Arbitral Proceedings and Award

Consequently, Zhongfu initiated an investment treaty arbitration against Nigeria, citing the bilateral investment treaty between the People's Republic of China and Nigeria. On 26th March 2021, an arbitral tribunal issued a final award of \$55,675,000 in addition to an interest of \$9.4 million and costs of £2,864,445 payable by Nigeria to Zhongshan. It is in the realization of this arbitral award and enforcement of same that the Nigeria's presidential jets and other assets belonging to the Federal Republic of Nigeria, were attached and seized.⁸

Legal and Policy Implications

The foregoing raised intricate legal issues and concerns amongst Nigerians. Some of these issues include the hard facts that preceded and indeed enabled the success of the arbitration to wit; 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.



⁸ Three Nigerian presidential jet seizure abroad as Ogun State, Chinese firm battle, <https://www.premiumtimesng.com/news/724391-three-nigerian-presidential-jets-seized-abroad-as-ogun-state-chinese-firm-battle.html>.

In addressing these legal issues/concerns, several articles were published by our firm to provide readers with a well-rounded understanding of the legal issues:

01

Examining the Facts of Zhongshan's Case:

The article provided background facts to the case. It also explored how the arbitral tribunal considered 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 demystified the complexities involved and their implications for the arbitration process.⁹

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 also highlighted the legal standards and principle of attribution under international law, using case law as a focal point, and emphasized the need for restraint to avoid liability.¹⁰

03

Defence of Sovereign Immunity in the Pre-Enforcement Freezing Orders:

This article explored 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 dissected 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 explored whether such assets, typically used for official functions, are protected under sovereign immunity or can be classified as commercial assets subject to seizure.¹¹

^[9] "Zhongshan Fucheng Industrial Investment Company Ltd v. Federal Republic of Nigeria Arbitral Award – Analysis of the Issue, <https://topeadebayolp.com/wp-content/uploads/2024/09/THE-ZHONGSHAN-FUCHENG-INDUSTRIAL-INVESTMENT-CO.-LTD.-V.-FEDERAL-REPUBLIC-OF-NIGERIA-ARBITRAL-AWARD-%E2%80%93-ANALYSIS-OF-THE-ISSUES.pdf>

^[10] Ogalagu and Ezekwem, Op Cit

^[11] Harrison Ogalagu and Akinbobola Akinkuyi, "Zhongshan Fucheng Industrial Investment Company Ltd v. Nigeria: The Interplay Between Preservative Orders and Sovereign Immunity in the Seizure of Nigeria's Presidential Jets" <https://topeadebayolp.com/wp-content/uploads/2024/09/Zhongshan-Fucheng-Ind.-Inv.-Co.-Ltd.-v.-NigeriaThe-Interplay-Between-Preservative-Orders-and-Sovereign-Immunity-In-the-Seizure-of-Nigerias-Presidential-Jets.pdf>

04

The Defense of 'Mistake' in the underlying contract:

The Defense of 'Mistake' in the underlying contract: The article critically assessed the viability of using "mistake" as a defense 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, claimed that Ogun State was misled by Zhongfu International leading to the wrong company being appointed as manager of OGFTZ. It was concluded in the article 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.¹²

05

Resisting Enforcement of Arbitral Awards:

This article evaluated 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 explored potential due-process and public policy-based grounds to resist recognition and enforcement in enforcement jurisdictions such as Canada.¹³

Key Takeaways for Stakeholders

The Zhongshan's case has significant implications for international investment law. It underscores the growing importance of investor-state arbitration as a mechanism for resolving disputes between foreign investors and host governments. Furthermore, the case highlights the increasing resort to asset seizures (such as the attachment of aircraft in this instance) as a powerful enforcement tool for obtaining redress in international investment disputes. The outcome of this case will have far-reaching consequences for the legal framework governing sovereign immunity, the enforcement of international arbitral awards, and the overall balance of power between foreign investors and host States.

