ARBITRATION AGREEMENT AND THE LAW: DOES IT ALIGN WITH THE AGE LONG IGBO CUSTOMARY TRADITION?

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Abstract

Arbitration agreement is a contract whereby parties thereto agree to refer present and future disputes to arbitration. It is the bedrock of arbitration proceeding particularly non-statutory arbitration because without the voluntary agreement of the parties there would be no platform for arbitration. Arbitration being a private arrangement, parties are at liberty to agree virtually on all issues that govern and control the arbitration proceeding. However, arbitration agreement does not operate in a vacuum or in isolation of the law. There is a legal system which governs or provides the framework for private transaction. It is on this note that this research questions whether parties can contract outside the law considering the principle of party autonomy? If they can to what extent are they allowed to go? This article looks at arbitration agreement and the legal system considering the extent or whether it aligns with the age long Igbo customary tradition. In the process of the research, we

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adopted doctrinal approach whereof we used the constitution, statutes, case laws and opinion of law writers. The latitude and the ambit of this work is founded on the principles that control Nigerian legal system and Nigeria as a case study. At the conclusion we found that arbitration agreement and its proceeding is not unconnected with the legal system of any nation where it may be applied.

Keywords: Arbitration, Arbitration Agreement, Applicable Law, Customary Law Arbitration.

1. Introduction

Arbitration may be consensual or statutory. A consensual arbitration is premised on the parties' agreement to refer their dispute to arbitration. On the other hand, statutory arbitration[1] is a creature of a statute that provides that disputes of certain nature are to be settled by arbitration. In that circumstance agreement of the parties are excluded. Arbitration agreement is a contract to refer present or future dispute to arbitration. This agreement is usually commercial in nature and where it comes in form of a clause in a contract constitute an agreement to refer differences arising out of the contract to arbitration process. Arbitration agreement has no particular form. Arbitration being a private arrangement, parties thereto are permitted to agree on a lot of things that would guide arbitration proceedings. An arbitration agreement therefore is the life wire or bedrock of arbitration. It is this agreement that gives the arbitrators the authority, power or jurisdiction to conduct the arbitration. Where the agreement is invalid, the

[1] Which is also called arbitration under the law.

jurisdiction of the arbitrators is questioned and the consequent effect is that the award if reached or published will be set aside. The principle of party autonomy allows parties to arbitration to agree on almost all the things. However, there is a legal system which controls or provide the framework for private transactions. It is the law that facilitates and protects such private voluntary arrangements. It sets boundaries and ambits within which these arrangements must conform. The arbitration tribunal and the parties have limitations based on the restrictions imposed by these laws and they have to be adhered to for the arbitration and consequent award to be valid.

From time immemorial , negotiation, mediation, conciliation and arbitration were recognized and is still recognized and acknowledged as methods used in resolving disputes in the rural communities of Nigeria particularly Igbo communities. Customary arbitration is founded on its voluntary nature. No one is coerced into it, else it loses one of its ingredients which is its voluntariness.

2. Arbitration Defined

Arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both parties in a judicial manner, by a person or persons other than a court of competent jurisdiction.[2] It is a dispute resolution mechanism whereby the disputing parties choose one or more

[2] Halsbury's Laws of England 3rd Ed Vol 2.

neutral third parties to reach a binding decision resolving the dispute.

Also according to Halsbury's Law of England arbitration is "a written agreement to submit present and future differences to arbitration is named therein or not."[3] This is a narrow definition of what arbitration is. It failed to recognize oral agreement between parties to refer future or present dispute to arbitration. In our indigenous communities, submission to arbitration is a process orally agreed upon by the parties. Its oral nature does not make it any less an agreement to submit to arbitration. This definition therefore covers arbitration conducted under the Act which must conform to written principles for it to be controlled by the Act.

Arbitration therefore is an alternative dispute resolution mechanism, a consensual process in which a neutral intermediary appointed by the parties themselves renders a binding and enforceable decision after hearing the parties in judicial manner.

The very essence of arbitration was underscored by the Court of Appeal *in Osagie & Ors v Obazee and Ors*[4] where the court stated that:

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[3] Halsbury's Laws of England*; NNPC v Lutio Investment Ltd.* (2006) NSCOR 77 at 112, *Kano State Urban Development Board v Fanz Construction Ltd* (1990) 4 NWLR (Pt. 142) 32.

[4] (2013) LPELR-21994(CA) Per LokulSodipe JCA pp33-34 para. G-D; *RasPalgazi Construction Ltd. v FCDA* (2001) LPELR-294 (SC).

> …The very essence of arbitration is not only alternative dispute resolution, but the promotion of the public policy to the effect that it is in the interest of the community that there should be an end to disputes. Where parties and concerned members of the community elect that a dispute be settled out of court and in furtherance of the same there was mediation and the terms of settlement announced which are acceptable to the parties, the court of justice should not treat such mediation lightly. Since agreements are meant to be honoured and equity acts in *personam*, the law and equity will act in unison to estopa party to such mediation or out of court settlement who had accepted the terms of settlement from reneging and acting to the contrary of what he had accepted.

In addition to arbitration serving as one of the alternative dispute resolution mechanisms, it also promotes public policy in that it allows for speedy dispensation of justice in the community. The erudite Judge therefore enjoins our traditional court not to treat such process lightly. Parties who had willingly participated in such process should be barred by the law and equitable principles from reneging afterwards.

It is worthy of note that privity of contract is recognized in the arbitration process. This common law doctrine of privity of contract which established that only parties to the contract,

that is those that provided consideration could sue and be sued under the contract. Third parties therefore could not derive rights from, nor have obligations imposed on them by someone else's contract. In *AIDC v Nigeria LNG Ltd*[5] it was held that privity of contract is still very much a part of our law of contractual liability. A third party who was not privy to a contract cannot ordinarily be held responsible for the damages incurred by default of one of the parties…"[6]

Arbitration proceedings in Nigeria are regulated by Arbitration and Mediation Act 2023, the New York Convention, UNCITRAL Arbitration Rules and the UNCITRAL Model law. These legal instruments have impact and influence on the practice of arbitration in Nigeria.

Arbitration Agreement

"Arbitration agreement is an agreement by the parties to submit to arbitration all or certain dispute which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not".[7] This definition captures present disputes and future anticipated differences whether contractual oriented or not.

