THE NIGERIAN ARBITRATION PROCESS: A GLORIFIED LITIGATION?

Chukwuma Chinemerem Gift*

ABSTRACT

My research topic is on "The Nigerian Arbitration Process". With the provisions of the Arbitration and Mediation Act 2023 which repealed the Arbitration and Conciliation Act, Cap A18 Laws of the Federation of Nigeria, to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation, and make applicable, the convention and enforcement of foreign arbitral awards (New York Convention) to any award made in Nigeria or any contracting state arising out of international commercial arbitration[1]. Irrespective of this provision the Nigerian arbitration process still to a large extent poses itself to be a glorified litigation. This paper examines the Nigerian arbitration process and compares it to traditional litigation. While arbitration is often touted as a more efficient and flexible alternative to court proceedings, in Nigeria, it frequently resembles litigation in many respects. The paper analyzes various aspects of the arbitration process, including the drafting of arbitration agreements, the appointment of arbitrators, the conduct of proceedings, the enforcement of awards, and the comparison to litigation. It concludes that despite efforts to streamline the arbitration process, it often becomes drawn-out and costly; leading to the perception that it is merely a glorified litigation.

INTRODUCTION

Nigeria is a rapidly developing economy and as such has increasingly embraced arbitration as a means of resolving disputes. In 1914, Nigeria made its first attempt to consolidate arbitration by enacting the Arbitration Ordinance of 1914[2] which was applicable to all the states in Nigeria. The Nigeria Arbitration Ordinance was however modeled after the English Arbitration Act 1889. In the same year, the Ordinance was replaced by an Act and became the Arbitration Ordinance Act 1919, and 1954, which was applied by all states in the country. Also, it is worth noting that this Act applied to domestic and international arbitration.

*ENUGU STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY.

[1] Arbitration and Mediation Act, 2023 (Explanatory Memorandum).

[2] 1914 Nigeria Ordinance, orders and regulation, 199 issued as chapter 9 of the Laws of the Federation of Nigeria.

Currently, the principal legislation that governs arbitration law in Nigeria is the Arbitration and Conciliation Act 1990 (from now on the ACA)[3].

The concept of arbitration though is still a growing concept in terms of awareness and accessibility to the average Nigerian citizen, over the years it has gained a reasonable stance in the community space.

The court process in Nigeria is very tedious and stressful and as such its citizens without hesitation decided to take an approach which seems to relieve them of all the stress that they would encounter while going through the actual court process to settle their disputes through an Alternative Dispute Resolution (ADR) Mechanism called Arbitration.

While arbitration is intended to offer a more efficient and flexible alternative to traditional litigation, its implementation in Nigeria has been to an extent flawed. This paper explores the Nigerian arbitration process and examines the extent to which it aligns with the ideals of efficiency, neutrality, and finality.

It is argued that despite efforts to modernize the arbitration landscape, the Nigerian arbitration process often resembles litigation in many respects, these aspects may be in the form of delays in the enforcement of awards, procedural complexities, and high cost of fees for the procedure and the involvement of the courts in various stages of the arbitration proceedings undermine its intended benefits. The Nigerian arbitration process has positioned itself to look like a glorified litigation, mirroring the same flaws and inefficiencies as the court system, undermining its intended purpose, this paper will delve into the specific areas where the Nigerian arbitration process falls short of its goals, highlighting the factors that contribute to its perceived similarity and resemblance to litigation.

CONCEPT OF ARBITRATION AGREEMENT

Arbitration is a form of Alternative Dispute Resolution (ADR), a concept that includes an array of procedures for the private resolution of disputes. ADR is a loose term, encompassing various forms and procedures, sponsored by various forms and rules. The one thing common to these many ADR forms is that they all are generally private dispute resolution methods, which parties may choose as an alternative to conventional litigation, and fashion to fit their

[3] Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004.

particular needs[4].