¹² Harrison Ogalagu, Oludayo Ayeni, and Theresa Idelegbabon, "Assessing "Mistake" as a Defence in International Arbitration: The Ogun Free trade Trade Zone Dispute," <https://topeadebayolp.com/wp-content/uploads/2024/09/Assessing-Mistake-as-a-Defence-in-International-Arbitration-The-Ogun-Free-Trade-Zone-Dispute.pdf>

¹³ Harrison Ogalagu and Oludayo Ayeni, "Zhongshan Fucheng Industrial Investment Company Ltd v. Nigeria: Exploring the option available to resist the enforcement of arbitral award" <https://topeadebayolp.com/wp-content/uploads/2024/09/ZHONGSHAN-FUCHENG-INDUSTRIAL-INVESTMENT-CO.-LTD.-V.-FEDERAL-REPUBLIC-OF-NIGERIA-%E2%80%93-EXPLORING-THE-OPTIONS-AVAILABLE-TO-RESIST-THE-ENFORCEMENT-OF-ARBITRAL-AWARD.pdf>

5.0 LEGISLATIVE DEVELOPMENTS



a. National Minimum Wage (Amendment) Act

The National Minimum Wage (Amendment) Act 2024 (“the Amendment Act”) which amended the National Minimum Wage Act 2019 (“the Act”), was enacted on 29th July 2024 to address the pressing need for an adjusted minimum wage that aligns with prevailing economic realities for the Nigerian workers. This amendment responded to challenges such as currency devaluation, inflation, and the resulting surge in the cost of living.

The provision of the Act which governed worker's remuneration in Nigeria (before the advent of the Amendment Act), had established the national minimum wage at N30,000 (Thirty thousand Naira). However, the Amendment Act now requires all employers to pay a minimum wage of N70,000 (Seventy Thousand Naira) per month to every employee within their establishment. This represents a significant increase, more than doubling the previous minimum wage of N30,000.

Furthermore, to ensure that the minimum wage aligns with economic conditions, the Amendment Act shortened the review period from five years (as provided under the Act) to three years. This adjustment enables more frequent revisions to address inflation and other economic changes. Consequently, the current wage rate is set to expire in 2027.

It is essential to state that the Amendment Act exempts some categories of workers and employers from complying with the provisions of the Act to wit: establishments where workers are employed on a part-time basis and paid on commission or piece; establishments with less than 25 employees; workers in seasonal employment such as agriculture, construction, tourism, etc; and workers employed in vessels or aircrafts to which merchant shipping or civil aviation law apply.

Furthermore, non-compliance with the provisions of the Amendment Act constitutes an offence, punishable by conviction and a fine of up to 5% of the

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employer's total monthly wage bill, including all outstanding wage arrears. Additionally, the employer is liable to pay a penalty equivalent to at least the prevailing Central Bank of Nigeria lending rate on the unpaid wages for each month the violation persists.

The bold step taken by the National Assembly to enact the Amendment Act is a welcome development. By raising the minimum wage, the Amendment Act is expected to enhance the standard of living, boost worker's morale, and increase productivity. In response to this move, some States have increased their civil servants' minimum wage,¹⁴ signaling widespread acknowledgment of the Amendment Act's significance.

OUTLOOK

While the Amendment Act represents a commendable step towards economic fairness, the challenge remains in ensuring its consistent implementation. It will be important to observe whether the National Assembly upholds the three-year review timeline to keep up with economic realities.

b) Cybercrimes (Prohibition, Prevention, Etc.) Amendment Act 2024

To address the challenges of cybercrimes, the Cybercrime (Prohibition, Prevention, Etc.) Act 2015 ("Principal Act") was enacted in Nigeria. It is aimed at establishing a framework for combating cybercrimes, safeguarding Critical

National Information Infrastructure (CNII), and protecting digital assets. However, the rise in sinister inventiveness of cybercriminals necessitated a legislative review to amend ambiguous provisions, address implementation gaps, and strengthen Nigeria's cybersecurity measures. This review resulted in the enactment of the Cybercrimes (Prohibition, prevention, Etc.) Amendment Act, 2024 ("Amendment Act") which enhances national security, combats terrorism and protects Nigeria's economic interests.

The Amendment Act introduced key changes, including the clarification of the cybersecurity levy in Section 44(2)(a) of the Principal Act. The aforementioned section of the Principal Act introduced a levy of 0.005 on electronic transactions for businesses listed in the Second Schedule of the Act. However, compliance with this provision has been minimal due to ambiguity in its wording, specifically the interpretation of figure 0.005, which failed to convey the Act's drafters' intention accurately. However, the Amendment Act revised the levy to a clear 0.5% (half a percent) of the transactions, addressing prior ambiguities.