Arbitration agreement may be oral or written. There is no particular form an arbitration agreement should be. However to constitute arbitration under the Act it must be in writing to

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5 (2000) 4 NWLR (Pt 653)

6 Ibid per Katsina-Alu, JSC pp.506-507 paras. H-A.

7 Arbitration and Mediation Act, Section 91(1) Interpretation Section.

signify that it is the parties' intention to make a submission to arbitration.

Section 2 of the Arbitration and Mediation Act 2023 provides for the form and content of an arbitration agreement. It states thus:

> 2 (1) Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate complete agreement.
>
> (2) The arbitration agreement shall be in writing.
>
> (3) An arbitration agreement shall be in writing where its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by any other means.
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> (4) The requirement for arbitration agreement to be in writing is met, where it is –
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> (a) by an electronic communication, as defined in section 91, and the information contained in it is accessible so as to be useable for subsequent reference, and
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> (b) it is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(5) Reference in a contract or a separate arbitration agreement to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is in a manner that makes it part of the contract or the arbitration agreement.

Besides, arbitration agreement being in writing and signed by the parties to it, the existence of such contract may be substantiated from other documents pointing to the existence and intention of the parties to arbitrate.

Arbitration agreement may be oral or written. There is no particular form an arbitration agreement should be. However, to constitute an arbitration under the Act, it must be "in writing" to signify that it is the parties intention to make a submission to arbitration.[8] The existence of contracts of arbitration may be substantiated from other documents pointing to the intention of the parties to arbitrate.

Arbitration Agreement and the Arbitrators

Upon commencement of arbitration, the starting point is for the arbitrators to call for the arbitration agreement between the parties. The function of the arbitrators may arise by statutory provisions[9] or agreement of the parties. Where the function of the arbitrators is hinged on the agreement between

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[8] Ephraim Akpata, *The Nigerian Arbitration Law in Focus* (Lagos:West African Book Publishers Ltd 1997)19.

[9] *Kano State Urban Development Bard v Fanz Construction Co. Ltd.* (1990) 4 NWLR (Pt.142) 3 at 33 para. C-H.

the parties, it behooves the panel to conduct the arbitration proceedings strictly on the dictates of the parties' agreement.
It is therefore the responsibility of the arbitrators to meticulously study the arbitration agreement of the parties so as to find out the function and scope of the duties imposed on them by the parties deciphered from the agreement. The parties may in the agreement specify the time limit within which the arbitration should commence and the publication of award.

Parties are at liberty in their agreement to state the applicable law, the venue of arbitration and the language of the arbitration in their agreement.
Where the above are stated by the parties, the arbitral tribunals are duty bound to accord respect to the will and dictates of the parties as expressly shown in their agreement. It is so because the agreement of the parties is the bedrock of arbitration proceedings. It is the agreement of the parties that gives the arbitral panel the jurisdiction to conduct or handle the arbitration proceedings. The issue of jurisdiction has been held to be "the foundation or bedrock of adjudication…"[10] Where the arbitrators publish an award on any matter which the parties by their agreement have not mandated them to arbitrate upon, the arbitrators would have exceeded their powers and their decision may be set aside.[11] An arbitrator is clothe with jurisdiction to handle and decide only what has been submitted to him by the parties' agreement to determine.

[10] *Atoju v Triumph Bank PLC* (2014) 5 WRN.

[11] Section 58 of the Arbitration and Mediation Act 2023.

If he decides on some other issues not submitted to him or something else, he will be acting outside the authority granted to him by the parties as shown in their agreement and consequently, the whole of the arbitration proceedings including the award of the arbitration will be null and void and to no effect.

However, sections 55(3)(v) and 58(2)(v) of the *Arbitration and Mediation Act 2023* impliedly provide for the application of the doctrine of severance whereby the good parts that is parts submitted to the arbitral tribunal is separated from the bad ones that is those not in the agreement of the parties. So that if the decisions on matters submitted for arbitration can be separated from those not submitted only that part of the award which contains decision on matters not submitted can be severed or separated and renders void. The court will, if possible, save the contract from total invalidity by severing the offending part.

An arbitrator will therefore lack jurisdiction to act if there is no agreement between the parties on the issue, if the arbitration agreement did not cover area of dispute that has arisen or where the award published extraneous issues not submitted as shown in the arbitration agreement. The court finds it impossible to separate and declare null and void the excess part of the award.

Arbitration Agreement and the Court

It is important to note the jurisdiction of the court is not oust by the insertion of an arbitration clause in a contract. Rather it is a precondition that must be followed by the parties before recourse to court is made. It is a private arrangement which if parties cooperate may shun visit to the traditional court. However, the reverse is the case. The need for court's intervention is provided in almost all the legislative documents controlling arbitration and arbitration proceedings. This is to accelerate arbitration proceedings.

The following preliminary questions if answered in the positive promotes and calls for a referral to arbitration by the courts:

a) Whether there has been any valid agreement to submit any dispute to arbitration or a statutory provision which compels arbitration in such matters.[12] This requirement is predicated upon the fact that it is the mutual agreement of the parties to such agreement that would necessitate arbitration. Where there is no voluntary agreement by the parties to resort to arbitration, the court would decline to order arbitration and would also refuse to stay proceedings where such application is made. The requirement for agreement will be unnecessary

[12] *Kano State Urban Development Board v Fanz Construction Co Ltd* (1990) 4 NWLR (Pt142)3 at 33 para. C-H Per Agbaje JSC quoting *Halsbury's Law of England* 4th edition*; Nigerian LNG Ltd v AIDC Ltd* (1995) 8 NWLR. 693

where a provision to resort to arbitration is made by a statute, in which case the court will order arbitration in accordance with the provision of the statute.

b) Whether the dispute that has in fact given rise to arbitration is one within the scope of any agreement to refer.

c) Whether the parties before the court are parties to the agreement or the transaction which compels arbitration. This is a common law requirement that privity of contract is a condition which court must investigate, so that liabilities and obligations and rights must be upon parties to such contract.

d) That the arbitration sought is within the contemplation of the arbitration agreement or circumstances calling it.

e) That there is no sufficient reason why referral to arbitration should not be made.