Arbitration is a private process in which both parties agree that an arbitrator (a neutral third party) will render a binding decision. Like litigation, both sides have a lawyer in arbitration, and both make arguments and present evidence to support their case[5].

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, parties opt for a private dispute resolution procedure instead of going to court[6]. Halsbury's Law of England has defined arbitration as a process used by agreement of the parties to resolve disputes. In arbitration, disputes are resolved, with binding effect, by a person or persons acting in a judicial manner in private rather than by a national court of law that would have jurisdiction but for the agreement of the parties to exclude it[7].

Arbitration can also be said to be the reference of dispute or difference between not less than two parties, for determination after judicially hearing both parties by a person or persons other than a court of competent jurisdiction. In other words, 'arbitration' is a term applied to an arrangement for taking and abiding by the judgment of a selected person in some disputed matter rather than taking it to an established court of justice. The arbitrator can thus be regarded as a private judge: who determines controversies[8].

An arbitration agreement is primarily a substantive contract between parties to an arbitration. This means that party agreement is indeed crucial to arbitration agreement since its importance has been attributed to several factors including party autonomy, concerning having the choice to settle their dispute through arbitration, and the freedom of parties to mutually enter into an agreement and being able to formulate their terms. Arbitration is defined in section 91(1) of the Arbitration and Mediation Act as "a commercial arbitration whether or not administered by permanent arbitral institution."[9]

[4] Steven C. Bennett, Arbitration: Essential Concepts (published in 2002)
[5] Trey Hendershot's 'What is the difference between arbitration and Litigation' retrieved at https://www.hchlawyers.com Dated 24 March 2021, accessed 5 September 2024.
[6] World Intellectual Property Organization (WIPO) https://www.wipo.int/amc/en/arbitration/what-is-arb.html#:~:text=Arbitration%20is%20a%20procedure%20in,instead%20of%20going%20to%20court Accessed 9 September 2024.
[7] Halsbury's Laws of England,3rd Ed. 38
[8] National Open University of Nigeria; Alternative Dispute Resolution 1 NOUN | National Open University of Nigeria printed 2011, accessed on 10 September 2024.
[9] Arbitration and Mediation Act 2023, s 91(1)

The Arbitration Act does not contain any definition of arbitration at all. The Supreme Court of Nigeria in the case of NNPC v LUTIN INVESTMENT Ltd.[10]

In defining arbitration affirmed the definition by Halsbury's Laws of England. Also, in the case of CN Onuselogu Ent. Ltd v Afribank (Nig.) Ltd[11].

An arbitration agreement is where two or more persons agree that a dispute or potential dispute between them shall be resolved and decided in a legally binding way by one or more impartial persons in a judicial manner, upon evidence put before him or them[12]

From the above definition, Arbitration is a procedure, in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Arbitration is essentially a paid private trial, in other words, a method to resolve disputes without going to court[13].

The objective of Arbitration is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense[14].

The purpose of arbitration extends far beyond conflict resolution; it embodies a multifaceted approach aimed at fostering efficiency, fairness, and impartiality in the resolution of disputes outside the traditional court system[15]. Arbitration is a method of resolving disputes outside the traditional court system, as the purpose of arbitration is efficiency, arbitration proceedings are faster than the court process and as such it helps parties to resolve disputes quickly. In terms of cost-effectiveness, arbitration often costs less than going through the court system due to reduced legal fees and shorter timelines.

Arbitration proceedings offer a streamlined process characterized by flexible deadlines and expedited resolutions. The agility of arbitration not only minimizes delays but also optimizes resource allocation, ensuring that parties can swiftly navigate through the intricacies of dispute resolution. In arbitration proceedings parties to the agreement, enjoy confidentiality

