AN APPRAISAL OF THE RELATIONSHIP BETWEEN THE COURTS AND ARBITRAL PROCESS IN NIGERIA*

Abstract

Arbitration is an accepted form of dispute settlement in many countries today. Nigerian courts initially saw arbitration as a rival that must not be allowed to take roots in Nigeria. Then the courts were reluctant in recognizing the decisions of arbitral tribunals and viewed such decisions with suspicion. As time goes on, the attitude of the courts began to change. Now courts have played and have continued to play both supervisory and supportive roles in ensuring that arbitration process in Nigeria performs its role in dispute resolution. This paper aimed at appraising the relationship between the courts and the arbitral process with a view to determining how far arbitral process is dependent on the court. The researcher adopted the doctrinal methodology relied on library based materials and internet sourced materials. It found that the relationship between the duo is a symbiotic relationship. The courts are involved in the process of arbitration from commencement to recognition and enforcement of the arbitral awards as well as its setting aside. It is recommended that the intervention of the court should not be allowed to be over excessive so that the beauty of arbitration as a process of dispute resolution will not be eroded.

Keywords: Arbitration, Arbitral Process, Arbitral Award, Courts.

1. Introduction

Arbitration is a private dispute resolution method which has gained its ground in the commercial transactions. Ezejiofor describes it as the fair resolution of a dispute between two or more parties by a person or persons other than by a court of law and concludes that an exercise is not arbitration if it does not answer this definition.[1] This definition seems not to have captured all the elements of an arbitration process. The definition failed to state that the parties must voluntarily submit their dispute to the third party who will give a decision called an award. Halsbury's Laws of England defines it as: 'The process by which a dispute or difference between two or more parties, as to their mutual legal rights and liabilities, is referred to and determined judicially and with binding effect by the application of law by one or more persons (the arbitral tribunal) instead of by a court of law.'[2] The above definition is a more encompassing one as it seems to capture all the elements of the arbitral process. An arbitral tribunal derives its authority solely from the parties' agreement to arbitrate. 'Court', on the other hand, is an organ of the government, belonging to the judicial department, whose function is the application of laws to controversies brought before it and the public administration of justice. It is that body in the government to which the administration of justice is delegated.[3] Courts are, therefore the bastions of justice created by law and vested with the power to determine disputes.[4] The courts are creation of the constitution[5]. The 1999 Constitution of Nigerian sets up the court system and vests in them the right to determine controversies between persons in Nigeria. Access to court is therefore a fundamental right of every Nigerian citizens[6]. Judicial courts and arbitration panels are often perceived as two distinct worlds. This is because the essence of arbitration is that the dispute between the parties is taken out of the formal court process and determined by arbitrators chosen by the parties or appointed for them by the court or arbitral institute.[7] More so, the intention of the parties who go before an arbitral tribunal is to exclude the intervention of the court in their case[8]. But the truth is that as much as these mechanisms are exclusive one from the other that is, they demand a choice by the disputing parties on the forum to solve their disputes, there are nevertheless points of convergence between the two. Arbitration needs and receives the support of the courts. Indeed both work hand in hand to ensure the efficient and effective administration of justice. Courts have an important role to play which is complimentary to arbitration. The courts have played and have continued to play supportive role in ensuring that arbitration process in Nigeria is strengthened and empowered to perform its role in dispute resolution. This work looked at the various roles of the court in arbitral proceedings in order to portray the relationship between the duo. The relationship between courts and arbitral tribunals has been described as one of constant shifts and changes. It can also be described as that of 'partnership'. It is one in which each has

***By Tochukwu Nkiruka NWACHUKWU, LLB, BL, PGD (Management), LLM, PhD Candidate,** Faculty of Law, Nnamdi Azikiwe University, Awka. Phone No: 08067673140. E- Mail: tochianaje@yahoo.com

[1] G. Ezejiofor, *The Law of Arbitration in Nigeria*, (Ikeja: Longman, 1997), p.3

[2] *Halsbury's Laws of England*, 4th ed. Vol. 2, (London: Butterworths, 1986) p. 332 cited in C. A. Obiozor, *Nigerian Arbitration Jurisprudence*, (Onitsha: Allied Press & Co, 2010), p. 1

[3] C. A. Obiozor, *Courts and the Framework for Domestic Arbitration under the Act in Nigeria*, (Onitsha: Allied Press & Co, 2010) p. 1

[4] *Ibid*, pp. 2 & 3

[5] 1999 Constitution of The Federal Republic of Nigeria, Section 6.