It is important at this juncture to state that the inclusion in a contract agreement to submit a dispute to arbitration does not exclude the jurisdiction of the court. It merely delay the entitlement of the parties to have recourse to court until arbitration which is a pre-condition is conducted.

Importance of Arbitration Agreement

1. The place of arbitration agreement cannot be over emphasized in an arbitral process. It is the bed rock of arbitration because the arbitrators derive their jurisdiction

from the parties' agreement.[13] It is the arbitration agreement that delineates the width and breathe of the powers conferred on the arbitrators by the parties.

2. The arbitration agreement or any other document that will imply such agreement will establish whether there is any contract to arbitrate on the dispute between the parties.
3. The agreement will contain dispute or issues that have been referred to arbitration.
4. Parties in their arbitration agreement will specify the governing law of arbitration, the procedure for their appointment even the time frame within which the proceedings and publication of award should last.

3. Sources of Nigerian Arbitration Law

The sources of the legal regime on arbitration are as follows-

1. The English Common law
2. The doctrines of equity
3. Nigerian customary law
4. Nigerian statutes[14]
5. Convention on the Recognition and Enforcement of Arbitral Awards 1958 (New York Convention)
6. The United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules
7. The UNCITRAL Model law[15]

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[13] Robert Bradgate, *Commercial Law* (New York: Oxford University Press 2005) 882

[14] Ezejiofor G, *The Law of Arbitration in Nigeria* (Ikeja Lagos: Longman 1997) 15

The received English common law and the doctrines of equity with the statute of general application were all received by our local enactments at the time the country was under the colonial administration.[16]By local enactment English statutes of general application in some parts of western Nigeria was terminated, while the common law and doctrines of equity subsist and still applicable in the whole of Nigeria.[17]Therefore the rules of common law on arbitration are still part and parcel of our law. [18] The Supreme Court has held that from 1960 to date, all English laws, multilateral and bilateral agreements concluded and extended to Nigeria, unless expressly repealed or declared invalid by a Court of law or tribunal established by law, remain in force subject to the provisions of the prevailing Nigerian Constitution.[19]

In our traditional and local communities, extra judicial settlement of disputes by chiefs, elders, age grade, family members even masquerades is recognized, accepted and forms part of our customary law except where it failed the validity test.[20]

Arbitration and Mediation Act controls arbitration proceedings emanating from written and voluntary agreement

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15 Akpata E. *The Nigerian Arbitration Law in Focus*, (Lagos: West African Book Publishers Ltd, 1997)pp.4-10

16 Ezejiofor G *ibid.*

17 *Ibid*

18 *Ibidapo v Lufthansa Airlines (1997) 4 NWLR (Pt.498) 124*

19 *Ibid*

20 *Njoku v Ekeocha* (1972) 2 ECSLR 1990*; Agu v Ikewibe* (1991) 3 NWLR (Pt. 180); *Egesimba v Onuzurike* (2002) 15 NWLR (Pt.791)

entered into by parties to arbitrate dispute arising from their contract. Currently in Nigeria a plethora of statutes make provision signifying the recourse to arbitration or any other form of ADR.[21] Such statutory agreement indicating the need to resort to arbitration or any other form of ADR may or may not, be conducted in line with the provisions of the Arbitration and Mediation Act.[22]

The Arbitration and Conciliation Act the extant national law on arbitration has been influenced by three other sources discussed hereunder namely: The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention); the UNCITRAL Arbitration rules and the UNCITRAL Model Law.

It is necessary to note that the Hague Convention of 1899 pioneered the modern method and the first positive general method for the peaceful resolution of dispute. The Hague Convention is an off shoot of the Hague Peace Conference of 1899 which established the permanent Court of Arbitration.[23]

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[21] Section 19(d) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended); Trade Dispute Act Cap T8 LFN 2004; *Environmental Impact Assessment Act* Cap E12 LFN 2004; *Nigeria Co-operative Societies Act* Cap N98 LFN 2004; Sections 11 and 49 of *the Petroleum Act* Cap P10 LFN 2004; Section 4 of the *Nigerian Communications Commission Act* Cap N97 LFN 2004; Section 26 of *Nigerian Investment Promotion Act* Cap N 117 LFN 2004 and so on.

[22] This is dependent on the applicable law specified by the parties.

[23] Akpata E *ibid* 4-5

a) New York Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards otherwise known as New York Convention was adopted by the United Nations Conference on International Commercial arbitration in 1958. This is the most important international treaty relating to international commercial arbitration which Nigeria acceded to on 17 March 1970. Until the promulgation of the Arbitration and Conciliation Act in 1988, there was no legislative enactment covering that convention in Nigeria. This is an improvement on the Geneva Convention of 1927 because it provides a simple standards and adequate procedure of procuring recognition and enforcement of foreign arbitral awards.[24]The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is captured in the second schedule to the Arbitration and Mediation Act 2023.[25]

Article 1:1 provides that:

"This convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a state other than the State where the recognition and enforcement of such awards are sought, and arising out of difference between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought."

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[24] Akpata E *supra*.5

[25] Incorporating as the second schedule to the Act, makes it part and parcel of the Statute and should be looked at in the interpretation of this legislative document wherever it becomes necessary.

Section 60 of the Arbitration and Mediation Act enacted this convention and by implication domesticated the convention as part and parcel of Nigerian (municipal) legislation. In other words, this provision has given the convention a legal backing and is applicable as the national law.

b) Uncitral Arbitration Rules

The United Nations Commission on the International Trade Law (UNCITRAL) became operational by the resolution of the United Nations General Assembly on 17 December, 1966 designed to harmonize and unify the law of international trade. Amongst the objectives of UNCITRAL is the promotion of the New York Convention. This objective led the commission to provide for steps to be adopted in ad-hoc arbitrations. Their Arbitration Rules were adopted by the Commission on 28th April 1976 and approved by the General Assembly unanimously on 15th December 1976.[26]

The rules in the First Schedule to the Arbitration and Mediation Act, which are for both domestic and international commercial arbitration, are to a large extent of the UNCITRAL Arbitration Rules. Parties to an international commercial agreement may expressly agree that any dispute arising out of their contract or agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in the First Schedule to the Arbitration and Mediation Act, or

[26] Akpata E supra.6

the UNCITRAL Arbitration Rules or any other international arbitration rules acceptable to the parties.[27]

(c) The Uncitral Model Law and Arbitration and Mediation Act.