[10] NNPC V Lutin Investment Ltd (2006) 12 NWLR (Pt. 96) at pg 504.
[11] CN Onuselogu ENT. Ltd v Afribank (Nig) Ltd (2005) 1 NWLR (Pt. 940) 577 (CA).
[12] Ibid
[13] The advantages and disadvantages of Arbitration https://www.sacattorneys.com/articles/the-advantages-and-disadvantages-of-arbitration/ accessed 15 September 2024
[14] Section 1(1) of the Arbitration and Mediation Act 2023.
[15] Dr Andreas, RF Arbitration <http://www.rf-arbitration.com publication >blog>what is the purpose of arbitration>> accessed on 9 September 2024.

and privacy which helps keep sensitive information out of the public domain. In arbitration, the services of expert witnesses are employed in the specific field related to the dispute, providing informed and specialized professional decisions. About finality, the decisions in arbitration are usually binding and enforceable, reducing the likelihood of prolonged legal battles.

LEGAL FRAMEWORK AND OVERVIEW OF NIGERIAN ARBITRATION PROCEDURE

In Nigeria, the arbitration procedure is governed by several legal frameworks which may include and are not limited to the Arbitration and Mediation Act 2023[16] or the repealed Arbitration and Conciliation Act.

The Arbitration and Mediation Act 2023, is divided into three (3) parts which are ninety-two (92) and three Schedules. The first part applies to both domestic (all disputes between/entities within the jurisdiction of Nigeria's thirty-six states and the Federal Capital Territory), and Nigerian seated arbitration as seen in section 1(7) of the act. The second part of the Act provides for the settlement of both domestic and international disputes through mediation subject to Nigerian Law. The last part of the three schedules is the First Schedule contains Arbitration Rules serving as the guiding framework for resolving disputes brought under the jurisdiction of the Arbitration and Mediation Act. These rules apply when parties consensually agree that these rules apply to their arbitration proceedings. The Second Schedule is dedicated to the domestication of the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention)[17] within the legal framework of Nigeria. Lastly, the Third Schedule comprises the Arbitration Proceedings Rules, providing additional procedural details and guidelines for arbitration proceedings conducted under the new Act. These rules in the Third Schedule are concerned with arbitration applications before the High Courts[18]. These schedules collectively facilitate the efficient and structured application of the New Act's provisions.

The Arbitration and Mediation Act provides for the application of the New York Convention

[16] Ibid
[17] Arbitration and Meditation Act 2023, s 60
[18] Tiwalade Aderoju, 'The Nigerian Arbitration and Mediation Act 2023:A comparison with the Arbitration and Conciliation Act 2004 and global practiceshttp://www.ibanet.org/the-nigerian-arbitration-and-mediation-act-2023 Dated 20 December 2023 and Accessed 10 September 2024.

on the recognition and enforcement of foreign arbitral awards, without prejudice to the provisions of the Act concerning the recognition and enforcement of awards[19] and the provisions of the same Act which provide for the refusal of recognition or enforcement of awards[20], where the recognition and enforcement of any award made in an arbitration in a Country other than Nigeria is sought, the New York Convention on the Recognition and Enforcement of Foreign Awards set out in the second Schedule to this Act applies to an award, provided that the country is a party to the New York convention and differences arise out of a legal relationship, whether contractual or not, considered commercial under the laws of Nigeria[21].

In Nigeria, matters brought to be settled by arbitration must first of all be arbitrable, with this fact already established, there are as well cases that cannot be handled under arbitration and these matters include criminal matters, matrimonial causes dispute, taxation and electoral matters.

TYPES OF ARBITRATION PRACTICED IN NIGERIA

The arbitration process in Nigeria could be institutional, ad hoc or customary. Arbitration is said to be institutional if the arbitration is administered under the rules of one of the arbitral institutions in Nigeria. There are several arbitral institutions in Nigeria including the Regional Centre for International Commercial Arbitration Lagos, Lagos Court of Arbitration, Lagos Chamber of Commerce International Arbitration Centre etc. Arbitration can also be administered in Nigeria under the rules of international institutions like the ICC. Ad hoc Arbitration on the other hand is an arbitration that is not administered by any arbitral institution while customary arbitration is administered under local customs and traditions[22].