[6] A. Law, *The Role of the Court in Arbitration under the Arbitration and Conciliation Act 2004*, https:www.djetlawyer.com accessed on 15th Feburary, 2022.

[7] G. C. Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria*, (Enugu: Snap Press Ltd, 2004) p. 409

[8] *Ibid.*

a different role to play at different times[9]. The nature of this relationship has been described as a relay race where initially 'the baton is in the grasp of the court' as it is the sole organization with power to give effect to the arbitration agreement.[10] Then the arbitrators take over until making an award and once the award is made, their function is fulfilled so the baton is once again handed to the courts to 'lend its coercive powers to the enforcement of the award'.[11] It is also observed that under the Nigerian Arbitration and Conciliation Act, there are sections providing for court's involvement in arbitration. Though, Arbitration may depend upon the agreement of the parties, it is also a system built on law and which relies upon that law to make it effective both nationally and internationally. It is therefore a true statement that courts can exist without arbitration, but arbitration cannot exist without the courts[12]. Nwakoby[13], opined that:

> … It is very difficult to exclude in its entirety the intervention of the court in arbitral process. Arbitration will be rendered unattractive and hopeless if the court is completely excluded from the same. This is because the arbitral tribunal has certain obvious limitations based on law

One would expect that a party having chosen arbitration as a faster means of dispute resolution will be free entirely from the intervention of court, invariably eliminating delay, though that is usually not the case. In fact, a party who agrees to refer dispute to arbitration chooses a private system of justice and this, in itself, raises issues of public policy.[14] Having established this foundation, the essence and real issue here is to define the point where the reliance of arbitration on national courts begins and where it ends.

2. The Converging Points of Courts and Arbitral Process

The Arbitration and Conciliation Act[15] being the canon law of arbitration in Nigeria allows the involvement of court in arbitral process but also stated the limits of the involvement. It has provided in its section 34[16] that 'a court shall not intervene in any matter governed by this Act except where so provided in this Act'. This section of the Arbitration and Conciliation Act is in *pari materia* with Article 5 of the UNCITRAL Model Law. sBy virtue of the provisions of section 34 of the Act, there exists a relationship between the arbitral process and the court. The essence of section 34 is to strike a balance between the supervisory power of the court and the freedom of the arbitral process.[17] It is also to ensure that the formal courts do not interfere with arbitration proceedings unnecessarily. The intendment of the section is not to limit the jurisdiction of any court in the determination of matters within its jurisdiction but rather that no application may be made to the court in any matter where there is an available process in the Act. The essence is to ensure that arbitral process is not rendered nugatory and unattractive within our jurisdiction by incessant and unnecessary intervention by the courts.[18] By section 34, therefore, courts will only supervise and where necessary assist the arbitration process. It is pertinent to state that courts supervision and assistance does not threaten the future of arbitration as a form of dispute resolution. Rather it supports and insures its continued viability. Courts intervention is prevalent and indeed inevitable. The Act also defines court to mean the high court of a state, the high court of the Federal Capital Territory or the Federal High Court[19]. It is to any of these courts that arbitral matters could be referred by the parties to arbitration agreement. Flowing from sections 34 and 57 of the Act it means that the Act makes provisions for the intervention of the Courts in the arbitral process and these areas where courts can intervene are the areas of convergence between the courts and the arbitral process. These occasions for intervention are as follows:

Revocation of Arbitration Agreement

Arbitration is based on a valid agreement to arbitrate. As stated earlier, an arbitration is a product of an agreement by the parties to refer any or all existing or future disputes arising from their legal relationship to a neutral person or persons for determination of their respective rights and liabilities, in relation to the dispute under reference.

---

[9] A. I. Idigbe, 'Court Control of Arbitral Process', A paper presented at the Nigerian Bar Association Section on Business Law, 2- Day Workshop on ADR as an Alternative and Expeditious and Cost Effective Means of Dispute Resolution. At Eko Hotels, Victoria Island, Lagos on 5th July, 2006.