The establishment and provisions of the Model law is borne out of the necessity to liberalize international commercial arbitration by restricting the scope of the intervention of national courts and to a large extent recognizing the sovereignty of parties to agree on how their differences should be resolved. It is to provide the legal framework for the conduct of international commercial arbitration so that even where parties could not agree on procedural issues, the arbitration could proceed to completion.[28]

A perusal of the Arbitration and Mediation Act and the Model Law will show the Act is fashioned after the Model law. Section 2 of the Act is almost word for word of Article 7(1) of the Model Law which covers and widens the form of an arbitration agreement which must be expressed in written form. Though it may not be in a single document but in any correspondence whereby the court can infer the intentions of the parties to arbitrate.

4. Can Parties Contract Outside the Law

A perusal of the Arbitration and Mediation Act will show that the Nigerian Arbitration and Mediation Act recognizes the sovereignty of the parties to the arbitration agreement.

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[27] *Ibid*

[28] *Ibid*

Arbitration being a private arrangement, thus, party autonomy is recognized and provided in almost all the sections of the Act. Parties are at liberty to agree on almost all the issues with respect to the subject matter of the arbitration between the parties except cost of the arbitration. Parties are free to agree on the number of arbitrators, venue of the arbitration, date of the commencement of arbitration proceedings, language of the arbitration, the applicable law the parties may choose one proper law for the substantive contract and another for the arbitration agreement. When a particular legal system is chosen the construction which forms part of that law is applicable.[29]

Arbitration award may be worthless or useless unless it is recognized and capable of enforcement in the forum where its enforcement is sought or in other countries where its recognition and enforcement is sought. It has therefore been noted that to ensure that the award is enforceable at law the mandatory rules of the national law applicable to international arbitrations in the country where the arbitration takes place must be observed, even if other rules of procedure are chosen by the parties or by the arbitrator.[30] In this wise parties cannot disregard the law while entering into arbitration agreement. Arbitration awards have failed to be recognized where it failed to take cognizance of the requisite legal system. This research is concerned more with these areas which parties cannot wish away.

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[29] Akpata E *ibid* 120.

[30] *Ibid.*

(a) Arbitrability of the subject matter of arbitration:
There is no international document on arbitration that has produced any definition on this area. The UNCITRAL acknowledged the uncertainty that exists about the scope of arbitrability. Their observation on the uniformity of this area is that it would lead to rigidity since the issue of arbitration is dynamic and subject to constant development.[31]

Laurence Shore define arbitrability to mean "whether specific classes of disputes are barred from arbitration because of the national legislation or judicial authority."[32]

On the issue of arbitrability, the New York Convention provides that:

> Each contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.[33]

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[31] International Journal of Arbitration, Mediation and Dispute Management (2013) Vol.79 No.3

[32] "Defining Arbitrability"; *the United State v the Rest of the World* (2009) New York Journal, Special Section June15.

[33] Article 11(1)

The import of this provision is that party autonomy though recognized and exercisable in all disputes caution must be applied to exclude situations where the subject matter cannot be settled by arbitration. Such situations can be implied or inferred from the provision of the Convention. Article V(2) states:

1. Where the subject matter of the difference is not capable of settlement by arbitration under the law of that country or
2. The recognition or enforcement of award would be contrary to the public policy of that country.

Section 58(2)(b) of the Arbitration and Mediation Act 2023 that deals with refusal of recognition or enforcement of awards provides that court will refuse recognition where the court finds-

(i) The subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria, or
(ii) That the award is against public policy of Nigeria.

This means that if an arbitration agreement covers subject matters incapable of being resolved under the law agreed upon by the parties or under the law of the place of arbitration or publishes an award its recognition or enforcement that would be contrary to public policy of that country where its recognition and enforcement is sought is unenforceable. Recognition and enforcement of foreign awards, will be refused where the subject matter of the arbitration is excluded

from subject matters that could go on arbitration under the Nigerian law.

From the foregoing, though sovereignty of the parties is recognized in arbitration proceeding but it is subject to limitations imposed by respective countries. They are precluded from agreeing to arbitrate on subject matter which the legal system[34] of a State forbids. The party autonomy is recognized and exercisable virtually in all issues except situations where the subject matter of arbitration is not capable of settlement by arbitration. The conventions equally highlight situations which the parties by their agreement cannot subject to arbitration. Where the subject matter of the difference is not capable of settlement by arbitration under the law of that country or the recognition or enforcement of the award would be contrary to the public policy of their country[35] the award will be set aside. The arbitrability of any subject matter of arbitration will largely depend on the varying restrictions imposed by respective countries. It is a jurisdictional issue that may render any arbitral proceedings inclusive of its award nullity. The efficacy of this subject matter is that it can render in-operational or nullify the arbitration agreement which invariably confers jurisdiction on the arbitrators. This is the position of a non-statutory arbitration whereby the arbitrator derives his jurisdiction from the agreement of the parties at whose instance he is appointed. The jurisdiction he has is as they agreed to give

[34] This may be informed from the national legislation or judicial authority.

[35] Ibid

him. So where the agreement is based on a non-existent subject the entire process is a wasteful exercise. Parties, arbitrators and courts have to address the issue of arbitrability of a subject matter before delving into determining issues concerning arbitration.

(b) Applicable Law

Arbitration award will be worthless unless it is recognized and can be enforced in other countries especially where it has international flavor. Another serious and important issue to be considered is the applicable law of the arbitration. The arbitrability, recognition and enforcement of an award will depend on the choice of laws. In domestic arbitration the applicable law is the national law of that State. While in international commercial arbitration several laws may apply including the already made rules by respective arbitration institutions and relevant conventions.[36] Parties are free in international commercial arbitration to choose the governing law of their contract.[37] The law chosen by them will regulate the substance of their dispute, the interpretation and validity of the contract, rights and obligations of the parties, the mode of performance and the consequences of the breaches of the contract.[38]

Acknowledging party autonomy the Act provides that the arbitral tribunal are required to apply rules operating in the

[36] Greg C Nwakoby *ibid* 92.

[37] Ezejiofor *G ibid* 167.