In Nigeria, we have domestic and international arbitrations, common law arbitration, and arbitration under the Act.

[19] Arbitration and Mediation Act 2023, s 57
[20] Arbitration and Mediation Act 2023, s 58
[21] Ibid
[22] Arbitration Process in Nigeria: A Step-by-Step Guide https://www.mondaq.com/nigeria/arbitration-dispute-resolution/1106430/arbitration-process-in-nigeria-a-step-by-step-guide#:~:text=What%20are%20the%20Types%20of,the%20arbitral%20institutions%20in%20Nigeria accessed on 14 September 2024

APPOINTMENT OF ARBITRATORS IN NIGERIA

The appointment of the arbitrator(s) follows immediately after the service of notice of arbitration by the claimant to the respondent. Although, often in the notice of arbitration, the party serving the notice informs the other that it has appointed an arbitrator and either request that the other party concurs with the appointment or appoint its arbitrator, depending on the number of arbitrators stipulated in the agreement. The arbitrator (in the case of more than one arbitrator, 'the arbitral tribunal') may be appointed by; Parties; an arbitral institution, upon the authority of the parties; an independent appointing authority; existing arbitrators; the court, by the provisions of Article 6(2)- (3) of the Arbitration Rules.

With Party autonomy a prominent feature of the arbitration process in Nigeria, parties are at liberty in their agreement to specify the number and mode of appointment of the arbitrator(s)[23]. Parties can select a sole arbitrator together, if they choose to have a three-member arbitral tribunal, each party appoints one of the arbitrators; those two persons then agree on the presiding arbitrator. Alternatively, the centre can suggest potential arbitrators with relevant expertise or directly appoint members of the arbitral tribunal[24].

Arbitration proceedings can be at the discretion of the parties concerning selecting arbitrators with expertise in the relevant field or subject matter.

ARBITRAL AWARDS

An arbitral award is the 'final decision' reached by an arbitrator or a panel of arbitrator or a panel of arbitrators in an arbitration proceeding. It is a legally binding document that resolves the dispute between the parties involved. The award is legally enforceable, in the sense that parties are obligated to comply with its terms. An arbitral award is the result of a process where parties agree to their dispute resolved by an impartial third party (the arbitrator) instead of going to court. It has the same legal effect as a court judgment, but it's reached through a different process.

In Nigeria, the award must be in writing and signed by the arbitrators. Where the tribunal comprises more than one arbitrator, the majority's signatures will suffice if the reason for the absence of any signature is stated. The award must contain the reasons on which it is

[23] Arbitration and Mediation Act 2023, s 7
[24] Ibid

based unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms. The award must also contain the date it was made and state the place of the arbitration, as agreed by the parties or determined by the tribunal. A copy of the award signed by the arbitrators must be delivered to each party[25].

Arbitral awards are final and where there are mistakes in the award, they can be corrected at the request of one of the parties within an agreed timeframe or 30 days of the receipt of the award. The party applying for the correction must notify the other party when requesting the correction. A correction can be in respect of any errors in computation, clerical or typographical errors or errors of a similar nature. Where the arbitral tribunal considers the request justified, it will correct and provide an interpretation, and the correction or interpretation will form part of the award.

The parties are strictly bound by the terms of their agreement and may exclude their right to recourse against an award in the agreement. However, such agreements may be unenforceable if challenged, as the courts have held in other circumstances that access to the judicial system is a public right that cannot be waived.

A party to a domestic arbitration may apply to the court to the award may apply to the High Court to have an award set aside because the tribunal exceeded its jurisdiction; the tribunal was guilty of misconduct or the award was fraudulently procured. A party that is aggrieved by the arbitral award can apply to the High Court to set aside the award within three months of the date of the award or after the correction of the award[26].

In the case of Statoil v FIRS, the court of first instance held that a third party that is likely to be affected by the outcome of the award can challenge an arbitral award on the basis that it affects them[27], this position of law has been affirmed by the Court of Appeal in Shell Nigeria Exploration and Production Co Ltd v Federal Inland Revenue Service[28].