[10] L. Mustill, 'Comments and Conclusions in Conservatory Provisional Measures in International Arbitration, 1993, 9th Joint Colloquium, ICC Publication p. 118

[11] *Ibid*

[12] A. I. Idigbe, *op. cit.*

[13] G. C. Nwakoby, *op. cit.* p. 409

[14] A. I. Idigbe, *op.cit.*

[15] Cap A 18, Laws of Federation of Nigeria, 2004.

[16] Arbitration and Conciliation Act, Cap A 18, Laws of Federation of Nigeria, 2004.

[17] Mustil & Boyd, *The Law and Practice of Commercial Arbitration in England*, 1989, 43, cited in G. C. Nwakoby, *Op. cit*, p. 410

[18] G. C. Nwakoby, *op. cit*, pp. 409 -410.

[19] Arbitration and Conciliation Act, *op.cit*, s. 57.

Arbitration is a creature of consent, and that consent should be freely, knowingly, and competently given.[20] Therefore, to establish that parties have actually consented, the Act provides that the agreement must be in writing and signed by both parties. Section 2[21] provides that 'unless a contrary intent is expressed therein, an arbitration agreement shall be irrevocable except by agreement of the parties or by leave of court or a judge'. Even the death of any party does not revoke or render the agreement invalid, as it shall be made enforceable by or against the personal representatives of the deceased.[22] The choice of arbitration does not bar resort to the courts to obtain security for an eventual award.[23] It is pertinent to state that the private nature of arbitration does not oust jurisdiction of the courts, all that the agreement does is to postpone the right of access to court.[24] Since, the parties to a contract are allowed within the law to regulate their rights and liabilities themselves,[25] all that the court is required to do is to give effect to the intention of the parties as it is expressed in and by their contract.[26] This calls for two things from the courts. First, it must determine whether an arbitration agreement is valid and then whether to enforce a valid arbitration agreement which has not been mutually abandoned.[27] Once parties enter into a valid arbitration agreement, one of them cannot unilaterally revoke it, he must apply to the court for revocation under Section 2 of the Act. The arbitration agreement was freely and voluntarily entered into by the parties. To depart from it, the party seeking a revocation has to show good reason. One of such circumstances is when something happens which makes the performance of the arbitration agreement impossible or which destroys the foundation of the contract to arbitrate.[28] Like any other contract, the arbitration contract will be frustrated and can be formally revoked by the court on application by a party. The court will then be empowered to exercise the power of revocation in the event of a supervening impossibility causing a frustration of the objects of the arbitration agreement.[29] In addition, where some supervening issues of law would arise to make a continuation of the performance of the arbitration agreement illegal,[30] the contract will be deemed frustrated and an application for revocation on this ground by a party where the other party does not agree will be held by the court. Arbitration will only apply when the dispute or difference which the parties to an arbitration agreement agree to refer is a justiciable issue which can be tried as civil matters.[31] The court's role is to decide whether a dispute is arbitrable or not. The court will revoke an agreement to arbitrate when the agreement relates to disputes that cannot be settled by arbitration.[32]

Stay of Court Proceedings

In every arbitral process, it is presumed that the parties to arbitration have agreed that their dispute shall be settled by arbitration. This is a solemn contract like any other and so a party to the agreement will not be allowed to unjustifiably breach that agreement by bringing a court action in respect of the same subject matter[33]. But this is not always the case. A party to an arbitration agreement may decide to institute proceedings in court, rather than explore arbitration as agreed by parties. If the other party agrees, the court action will proceed. Where the Defendant insists on his right to have the matter resolved by means of arbitration, the court's responsibility is to ensure that the parties' agreement is enforced by referring them to arbitration.[34] The Act has given the court the power to stay proceeding in situations like this in its sections 4 and 5[35]. By the combined effect of sections 4 and 5 of the Act, the court has the jurisdiction to grant stay of proceedings in respect of matters brought before it by a party to an arbitration agreement in breach of the terms of his agreement with his fellow. It is a breach of arbitration agreement for one party to commence an action in court without first reverting to the arbitration tribunal in accordance with the terms of his agreement[36]. Where a party to an arbitration agreement decides to file his case in court instead of reverting to arbitration in accordance with the agreement he entered into with the other party, the aggrieved party is not without remedy in law. In accordance with sections 4 and 5 of the Act, the aggrieved