[38] *Ibid.*

country which the parties had specified in their arbitration agreement as the law regulating their transaction. The legal system of the country shall be construed as directly referring to the substantive law of that country and not toss its conflict of laws rules except where the parties specify otherwise.[39] However, it is also provided that where parties fail to stipulate the applicable law, the arbitral tribunal shall apply the conflict of law rules which it considers applicable.[40] The arbitral tribunal may apply the theories of localization and delocalization. Localization theory entails the application of the law of the forum of arbitration. That is the arbitrators adopting the law of the place of arbitration while delocalization theory means using the law that has the closest connecting relationship with the subject matter.[41]

Some writers have argued for the adoption of localization theory which requires the arbitrators to adopt the law of the forum for the arbitration agreed upon by the parties in the absence of choice of law by the parties. The strength of this view is premised on the fact that there are required legal rules which an award must comply with for it to be binding on the

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[39] Arbitration and Mediation Act 2023 Section 15 (1)(2); see also Article 33 of the First Schedule

[40] Ibid (3), the proper law will be determined from the intention of the parties which will be conclusive. Where no intention is expressed by the parties, the arbitral tribunal will presume their intention from the terms of the contract and the surrounding circumstances such as the country where the contract is initiated, the country where the contract is to be performed, and if the contract relates to immovable, the country where they are situated.

[41] GC Nwakoby *ibid* 94.

parties. Those required legal rules must be adhered to else the award will be set aside.[42]

The choice of localization theory has been faulted on the grounds that the place of arbitration is mainly selected for reasons for comfort and its neutrality to the parties. Nwakoby opined that the only reason why the law of the forum should apply is where the forum has strong connection or relationship with the transaction or contract, and the parties.[43] In line with the Act, parties may have chosen the forum for the arbitration in their arbitration agreement wherein they may have rejected the application or adoption of the law of the forum for the arbitration and party autonomy has to be respected and in that circumstance the law of the forum becomes inapplicable.

It has been noted that the correct position of the law with respect to the law that will regulate arbitration in the absence of choice of law by the parties is the law that has the closest connection or relationship with the contract, the transaction, the parties, and the subject matter.[44] Lord Denning supporting

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[42] L.J.Bouches, "The Prospects of International Arbitration Disputes Between States and Private Enterprise", *Journal of International Arbitration,* 1991 p.81; *Government of Kuwait v American Independent Oil Co.* (International Legal Material ILM) 66 (1984) 752, "Sassoon Choice of Tribunal the Proper Law of the Contract", *Journal of Business Law*, 1964,81. Referred to by GC Nwakoby *ibid*94

[43] Ibid.

[44] Ibid.

this position held in *Boissevain v Weil* that[45] "the proper law of the contract depends not so much in the place where it is made, not even on the intention of the parties, or on the place where it is to be performed but on the place of which it has the most substantial connection". Holding to the previous decision, the House of Lords in *Re United Railways of Havana*[46] stated that, "in the absence of an express clause, the test is simple with what country has the transaction the closest real connection." The implication is that even where the parties fail to stipulate the law that will regulate arbitration, the legal system of the forum of arbitration is not the applicable law. The duty of the court is to find and apply that law that has the closest connection or relationship with the transaction and the contract. Applying the conflict of laws rules the court will take cognizance of the law of the place of contracting, the law of the place where the subject matter of the contract is located or where the services are to be rendered, the law of different transactions, and the law of the place where the parties have their main business establishments.[47]

What would be the extent of parties' agreement on the applicable law?

The liberty of the parties to choose the law applicable to their contract is a widely accepted and recognized principle in international commercial arbitration. Parties are at liberty to

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45 (1959) KB 482 at 490s

46 (1961) AC 1007 at 1069

47 GC *Nwakoby ibid*.95

choose the applicable law of their contract. This law regulates the substance of their dispute and thereby control the interpretation and validity of the contract, the rights and obligations of the parties, the method of performance and the consequences of breaches of the contract.[48] In considering the subject matter of arbitration, the arbitral tribunal is obliged to apply the law of the country chosen by the parties in their arbitration agreement. Reference to that law is to the substantive law and not conflict of law rules of that country. According to Ezejiofor, party autonomy cannot be restricted except where it seems that the choice of law has not been made bona fide. In this circumstance party autonomy can be limited to the extent that the mandatory rules of law of a country with which the contract has the closest connection cannot be neglected by electing another law as the proper law of contract.[49]Party autonomy can also be restricted on the basis of protection of public policy that is the national interest of that country.

Note that Geneva Convention of 1924 and New York Convention 1958, provide for mutual recognition of arbitration awards. New York Convention provides that recognition and enforcement may be refused where it is shown that the parties to the arbitration agreement were under the law applicable to them under some incapacity, or that the said agreement is not valid under the law to which parties

[48] Ezejiofor G. ibid 167-168
[49] Ibid.

have subjected it or, failing any indication thereon, under the law of the country where the award was made.[50]
Applicable law governs the formation, validity, enforcement and termination of arbitration agreement. It deals with aspects like formal requirements of arbitration agreement, the arbitrability of the subject matter, its relation to the contract in which it is contained, the arbitrators capacity to rule on their own jurisdiction.

5. The Position of Arbitration Agreement, Law and Igbo Customary Arbitration.

Customary law arbitration is rooted in customary law which is one of the sources of Nigerian law recognized under the Nigerian legal system. Customary law in Nigeria comprises of the indigenous customary law and Islamic law. Islamic law is recognized as customary law because section 2 of the Native Courts Law 1957 which applied to Northern Nigeria provided that native law and custom includes Moslem law. Discourse on customary law in Nigeria covers Moslem law, though received but it has been fully adopted as a way of life of persons that practice it and regulates their activities.