The High Court may set aside the award or part of the award if the party making the application proves that the award or a part of it contains decisions on matters which were beyond the scope of the submission to arbitration. Where an application to set aside an award

[25] Arbitration awards in Nigeria https://www.lexology.com/library/detail.aspx?g=6fd8769a-b9a1-45ad-a895-9158d1b592df Dated 11 December 2018, Accessed on the 14 September 2024
[26] Section 55(3) of the Arbitration and Mediation Act 2023
[27] Statoil v FIRS (2014) LPELR-23144(CA)
[28] Shell Nigeria Exploration and Production Co Ltd v Federal Inland Revenue Service CA/A/208/2012

is brought, the High Court may, at the request of a party, suspend its proceedings for a period that deems appropriate so that the arbitral tribunal can resume the arbitral proceedings or take other actions to eliminate the grounds for setting aside of the award.

If at any point there is a failure to comply, a party can apply to enforcement of the award in the manner prescribed by the Arbitration and Conciliation Act (now the Arbitration and Mediation Act) and the rules of the court. The party relying on the award or applying for its enforcement must apply the duly authenticated original or duly certified copy of the award and the original arbitration agreement or a duly certified copy of the agreement.

PROS AND CONS OF THE NIGERIAN ARBITRATION PROCEEDINGS

The Nigerian Arbitral process promised to be a system that benefited effectively the wants and desires of the common man in respect to dispute settlement and resolution, below is an evaluation to examine the advantages and disadvantages of arbitration. Firstly, the advantages.

Efficiency

In arbitration proceedings, disputes will be settled by finding a solution that works for the parties involved, without any unnecessary delay or hinge whatsoever. The arbitration process is to a large extent very effective as to the quality of arbitrators which encompasses the experience, expertise and as well the impartiality of arbitrators. These experienced persons and experts as arbitrators and 'judges' in a particular subject matter will result in making and arriving at informed, critically analyzed decisions and reduce delay simultaneously. This advantage of arbitration in the resolution of disputes in complex long-term contracts, business and commercial relationships is the element of speed, that is, the period between the dispute and the time it is resolved by a neutral party with a binding award. The importance of this cannot be overemphasized because the longer the time that elapses the more the dispute seems to take on a life of its own, which may be totally out of proportion to the seriousness of the original controversy and the more the business relationship between the parties are strained[29].

In recent times significant developments have been introduced in the Nigerian Arbitration process, these developments include; the establishment of specialized arbitration centres [the

[29] Greg C. Nwakoby, The Law and Practice of Commercial Arbitration in Nigeria (published in 2013) 64

Lagos Court of Arbitration (LCA) and the Nigerian Arbitration Foundation (NAF) which have played a major role in the promotion of arbitration in Nigeria. The sectors of Energy and Natural Resources is a sector that is complex and with their nature come high risks and stakes, arbitration has become the preferred method for dispute resolution in recent developments in this area.

Expertise and Flexibility

This is one of the primary advantages of arbitration compared to traditional litigation. The arbitrators have the power to tailor the proceedings to the specific needs of the parties, allowing for greater unhinged smooth movement in terms of procedure, time frames, and the scope of the dispute. The parties to an arbitration agreement often make the choices of their arbitrators, the arbitrators are often chosen for their specialized knowledge in specific fields, allowing for more informed decision-making. This expertise can be particularly valuable in cases involving technical or industrial issues. In addition, the flexible nature of arbitration proceedings enables parties to tailor the process to their specific needs, streaming the resolution and reducing costs. This flexibility can be beneficial for complex disputes that require a more tailored approach or for parties with specific preferences regarding the procedure. However, it's essential to strike a balance between expertise and flexibility to ensure a fair and efficient outcome.