While the levy aims to bolster cyber security funding, it may deter electronic payments, reduce financial inclusion, and may affect the Central Bank of Nigeria's (CBN) cashless economy initiative due to increased transaction costs. Additionally, the Amendment Act empowers the Office of the National Security Adviser (ONSA) to monitor compliance, while extending the levy to the telecommunications, insurance, and stock exchange sectors. However, implementation frameworks for these industries are pending.

^[14] Minimum Wage: Lagos to commence payment of N85,000 to workers in Nov, <https://www.vanguardngr.com/2024/11/minimum-wage-lagos-to-commence-payment-of-n85000-to-workers-in-nov/>

5.0 LEGISLATIVE DEVELOPMENTS

The Amendment Act introduced Sectoral Computer Emergency Response Teams (CERTS) and Security Operation Centres (SOCs) to collaborate with the National CERT. These entities are responsible for receiving and responding to cyberattack reports from public and private institutions. They are also responsible for managing internet and data traffic integration to secure the national cyberspace.

The Amendment Act also made reporting cyber threats mandatory. Under the Amendment Act, institutions or individuals experiencing cyber threats must report to the National Cert via their respective Sectoral CERTs or SOCs within 72 hours of detection. The Amendment Act also prescribes penalties for non-compliance as such denial of internet access and a fine of N2,000,000 payable to the National Cybersecurity Fund (NCF) administered by the ONSA.

The Amendment Act provides that customers conducting electronic financial transactions are required to present their National Identification Number (NIN) for identity verification. This measure enhances the tracking of offenders by linking transactions to verified individual data. However, concerns remain about potential misuse, such as fraudulent locations linked to authentic NINs.

Furthermore, the Amendment Act revised Section 38(1) of the Principal Act to align with the Nigeria Data Protection Act (NDPA). Accordingly, service providers are now mandated not only to retain specific traffic data and subscriber information but also to ensure their protection. This amendment reflects a stronger commitment to data security and privacy.

In addition to the above, the Principal Act limited its scope to payment systems involving Automated Teller Machines (ATMs) and Point of Sale (POS) terminals, thereby disregarding the variety of other payment technologies widely used in Nigeria. The Amendment Act rectified this limitation by extending accountability to individuals who manipulate any payment technology, not just ATMs and POS terminals. This broadened coverage addresses Nigeria's diverse payment systems, ensuring more comprehensive oversight and reducing fraud risks associated with non-traditional payment methods.

IMPLICATIONS AND CHALLENGES

The Amendment Act marks a significant advancement in Nigeria's fight against cybercrimes and efforts to protect its digital infrastructure. By addressing critical gaps and enhancing the cybersecurity framework, the Amendment Act strengthens the nation's defenses against cyber threats. However, challenges persist, particularly in the practical implementation of certain provisions and their potential effects on financial inclusion. It is without doubt that, the successful execution of the Amendment Act will require effective collaboration among government agencies and other stakeholders to ensure the efficacy of the objective of the Amendment Act.



The recently produced Supreme Court Rules 2024 (“2024 Rules”) made by the immediate past Chief Justice of Nigeria, Hon. Justice Olukayode Ariwoola, GCON, on 1st August 2024, represent a significant step in modernizing Nigeria's appellate procedure. Officially effective from 15th August 2024, upon publication in the Official Gazette, the 2024 Rules repealed the Supreme Court Rules 1985 (“Old Rules”) and introduced innovative provisions that has garnered widespread praise from legal scholars and practitioners alike. Some of these innovative provisions are:



REDEFINITION OF APPEALS

Under Order 1 Rule 2 of the Old Rules, the interpretation clause encompassed the notion that “appeal includes an application for leave to appeal.” However, Order 1 Rule 3 of the 2024 Rules revised this definition, stating that “Appeal means entry of Appeal after the record of appeal has been transmitted from the Court below.” The revision of the definition of “appeal” in the 2024 Rules reflects a conscious effort to modernize and refine the appellate process in Nigeria. It signals a shift towards a more practical and procedural-oriented approach, which may have significant implications for the efficiency and effectiveness of appellate proceedings before the Supreme Court of Nigeria.