The question posed by the title of this research is whether there is a relationship between arbitration agreement and the age long Igbo tradition precisely Igbo customary arbitration?
The Igbo people are predominately found in the Southern part of Nigeria. That is the South East, South South and some part

[50] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, Article V(I)(a).

of South West geopolitical zones of Nigeria. They comprise mainly of Abia State, Anambra State, Enugu State, Ebonyi State, Imo State. One can find some Igbo speaking communities in Rivers, Delta and Edo States of Nigeria. Many of the peoples and languages of the lower Cross River are off-shoots of the Igbo people and their language.[51] The merchant captains of the dark and bleak age of the slave trade were of the view that it was mostly the Igbo who occupied the hinterland of the Bight of Biafra.[52] The Igbo speaking people of Nigeria have diverse dialects but enjoyed basic uniformity of pattern and of cosmological and social ideas. Therefore, their pattern and method of settling disputes in their various localities are virtually the same. They have culture, custom and tradition passed from generation to generation which are peculiar to them. Agreement to submit disputes to arbitration has from time immemorial been a practice recognized among the Igbo speaking people as a way of resolving disputes. Disputes may range from land disputes, boundary controversies, family disagreement, marriage conflicts etc. Customary law arbitration is a practice recognized in Igbo setting even before the advent of received English law as a way of settlement of disputes which is alien to Igbo people. Notwithstanding, the fact that Igbo people have received and embraced the English legal system, recourse to customary

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[51] Adiele Afigbo, *Ropes of Sand Studies in Igbo History and Culture* (Nsukka: University of Nigeria Press,1981)1 referring to A.G. Leonard, *The Lower Niger and Its Tribes* (London: 1960) 4.

[52] Adiele Afigbo, Ropes of Sand Studies in Igbo History and Culture (Nsukka; University of Nigeria Press, 1981)1

arbitration is still prevalent in this tribe as a medium of settling disputes especially among the rural dwellers.

Customary Law Arbitration

Customary law arbitration is "an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either chiefs or elders of their communities and the agreement to be bound by such decision…"[53] Customary law arbitration has also been defined as an arbitration that is based on the voluntary submission of the parties to the decision of the arbitrators who are either the chief, elders of their community, or religious leaders such as Imam or pastor, and the parties are bound by such decision.[54] The parties to the customary law arbitration must willingly submit themselves to the non-judicial adjudication process. No one is coerced into it. In this vein it has been noted that "the essence of summon is to command. So, when the respondent pleaded that he summoned the appellant before the chiefs and elders of the town who gave judgment in favour of the plaintiff, I clearly understand it to mean that the appellant was bound to appear before them…"[55] In other words, parties to customary arbitration must voluntarily submit themselves to the arbitration of the individual body. Customary law arbitration is therefore, the voluntary submission of dispute by the disputing parties to a

[53] *Agu v Ikewibe* (1991) 3 NWLR (Pt.180) p.385 at 407

[54] Ajetunmobi A.O, *Alternative Dispute Resolution and Arbitration in Nigeria Law Theory and Practice*, (Lagos: Princeton & Associates Publishing Co. Ltd, 2017) pp.160-161

[55] *Agu v Ikewibeop cit* Per Nnaemeka Agu JSC.

neutral intermediary whose decision on publication is binding on the parties.

Nature and Basic Characteristics of Igbo Customary Law Agreement and Arbitration

The indigenous customary law is generally unwritten in nature which is a characteristic that gave rise to the misconception that Africa had no laws or that there is nothing known as customary arbitration.[56] Uwaifo J.C.A opined that customary arbitration awards are not *res judicata* or *ipso facto* binding.[57] This position is in sharp contrast with earlier decisions by Nigerian courts recognizing customary arbitration as part of our jurisprudence. According to Elias[58] "referring dispute to the family head or an elder of the community for a compromise solution based upon subsequent acceptance by both parties of the suggested award, which becomes binding only after signification of its acceptance and from which either party is free to resile at any stage of the proceedings up to that point is a way of resolving dispute in traditional African society. It is very popular among the indigenous people of Igbo land. The procedural pattern of conducting customary law arbitration in Igbo land is the mutual agreement between the parties which is oral and the decisions except in the recent time are not reduced into writing.

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[56] Uwaifo J.C.A *in Okpuruwu v Okpokam* (1988) 4 NWLR (Pt.90) p.544

[57] Ibid

[58] *The Nature of African Customary Law* (1956) 212.

The import of the above discussion is that customary law arbitration in Igbo communities is not regulated by statutory provisions. The disputing parties by mutual and voluntary agreement refer their dispute to chiefs, elders, lmams, or bodies recognized in the community for settlement of disputes.[59] The arbitrators are men of high repute, integrity, impartial and independent mind in the society. The arbitrators or the body recognized as arbitral panel are persons and individuals well conversant with the custom and tradition of the people, as the award will be invalidated where the proceeding is not conducted in accordance with the recognized custom of the parties.

For an applicant in a proceeding may plead an award of customary arbitration, where successful it operates as an estoppel against the opposing party. To establish the award of customary arbitration, these ingredients must be proved jointly to the satisfaction of the court.

1. Voluntary submission of the dispute to the arbitration of the individual body;
2. Agreement by the parties either expressly or by implication that the decision of the arbitrator will be accepted as binding;
3. The customary arbitration was conducted in accordance with the custom of the parties and

[59] Ezejiofor G, *The Law of Arbitration in Nigeria*, (Lagos: Longman Nigeria Plc, 1997) 22-27.

4. That the arbitrators reached a decision and published the award.[60]

The extension of the ingredients to be proved of an existence of customary law arbitration in *Egesimba v Onuzurike*[61] is not acceptable by some authors[62] including the present writer. The reason being that where parties willingly submitted themselves to those non judicial bodies, the implication is that they have consented to be bound by the final decision of the panel. It will be effort in futility to allow either party to reject the decision for the sole reason that the decision is not favourable to him.

It has been noted and rightly so that the principles of estoppel will not allow the practice of rejecting the award published by the non- judicial body.[63] Such an award operates as res judicata or issue estoppel upon successful proof of the elements of customary arbitration as pleaded by either party.[64] The principle of res judicata operates where an award or any judicial decision has been published by a judicial tribunal

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[60] *Agu v Ikewibe* (1991) 3 NWLR (Pt.180) and *Egesimba v Onuzurike* (2002) 15 NWLR (Pt. 791) 466 at 477-479 Both were Supreme Court decisions, though in *Egesimba's* case extended its decision by including the willingness of the parties to be bound by the decision of the judicial body or freedom to reject the decision where not satisfied; and that neither of the parties has resiled from the decision so pronounced.

[61] (2002) 15 NWLR(Pt.791)

[62] Ezejiofor G. P.26, Nwakoby G.C P.