Cost

The concept of cost in arbitration and expense made in the cause of the proceedings is reduced especially concerning domestic arbitration. The cost of filing which is present in regular court proceedings is not available in arbitral processes. The issue of more expensive fees may be a result of international arbitration, where the cost of interpretation of the document and the expense of employing a translator for the parties who are unable to understand the language of any other party.

Cost is a significant factor to consider when choosing between arbitration and litigation. While arbitration can be more expensive upfront than litigation, it often proves to be more expensive in the long run. This is because arbitration proceedings are typically faster and less formal than litigation, leading to reduced legal fees, expert witness costs, and court costs.

Confidentiality

The issue of confidentiality cannot be over-emphasized, as a benefit in comparison to traditional litigation. Arbitration proceedings are typically private, allowing for greater protection of sensitive business information. This can be particularly important for disputes involving trade secrets, proprietary information, or other confidential matters. Confidentiality in arbitral proceedings can be also a double-edged sword, while it can protect sensitive information, it can also limit public scrutiny and accountability. In some cases, the lack of public oversight can raise concerns about the fairness and transparency of the arbitration process. In addition, the confidentiality of arbitration can make it more difficult to enforce arbitral awards, as there may be limited public records available to assist in the enforcement process.

Persons in business prefer a more confidential setting for their dispute resolution and this is where arbitration comes in, to prevent the exposure of their business secrets and exposure to inquisitive journalists and other market and trade competitors.

Neutrality

The concept of neutrality is a fundamental principle of arbitration, ensuring that the arbitrator is impartial and unbiased. This is a significant advantage of arbitration in comparison to litigation, where there may be concerns about the impartiality of the judges. This concept however can also be a double-edged sword. It can be difficult to ensure that arbitrators are truly neutral, particularly if they have prior relationships with the parties or their counsel. Additionally, the neutrality of arbitrators can be challenged in cases where they have a financial interest in the outcome of the dispute or where they have expressed strong opinions on similar matters. As neutrality is a desirable goal in arbitration, it is important to be fully aware of the potential challenges and to take steps to ensure that arbitrators are truly impartial.

Some other advantages of the arbitration process in Nigeria may include; a non-hostile environment, convenience, procedural simplicity etc.

CHALLENGES OF THE NIGERIAN ARBITRATION PROCESS

The Nigerian arbitration process, while gaining popularity as an alternative to litigation,

faces several challenges.

In Nigeria, numerous obstacles stand in the way of the country's adoption of arbitration as a commercial dispute resolution process, including the requirement to expand the authority of arbitral tribunals and their limited enforcement capabilities. Because parties must pay arbitrators according to the number of arbitrators appointed, arbitration procedures may be more costly than litigation. The Federal and State governments should reenergize already-existing institutions to provide greater access to arbitration and other alternative dispute resolution procedures to guarantee affordability[30].

Another major disadvantage is the inability of the arbitration procedure to compel the consolidation of lawsuits, which is necessary for justice and fair trial.

The reality of the Nigerian arbitration could also include lengthy and complex procedures, high costs and fees mostly concerning international arbitration proceedings, court interference, lack of expertise among arbitrators, and the delays and difficulties of enforcement of arbitral awards. Nigeria is a signatory to the New York Convention, but there can still be challenges in enforcing arbitral awards in certain jurisdictions. This can be particularly problematic for international disputes, even within Nigeria; there can be delays and difficulties in enforcing arbitral awards. This can undermine the effectiveness of arbitration as a dispute resolution mechanism.

Arbitration can be more expensive in the face of it than litigation, particularly when it comes to appointing arbitrators and conducting the proceedings. This can be a barrier for smaller businesses or average individuals in the society. It can be faster than litigation, it can still take time to appoint arbitrators, conduct hearings, and issue awards. This can be a disadvantage for parties seeking a quick resolution to their disputes.