[20] O. Bamigboye, 'Arbitration Law and Practice in Nigeria: Does National Court Involvement Undermine the Arbitration Processes?' February, 29 2015, *https:www.papers.ssrn.com/so13/papers.cfm?abstract_id=2858812* accessed on 12th August, 2021.
[21] Arbitration and Conciliation Act, *op. cit.*
[22] *Ibid*, s. 3
[23] *Scheep v. Mv Araz* (2000) 15 NWLR (pt 691) 622.
[24] *City Eng. (Nig) Ltd v. Federal Housing Authority* (1997) 9 NWLR (pt. 520) 224 at 248.
[25] *Gott v. Gandy* 2 E & b 845 at p.847 per Erle, J, cited in O. Bamigboye, *op. cit.* p. 14.
[26] *Sonar (Nig) Ltd. v. Nordwind* (1987) 4 NWLR (pt. 66) p. 520, para G..
[27] *Kurubo v. Zach Motison (Nig.) Ltd* (1992) 5 NWLR (pt. 239) p. 102.
[28] Mustill & Boyd, *op.cit*, p. 508.
[29] *Ibid*
[30] I. E Sagay, *Nigeria Law of Contract*, (Ibadan: Spectrum Books Limited, 2009) pp. 359-456
[31] G. Ezejiofor, *op.cit.* p. 16
[32] *KSUDC V. Fanz Construction Ltd*, 4 NWLR (1990) (Pt 142) 1 at 32
[33] J. O. Orojo & M. A. Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, (Lagos: Mbeyi & Associates (Nigeria) Ltd, 1999), p. 316
[34] A. I Idigbe, *op. cit*, p. 4
[35] Arbitration and Conciliation Act, *op. cit*.
[36] G. C. Nwakoby, *op.cit*, p. 417

party has a right to apply for a stay of proceedings in the court in which the suit is pending.[37] A stay of court proceedings literally means the postponement or halting judicial proceedings or an order to suspend all or part of such proceeding.[38] Therefore, Sections 4 and 5 of the Arbitration and Conciliation Act[39] empowers the court to stay proceedings and preserve the *res*.[40] It is a well settled principle of law that proceedings in the court may be stayed, pending arbitration, in circumstances where an arbitration clause is inserted in the agreement between the parties in order that a stay might be granted. The court ought to give due regard to the voluntary agreement of the parties by enforcing the arbitration clause as agreed to by them. However, for the court to exercise such discretionary powers conferred by statute, the applicant for a stay of court proceedings must have asserted the right to evoke the arbitration provision before taking other steps in the proceedings. Orojo and Ajomo[41] suggest that this application must be made after appearance and before the applicant has delivered any pleadings or taken any other steps in the proceedings. The court is bound to stay proceedings unless it is satisfied that there is sufficient reason to justify a refusal to refer the dispute to arbitration despite the agreement of the parties. The court may only refuse to order a stay of proceedings where the defendant establishes that he would suffer injustice from the arbitration tribunal or that agreement between the parties is null and void, inoperative and incapable of being performed.[42]

Power to Appoint Arbitrators

Once a decision to refer a dispute to arbitration has been made, selecting an arbitrator is critical not only for the reputation of the arbitral tribunal process but for its standing. The usual practice is for the parties to appoint their arbitrators, prescribe their qualification, and state the number of arbitrators who shall arbitrate for them or in the alternative, name the arbitrator or a particular office holder as their arbitrator. The court does not have an inherent jurisdiction to appoint an arbitrator or umpire or to compel any party to the agreement of reference to do so[43]except where the parties have failed to make adequate provision for the constitution of the arbitral tribunal, or fail to agree on one arbitrator or the two arbitrators fail to appoint a third arbitrator.[44] Section 7 of the Act[45] provides for the intervention of the court in domestic arbitration to appoint an arbitrator on the application of any party to the agreement. Section 7 of the Arbitration and Conciliation Act provides thus:

> 7. (1) Subject to subsection (3) and (4) of this section, the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator.
> (2) Where no procedure is specified under subsection (1) of this section-
> (a) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third, so however that-
> (i) if a party fails to appoint the arbitrator within thirty days of receipt of request to do so by the other party; or
> (ii) if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement;
> (b) in the case of an arbitration with one arbitrator, where the parties fail to agree on one arbitrator, the appointment shall be made by the court on the application of any party to the arbitration agreement made within thirty days of such disagreement.
> (3) Where, under an appointment procedure agreed upon by the parties-
> a. a party fails to act as required under the procedure; or
> b. the parties or two arbitrators are unable to reach agreement as required under the procedure; or
> c. third party, including an institution, fails to perform any duty imposed on it under the procedure,
>
> any party may request the court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.
> (4) A decision of the court under the subsections (2) and (3) of this section shall not be subjected to appeal.
> (5) The court in exercising its power of appointment under subsection (2) and (3) of this section shall have due regard to any qualifications required of arbitrator by the arbitration

[37] *Ibid*, p. 418
[38] C. A. Johnson & O. shashore, *Commercial Arbitration Law and International Practice in Nigeria*, (Durban: LexisNexis, 2011) p. 258
[39] CAP A18 LFN
[40] The subject matter of the dispute
[41] J. O. Orojo & M. A. Ajomo, *op. cit*. p. 316
[42] *M.V Lupex v. Nig. Overseas Chartering & Shipping Ltd* (2003) 15 NWLR (Pt 844) S.C. 469
[43] *El-Assad v. Misr (Nig) Ltd* (1968) NCLR 173 at 176
[44] J. O. Orojo & M. A. Ajomo, *op.cit*. p. 2
[45] Arbitration and Conciliation Act, *op. cit.*

> agreement and such other consideration as are likely to secure the appointment of an independent and impartial arbitrator.

Power to Compel the Attendance of Witnesses

In arbitral proceedings, it is ordinarily expected that a party should attend the proceedings with his own witness. A witness of a party may voluntarily attend and testify at an arbitral proceeding either to give evidence or corroborate already adduced evidence, but sometimes a witness may not wish to attend voluntarily and it then becomes necessary to compel his attendance where the applicant who requires it shows that the evidence is relevant.[46] Since the arbitral tribunal has no coercive power, it relies on the court to exercise such powers and assist the arbitral process by compelling attendance before any tribunal of a witness wherever he may be within Nigeria. It may also order to bring up a potential witness in prison for examination before the arbitrator. Section 23 of the Act[47] provides inter alia as follows:

> (1) The court or the judge may order that writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before any arbitral tribunal of a witness wherever he may be within Nigeria.
> (2) The court or a judge may also order a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before any arbitral tribunal.

The application for the issuance of the witness summons and attendance of the witness shall be made by the party to the arbitral proceedings who desires his attendance.

Recognition and Enforcement of award

At the end of the arbitral process, the tribunal gives an award which is binding on parties. Every arbitral award duly made is to be recognized as binding and is expected to be complied with.[48] Section 31(1), (2) (a) (b) and (3) provides that- an arbitral award shall be recognized as binding, and subject to section 32 of the Act[49], shall upon application in writing to the court, be enforced by the court. Also an arbitral award may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect. By virtue of the above stated provision of section 31, it is obvious that an arbitral tribunal has no machinery for enforcing its award. The arbitral tribunal becomes *functus officio* on rendering of its final award[50]. This indeed has created a vacuum in the arbitration process which the Act has permitted the Court to fill up. Without a legal framework for recognizing or enforcing arbitral awards, the arbitration process would be of little value to anyone. An award will only be worth it for the winning party when such a party can enforce the stipulations of the award against the losing party[51]. For an award made pursuant to the Act to be enforceable, the award must be in writing, signed and dated, the reasons upon which it is based must be stated unless the parties agreed that the reasons are not to be given, and the place of the arbitration must be stated. The award must be published to all the parties. This means that it is the court that gives effect to the award made by the arbitration tribunal. An award which cannot be enforced at the end of the day is useless. Every arbitral award duly made is to be recognized as binding[52] and is expected to be complied with. Thus, while Section 31(1) recognizes the award as binding, it is *only upon application in writing to the court*[53] that it can be enforced. Nikki Tobi, opined that 'an arbitral award per se lacks enforcement or enforceability…., and is a toothless dog which cannot bite until a court of law gives teeth to it[54]'