[63] Greg C. Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (Enugu: Snapp Press Ltd.,2014)pp.16-17

[64] *Ibid*

having jurisdiction over the dispute or subject matter. The principle of res judicata will apply in arbitration proceedings and its consequent award precluding any party to the previous arbitration proceeding in any further litigation from contending the correctness of the earlier award or decision in law and fact. The unsuccessful party is therefore estopped from re-litigating on the subject matter.[65] The principle of estoppel applies irrespective of the fact that the tribunal that handed down the decision is not a court of record or whether it is what has been dominated by custom, or statute, a superior court or not, or even whether it is known by name of court at all. It is merely enough if the alleged judicial tribunal is made up of a person or body of persons exercising judicial functions under common law, statute, patent, charter, custom or otherwise in accordance with the law of England or, in the case of a foreign tribunal, the law of the particular foreign state.[66]

Customary Law Arbitration and the Nigeria Legal System

The Constitution of the Federal Republic of Nigeria (Fourth Alteration) recognizes customary law which is one of the sources of Nigerian law. Customary law includes customary arbitration, which by virtue of section 315(3) and 4 (b) of the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration) is an existing law being a body of rules and

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[65] *Ibid*

[66] *Okere v Nwoke* (1991) 8NWLR (Pt.209) p.317, court adopting the views of the authors Spencer, Bower & Turner, *Estoppel*, 2nd ed. 21-22 referred to by Nwakoby Ibid.

custom in force immediately before the coming into force of the 1999 Constitution.[67] This is not in conflict with the judicial powers as stipulated under section 6 of the same Constitution. The Nigerian Legal System recognizes customary law arbitration which is obviously different from arbitration conducted under the Act. Courts have acknowledged that where parties voluntarily submit their dispute to intermediaries as arbitrators, and agree to be bound by the decision of such arbitration then the court must clothe such decision with a garb of estoppel per rem judicatem. Customary law arbitration is a common method of resolving disputes in all indigenous Nigerian societies particularly the Igbos. Customary arbitration has been judicially noticed by the Nigerian courts.[68]

Nigerian legal system include rules, institutions whose main responsibilities are achievement of justice; provision of framework within which people conduct their affairs; and shaping of people's ideas.[69]

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[67] Per Karibi Whyte J.S.C in *Agu v Ikewibe op cit* where the Lordship analyzed the position of the Constitution under its saving provision in 1979 Constitution section 274 (3), 4(b) which is *ippissimaverba* of section 315(3) and 4(b) of the 1999 Constitution.

[68] *Njoku v Ekeocha* (1972) ECSLR p.199*; Ekwueme v Zakari* (1973) ECSLR 631; *Oline v Obodo* (1958) 5 SCNLR.298

[69] Dias, R.W.M. *Jurisprudence* 5th edition (London: Butterworths, 1985) p.62.s

The Nigerian legal system comprises of our local customs, Islamic law, English law, international law, Nigerian case law and Nigerian legislations.

Under the Nigerian legal system arbitration as a means of resolving disputes are currently being tremendously resorted to. The Supreme Court in *Melford Agala & 9 Ors v Chief Benjamin Okosun & 3 Ors*[70] held that by virtue of section 6(1) and (5) of the 1979 and 1999 Constitutions, it is in the courts and not in non-judicial bodies that the judicial powers of the Federal Republic of Nigeria are vested. It is however, left for the parties either to choose the normal channel for the determination of their dispute through the machinery of the courts or to submit the matter voluntarily to a non-judicial body for a decision.

6. Arbitral Bodies Recognized Under Igbo Customary Law Arbitration.

Customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions. It is organic in the sense that it is not static. It is regulatory because it controls the lives and transactions of the community that is subject to it. It is said that custom is a mirror of the culture of the people.[71]It imports justice to the lives of those subject to it.

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[70] (2010) 10 NWLR (Pt.1202) 412 at 448

[71] Obaseki, JSC in *Oyewunmi v Ogunsan* (1990) 3 NWLR 182 at 207

It is in this regard that this article considers some groups and entities recognized in Igbo communities as a forum for settling disputes. They include:

Family Unit- This consists of a man and his wife or wives and the children of the family. This is the nuclear family. In Igbo communities, the practice of polygamy is recognized and this can bring about large number of lineages, thus, villages and towns become united in blood ties through marriage contracts. The head of the family settles disputes which may crop up in his family among his children and wives. The erring member of the family is cautioned and asked to refrain from such evil acts. Petty fine is equally awarded against the erring party.

Extended Family Unit- This family unit goes beyond the nuclear family. The most senior takes the mantle of leadership and authority in every *umunna*[72](Kinsmen). In Nkanu area of Enugu State, the most senior member of the *umunna* is respected and reverenced and as such is referred to as *Onyeshi* (the eldest person). He is the custodian of *ofo (symbol of authority)* of the *umunna*, and any dispute among or between the families that make up the *umunna* is usually settled by him.

Village Group- This is the large group of umunna, kindred and hamlets living within a defined territory and bounded together by traditional ties to a common progenitor (ancestor

[72] Ilogu E. *Christianity and Igbo Culture*, (Enugu: NOK Publishers Ltd) 19

or chi (god) forms a village. In a village a person is vested by the people with the authority to preside over certain issues irrespective of his age, through the special position of his own hamlet or as a result of his positive and tremendous achievements in the community in the area of security and development of the village or as a result of titles he has taken in the village consequent upon his character and wealth.

Town Democracy- This consists of elders and titled men[73] that represent the various villages within any given town or community. Their main responsibility is trying cases that are abominations in nature. An act is an abomination (nsoani) if it is capable of bringing disaster and calamity in the whole town unless steps prescribed by the custom are carried out immediately to appease the gods. The town democracy also settle disputes between two villages, decides issues of war, control of markets, or any matter likely to affect the group's solidarity.

Priests of Oracle and Deities- In Igbo customary law, sometimes disputing parties may declare their allegiance and confidence in oracles and deities and readily trust their abilities to settle and hand down their decisions without bias. The trust reposed on these oracles and deities is because it is believed that they are unable to pervert justice because they are aware of the negative consequences of so doing. Parties who submit themselves to the impeccable quality of the oracle priests and readily accept their decisions are bound by

[73] Titled men such as *"ndiNzenaOzo"*

it. In settlement of such disputes, the oracle priests sometimes present oath to be sworn by the parties or any of the parties.