Arbitration proceedings are typically private, which can raise concerns about transparency and accountability. This can be particularly problematic in cases involving public interest issues. The lack of public records associated with arbitration proceedings can make it more difficult to enforce awards and monitor the conduct of arbitrators or the arbitral tribunal. Arbitral awards are not binding on future cases, limiting their impact on developing legal

[30] Vaishnavi Rastogi, 'Advancing Arbitration in Nigeria: Challenges and Opportunities'https://viamediationcentre.org/readnews/MTY4MA==/Advancing-Arbitration-in-Nigeria-Challenges-and-Opportunities Accessed on 15 September 2024.

principles. That is arbitral awards do not have case precedent and are not binding on future cases. This can be a disadvantage for parties seeking to establish new legal precedents.

Another disadvantage of the Nigerian arbitration process is the risk that the arbitrator (s) or the arbitral tribunal may be biased or have conflicts of interest. This can undermine the fairness and impartiality of the arbitration process. Arbitrators may not follow proper procedures or may make errors in their decisions. This can lead to challenges in enforcing awards and may damage the reputation of the entire arbitration proceeding.

Addressing these challenges is essential for the continued development and effectiveness of the Nigerian arbitration process. By improving the enforcement of arbitral awards, reducing costs and delays, increasing transparency, and promoting the use of qualified arbitrators, Nigeria can enhance its reputation as a favourable jurisdiction for international business.

WHY, GLORIFIED LITIGATION?

It has been an assertion thriving in the lips of countless numbers of Nigerians that the country's arbitration process is just a mere sham or as I may prefer to call or describe it 'a glorified litigation'. Some of the reasons Nigerian's arbitration process may be considered glorified litigation are as follows;

Arbitration Agreements that Are Overburdened by Legalistic Machinery

Arbitration would be severely hampered if it were over-legalised. The above example is a nice illustration that arbitrators should not become obsessed with correct legal procedure and formality, as it can result in delay and additional costs to the process or take attention away from the substance of the dispute. Nowhere is this more challenging perhaps than in the world of international arbitration, where distinct legal cultures and laws can often add to the complexities.

The arbitrators need therefore to try to strike a balance between affording the parties due process on one hand and providing for a timely and efficient adjudication of the dispute. Arbitrators must be more flexible and practical, to speed up the procedure and contain costs all whilst safeguarding the interests of both parties. This includes streamlining processes, promoting settlement discussions and embracing alternative dispute resolution.

Overreliance on court intervention in Nigerian arbitration

While Nigeria has had a very busy Arbitration landscape, it still struggles with the issue of excessive tendency to Court intervention. This propensity to turn back to the courts, even in cases expressly designed for arbitration, compromises the promptness and self-sufficiency of the arbitral process.

Multiple things contribute to this overreliance. First, a general mistrust of the arbitration process contributes to parties running to the courts. This could be due to fears about the lack of impartiality of arbitrators, the enforceability of arbitral awards or a perception that arbitrators may not have appropriate expertise. The second drawback is the Nigerian legal system: The court process appears slow while enforcement mechanisms seem to be limited for some arbitration cases. Lastly, a weak arbitral culture may cause a party to opt for the customary procedural functions of the court system.

Seat intervention ends up a last chore with numerous adverse results; this can postpone the resolution of disputes, add expense, and subvert the efficiency of arbitration. Further, it can undermine confidence in arbitration as an alternative process to court proceedings. To put an end to this malaise, Nigeria must encourage a more favourable arbitral culture by improving the efficiency and effectiveness of the arbitration processes whilst also providing better support for arbitration from the courts.

Inadequate Training and Expertise of Arbitrators

The quality of arbitration in Nigeria is often hindered by the inadequacy and lack of training among arbitrators. While there are efforts to improve the standards of arbitration in the country, the pool of qualified arbitrators remains limited. As a result of the lack of expertise and training the arbitrators may struggle to apply the law correctly, leading to inconsistent and potentially flawed awards. Arbitrators who lack the necessary skills or experience may find it difficult to manage the proceeding efficiently, resulting in delays and increased costs for the parties. With this issue on the rise potential parties to arbitration proceedings may become hesitant to choose arbitration if at any point they perceive that the arbitrators are not qualified or experienced enough.