Impeachment of Arbitral Awards

This is another area where arbitration process is dependent on the court and has to relate with the court. The arbitral tribunal has no jurisdiction to impeach its own award save and except for ICSID awards. A party to the arbitral proceedings who is not satisfied with the award for any good reason has a right to apply to the court to set aside the award.[55] Sections 29 and 30 of the Act[56] clothe the court with the jurisdiction to impeach an arbitral award for reasons of misconduct, lack or excess jurisdiction. The combined effect of these sections allows a party who is aggrieved by an arbitral award[57]to, within 3 months from the date of the award or in a case falling within Section 28 of the Act, from the date the request for additional award is disposed of by the arbitral tribunal apply

---

[46] O. Bamigboye, *op. cit*, p. 20
[47] Arbitration and Conciliation Act, *op. cit.*
[48] G. C. Nwakoby, *op. cit.* p. 431
[49] Arbitration and Conciliation Act, *op. cit.*
[50] G. C. Nwakoby, *op. cit.* p. 431
[51] O. Bamigboye, *op. cit*. p. 23
[52] This is the basis for res judicata which means that an award operates as a bar to a fresh arbitration or action unless an award as been nullified. See Ajogwu F. op. cit. page 130. According to Oguntade JCA in *Okpuruwu v. Okpokam supra*, '…it operates as estoppels *per rem judicatam'*
[53] Emphasis mine
[54] *Arbico Nigeria Ltd v. Nigerian Machine Tools Ltd* (2000) 15 NWLR (pt 789) 1 CA at p.32
[55] G. C. Nwakoby, *op. cit.* p. 429
[56] Arbitration and Conciliation Act, *op. cit.*
[57] This must be a party to the agreement and consequently to the arbitral award and not under any contractual incapacity.

to the court to set aside the award. If the application is not made within the stated time limit, the right is lost and barred.[58] Like a judgment, there is a rebuttable presumption in favour of an arbitral award and the burden of proof is on the party who is aggrieved and wishes to set aside the award[59] and such application must be made by a party to the agreement or his personal representative[60]

Protection of the Res

The arbitral tribunal has a right to order for the protection of the property forming the subject matter of arbitration so as to ensure that the proceeding is not rendered nugatory by the destruction of the subject matter or the scale of same by either of the parties to the arbitration agreement or their agents[61]. Section 13 of the Act[62] vests the tribunal with powers to order any party to take such interim measures of protection as the arbitrator may consider necessary in respect of the subject matter of the dispute and request any party to provide appropriate security in connection with the subject matter.[63] The implication of this provision is that the Arbitral Tribunal shall have the power to make interim orders directing either party to preserve the res pending the completion of the proceedings. It should be noted that this provision applies only where the property to be protected is in the custody of one of the parties. Where the property is in the hands of a third party, the Arbitral Tribunal (for obvious reasons) has no such power against a third party. This means that power and jurisdiction of the arbitration tribunal to make order to protect the *res* is not absolute. This is because when the order is to affect a third party then the arbitral tribunal lacks the jurisdiction to do so. The tribunal only has jurisdiction to make order with respect to the parties appearing before it and no other. The tribunal has no right to make orders which could bind third parties[64]. In this situation the court will come to the rescue of the arbitral process. An application has to be made to the court for it to make an interlocutory order protecting the properties forming the subject matter of the arbitration. Article 26 (3)[65] of the Arbitration and Conciliation Act which applies by virtue of Section 53 of the Act provides that '...A request for interim measures addressed by any party to court shall not be deemed incompatible with the agreement to arbitrate, or a waiver of that agreement. Such interim measures includes 'measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods' This provision can also be extended to a situation where a party as a first step approaches the court for an order of preservation or conservation of the res pending the constitution of the arbitral tribunal.[66]

Refusal of Recognition and Enforcement of award

Section 32 of the Act provides for any of the parties to an arbitration agreement to request the court to refuse recognition or enforcement of the award; this application must be made at any time after the award is made, especially as the application and order for enforcement may be made *ex parte*.[67] The grounds upon which the court is to refuse recognition or enforcement of the award is not stated under this section, nevertheless Section 52[224] provides for grounds upon which an application for recognition and enforcement may be refused in international arbitrations; and the Courts have in the exercise of their discretion applied them to domestic arbitrations in Nigeria.