Order 3 Rule 1 of the Supreme Court Rules 2024 expands the definition of address for service to include “electronic mail address, a GSM telephone number or any other available mode of communication where notices, summonses, warrants, proceedings and other documents, etc. may be left, sent, posted or transmitted if not required to be served personally.”



DIGITAL/ELECTRONIC SERVICE OF COURT PROCESS

Order 3 Rule 2 of the 2024 Rules represents a significant procedural advancement by expanding the methods for serving notices of appeal. By permitting service through electronic means, such as email, and GSM telephone number (WhatsApp) amongst others, in addition to traditional methods like personal service and service through counsel, the 2024 Rules is geared towards enhancing accessibility and efficiency for litigants.

This departure from the more restrictive provisions of the Old Rules, which mandated personal service akin to a writ of summons, has several potential benefits: it provides greater flexibility to appellants in effecting service of court processes, particularly when dealing with respondents based outside the court's jurisdiction or those actively attempting to evade service and it

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streamlines the appeals process by offering more convenient and potentially faster service options.

This shift aligns with contemporary practices in legal proceedings and global legal systems. It also aims to facilitate smoother and more efficient appellate processes within the Nigerian judicial system.



ASSESSING COSTS

The 2024 Rules represent a significant step forward in addressing the historical reluctance of Nigerian courts to award substantial costs to successful litigants. By explicitly outlining a tiered system of costs, including a minimum award of N2,000,000 for successful civil appeals and penalties of N1,000,000 for delaying proceedings, the 2024 Rules aim to deter frivolous litigation and encourage diligent and responsible legal practice.

The provision for personal costs against counsel, with the severe consequence of disbarment for non-compliance, further underscores the Court's determination to curb abuses of the legal process. While the practical impact of these provisions remains to be seen, the 2024 Rules signal a clear shift towards a more robust and equitable cost regime, potentially incentivizing more responsible litigation practices and enhancing the efficiency of the judicial process.



APPLICATIONS

Order 4 of the 2024 Rules signifies a notable shift towards greater procedural efficiency and clarity in applications before the apex court. By specifically requiring written addresses with page limits for both applicants and respondents, the new rules aim to streamline the presentation of arguments and encourage concise and focused submissions. This move is likely to enhance the court's ability to efficiently manage its docket and expedite the resolution of cases.

Furthermore, the stipulated timelines for filing responses and replies provide a structured framework for the adjudication process, ensuring that applications are promptly addressed and that the court can maintain a consistent pace of proceedings. This increased predictability and efficiency in the application process is expected to benefit all parties involved, including litigants, legal practitioners, and the court itself in attaining justice.

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ELECTRONIC FILING AND VIRTUAL HEARINGS

The 2024 Rules mark a significant advancement in modernizing judicial processes with comprehensive electronic filing and virtual proceedings provisions. Orders 17 and 18 of the 2024 Rules detail the procedures for submitting court documents through the NCMS E-filing portal and conducting virtual hearings. Notably, Order 17 Rule 4(2) and Order 18 Rule 8 empower the Chief Justice of Nigeria to issue Practice Directions periodically, specifying the format for electronic filing and regulating virtual hearing procedures.



DURATIONS AND TIMELINES

The 2024 Rules also introduced significant shifts in the procedural landscape, particularly evident in the revised timelines for crucial stages of litigation. Notably, the time allotted for filing the Appellant's brief has been increased from 10 weeks to 90 days, potentially affording appellants more time for thorough preparation. Conversely, the timeframes for filing the Respondent's

Appellant's reply brief have been significantly reduced to 30 days and 14 days respectively, likely aiming to expedite the proceedings. Furthermore, another noteworthy change under the 2024 Rules is the reduction of oral argument time from one hour per side to 15 minutes, suggesting a shift towards a more concise and efficient presentation of arguments before the Apex Court. These revised timelines, while potentially streamlining certain aspects of the litigation process, may also present challenges for legal practitioners in meeting the more stringent deadlines while ensuring adequate preparation and presentation of their clients' cases.

It is without doubt that the 2024 Rules, with its 22 Orders and 216 Rules, is geared toward modernizing the Supreme Court's procedural framework by replacing the outdated Old Rules which has been in existence for about four decades. By addressing inefficiencies, embracing technology, and aligning with contemporary legal standards, the Supreme Court is positioned to deliver more efficient, accessible, and effective justice.

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