The absence of regulatory bodies supervising the activities of arbitrators and other ADR practitioners in Nigeria has given rise to professional misconduct among them. There is also

no law on how the members are to practice the vocation[31]. Some other reasons may include; a lack of an institutional framework, lack of effective case management, poorly drafted arbitration clause etc.

The consequences of the arbitration process in Nigeria as a glorified litigation may include but are not limited to the following; decline of confidence in arbitration, increased costs and time, reduced effectiveness in alternative dispute resolution, impact on foreign investment and economic growth, decreased adoption and utilization of arbitration as a dispute resolution mechanism.

To ameliorate this issue, as a country, Nigeria needs to invest in training and development programs for arbitrators, though they already have quite a number, more will be of great help. There should be an enactment of laws that would govern the acts of the practitioners of the vocation. Functional regulatory bodies are to be put in place to guide and direct the affairs of the arbitrators, and to as well clearly state what and what amounts to professional misconduct. I advise the creation of awareness, on the functions, and presence of a National Arbitration Institute, as well as promote awareness and education on the benefits of arbitration and Alternative Dispute Resolution Mechanism (ADR) in general. To broaden the scope of arbitration the concept of institutional arbitration is to be embraced by members of the society.

CONCLUSION

As useful as the arbitration process is as a direct alternative to litigation in Nigeria, the Nigerian arbitration system continually misses its mark. The analysis revealed many important points which include the lack of fully functional and independent arbitral institutions in Nigeria has been a setback and also impacted negatively on the growth of arbitration culture. The result has been delays, procedural ambiguities and the need for complete arbitral arrangements each time. Although there are mechanisms under the law to enforce arbitral awards, enforcement proves difficult due to jurisdictional issues and the slow pace of enforcing proceedings in exercises of arbitration. A high number of parties and legal professionals in Nigeria are not aware of the import of arbitration nor trained in arbitral

[31] Festus Okpoto Agbo, "Assessing the Dangers of Unregulated Practice of Arbitration and other Alternative Dispute Resolution Mechanisms in Nigeria". Accessed on 14 September 2024

proceedings hence, resort to litigation.

Several reforms are required to achieve the full potential of arbitration as a better alternative to litigation in Nigeria including Establishing independent and well-resourced arbitral institutions that can create a supportive and conducive structural framework for arbitration. These institutions should have experienced arbitrators and procedures based on clear rules as well as effective enforcement. The Government, courts, as well as legal fraternity, should work in sync to promote institutional arbitration through advertisements and guidelines benefiting from it. The third criteria are focused on the enhancement of enforcement mechanisms which strengthen the legal framework for enforcing arbitral awards to ensure that arbitral awards are executed speedily. This could include more efficient enforcement processes, better global cooperation, and consolidation of conflicting jurisdictions. Training programs for the lawyer's end industries and the general public should be encouraged to increase awareness of arbitration. Such programs must educate contractors about the advantage of arbitration, what the process entails, and their institutional choices. Efforts should be made to nullify the cultural and socio-economic factors that act as a hindrance in the adoption of arbitration. This could mean promoting a culture of ADR that emphasizes efficiency, confidentiality, and party autonomy.

Arbitration in Nigeria can become a workable alternative once these reforms are implemented, arbitration could prove to be a powerful alternative to litigation. Arbitration provides a faster, more efficient and private mechanism for dispute resolution which will significantly lessen the load on the overburdened court system, encourage economic development and promote international investments.

That said, it is still very much a work in progress to claim that the Nigerian arbitration system has reached its full height of development. Nigeria can become a powerhouse in the practice of arbitration, for businesses as well as individuals and set an example to the world if we only acknowledge our challenges. Suggested reforms on how Nigerian Arbitration proceedings can proceed and thrive are just mere starting points.