Remission of Award

Section 29(3)[68] provides for the remission of an award to the arbitrators in limited circumstances. It provides that where an application is brought before the court for setting aside an award under subsection (1) of this section, the court may at the request of one of the parties, suspend proceedings for such period as it may determine to afford the arbitral tribunal an opportunity to resume the arbitral proceedings or take such other action to eliminate the ground for setting aside of the award.[69] This provision shows that the court has a statutory jurisdiction to remit

---

[58] *Araka v. Ejeagwu* (2000) 15 NWLR (pt. 692) 684; *United Insurance v. Stocco* (1973) 8 NSCC. 96; *Middlelemis & Gould v. Hartlepool Corpn* (1971) I WLR. 1646; (1973) All E.R. 175

[59] Section 29(2) Arbitration and Conciliation Act '…if the party making the application furnishes proof that the award contains decisions on matters which are beyond the scope of submission to arbitration…'

[60] O. Bamigboye, *op. cit*. p. 22

[61] O. Bamigboye, *op. cit.* p. 23

[62] Arbitration and Conciliation, *op. cit*

[63] This is in order to maintain the status quo as between the parties to prevent one party suffering detriment against the other. It could be by a Mareva injunction, appointment of receivers, detention, custody and preservation.

[64] G. C. Nwakoby, *op.cit*. p. 434

[65] (borrowed from Article 26 of the UNCITRAL Arbitration Rules)

[66]Busari O. 2012. *Protecting the Res In Arbitration* – Recent Developments In International Commercial Arbitration. Arbitration and ADR Committee Session of the 6th Business Law Conference of the Nigerian Bar Association Section on Business Law, Lagos, Nigeria 17th-20th June, 2012.

[67] K.S.O & Allied Products Ltd. v. Kofa Trading Co. Ltd. (1996) 3 NWLR 244 at page 254 where the Supreme Court approved the use of originating Notice of Motion and followed earlier decisions that '…where it is sought to enforce a right conferred by a a statute and in respect of which no rules of practice and procedure exist, the proper procedure is an originating Notice of Motion. [224] Part III of the Arbitration and Conciliation Act

[68] Arbitration and Conciliation Act, *op. cit.*

[69] J. O. Orojo & M. A. Ajomo, *op. cit*. p. 325

the matters referred for the reconsideration of the arbitrator. It has been stated that the effect of this remission to the arbitrator is that the award may be so altered that there is no more ground to set aside under this section and that a party may only make the request where there is a pending proceeding for setting aside the award.[70] This work agrees that this will help save some awards from failure.

3. Conclusion and Recommendations

Flowing from the ongoing, it is crystal clear that arbitration process has a lot of relationship with the court. It is a process which shall be meaningless and unattractive without its relationship with the court. This is because the arbitral tribunal has a lot of limitations imposed on it by the law. The courts assist the arbitral tribunal in those areas where it has limitations. It is discovered in the course of this work that, the courts are involved in the process of arbitration from commencement to recognition and enforcement of the awards. Most of the courts and the court systems are supportive rather than interfering with the arbitral process. The Nigerian judicial system and its enabling legal framework can be conveniently be described as one supportive system, this is evidence in current trend of our various High Court Civil Procedure Rules across the 36 state. It is therefore, a truism that the court can exist without arbitration but the arbitration process cannot exist without the court. This work recommends that the involvement of the court in arbitral process should be within the ambits of the Act and should not be allowed to amount to interference in order that the arbitral process will lose its sanctity as an independent and efficient private dispute resolution process. There is need for a more harmonious relationship between the court and the arbitral process. In view of the foregoing, this work recommends the following in other to harmonize the relationship between the courts and the arbitral process: The Act needs to be amended to increase and widen the powers of the arbitral tribunal in other to reduce their areas of limitations. For example, as arbitrators have power to make interim order preserving the res, the power to make interim order should not be limited to the parties in arbitration. It should be widened to also include third parties. This will also go a long way to reduce the involvement of court in arbitral process. It is recommended that a provision which allows the tribunal to adopt procedures suitable to the circumstances of the particular case should be inserted in our Act. There is a need to further reinforce the arbitral process in order to reduce the degree of intervention in the arbitral process and to ensure that the concept of party autonomy is not restrained in the practice of arbitration.

[70] O. Bamigboye, *op. cit*., p. 23