Diviners, Fortune Tellers and Herbalists- These groups of persons are important in Igbo traditional communities. They are believed to know the minds of the gods and the ancestors and methods adopted to appeal to them for favour or appease them to avoid their anger or impending danger. They act as intermediaries and mediate between the gods, the living, and the dead. They are also consulted in the settlement of disputes in Igbo culture.

These groups and bodies mentioned and discussed above and others not highlighted here are medium that may be resorted to for settlement of disputes in Igbo customary law. Once parties voluntarily submit themselves to their proceedings, believing in the efficacy of their methods, once decision is reached by such method they are bound by it except where it falls short of the ingredients of a valid customary arbitration.
The Supreme Court has severally recognized oath taking as a valid process under customary law arbitration[74] and the efficacy of juju to settle a dispute.[75] They are bound by the result and so the common law principles in respect of proof of titles to land no longer applies[76] since the proof of ownership of title to land will be based on the rules set out by the

[74] *Onyenga&ors v Ebere* (2004) 13 NWLR (Pt.889) 20 at 24.
[75] *Umeadi v Chibueze* (2020) 10 NWLR (Pt.1733) 405
[76] *Ibid*

traditional arbitration resulting in oath taking.[77] The court further stated that where customary arbitration is pleaded and proved, it is binding on the parties and capable of constituting estoppel.

Agreement to Arbitrate under Igbo Customary Law

Customary law arbitration is a concept practiced and recognized as a way of resolving disputes in the Igbo communities even before the advent of the British that came and forced on the Nigerian people the English Legal System. It is a way of settling disputes with a view to maintaining peace and harmony within the geographical entities.[78] It is an exercise that is voluntarily entered into by the disputing parties. In other words, the conduct of Igbo customary law arbitration must be by mutual agreement of the parties. None is coerced into arbitration.

The Courts have reiterated that valid arbitration takes place only when the parties voluntarily agree, beforehand, to submit to arbitration by a particular arbitrator or arbitrators and to be bound by the decision, whatever it might be.[79] Where this is absent there is no arbitration. This principle is similar to what obtains in arbitration conducted under the Act. There must be consensus ad idem and there must be an arbitration agreement entered into by the parties. However, for arbitration to be

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[77] *Ibid*

[78] J.A.Sokefun and S. Lawal, "Customary Arbitration, International Arbitration and the Need for a LexArbitri" accessed on 18th August, 2023.

[79] *Njoku v Ekeocha op cit at 205; Aguocha v Ubiji* (1975) 5 ECSLR. 251.

controlled under the Act the parties must enter into a written agreement to arbitrate.[80] On the position of customary law arbitration agreement, the court held in *Akaatse v Anju*[81] that where two parties to a dispute voluntarily submit their dispute to arbitration in accordance with customary law and agree expressly or by implication that the decision of the arbitrators would be accepted as final and binding, once the arbitrator reach a decision, it is no longer open to either party to subsequently back out of such a decision.[82]

The hallmark of customary arbitration is that the agreement to conduct customary arbitration is oral and the proceedings is often not recorded or reduced into writing as the arbitrators are not lettered or illiterates in that sense.[83] The oral nature of its agreement limits its coverage under the Act as the Act is concerned with written agreements entered into by the disputing parties. Notwithstanding this limitation it is well known, and accepted by the people in the localities and recognized by the courts. *In Ofomata & Ors v Anoka & Ors*[84] the West African Court of Appeal observed that… where matters in dispute between parties are by mutual consent, investigated by arbitrators at a meeting held in accordance with native law and custom and a decision given, it is binding

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80 Arbitration and Mediation Act 2023. Section 2.

81 (2018) 10 W.R.N P.97 Lines 35-45

82 See also *Ojibah v Ojibah* 6 SCNJ 156; (1991) 5 NWLR (Pt.191) 296

83 *OLine v Obodo* (1958) 3 F.S.C. 84 at p.86, *Ofmata & Ors v Anoka & Ors* (1974) 4 E.C.S.L.R. 251 at p.253

84 *Ibid* p.253

on the parties and the Supreme Court will enforce such decision.

7. Conclusion

Arbitration agreement reflects the autonomy of the parties. Party autonomy is a principle highly recognized in arbitration proceedings but it is difficult to divorce arbitration proceedings from the law of the place of arbitration or where the awards are to be enforced so also in customary arbitration. Party autonomy is not synonymous with unlimited power. The degree of autonomy possessed by the parties is largely dependent on what is accorded to them by such law. The source of arbitrator's authority and enforceability of his award is derived from the agreement of the parties. This agreement will not be contrary to the legal system of the place of arbitration and the place where its enforcement will be sought. The very essence of arbitration is to secure an enforceable award. Enforcement of an award if the losing party fails to comply with the dictates of the award involves access to the machinery of the State in which the enforcement proceedings are to be initiated, or in some other States, and this in turn presupposes that the award is recognized by the law of the state in question. From the foregoing, States impose some limitations on the powers of the arbitrators and extents parties can agree on. Recognition and enforcement of an award may be refused where under the applicable law chosen by the parties they are under some incapacity or the agreement is not valid under the law to which the parties subjected it or failing any indication thereon, under the law of

the country where the award was made or for want of jurisdiction, the composition of the arbitral procedure was not in accordance with the agreement of the parties or failing such agreement, was not in accordance with the law of the country where the arbitration took place, or the award has not yet become binding on the parties or is set aside (where impeachment of an award is successful and the award set aside, it is unenforceable in Nigeria and in any other country that has adopted the New York Convention or the Model Law as it will form a ground for refusing recognition and enforcement in other countries that has adopted the Model Law or New York Convention) or suspended by a competent authority of the country in which, or under the law of which, that award was made.[85]Also recognition and enforcement of an arbitral award may be refused if the competent authority in the country where recognition and enforcement is sought finds that the subject matter of the difference is not capable of settlement by arbitration under the law of that country or recognition and enforcement of the award would be contrary to the public policy of that country.[86] The party autonomy is restricted in so many ways, agreement to bound third parties is unenforceable as a result of privity of contract. So also customary arbitration is not alien to the Nigerian Legal System but has been in existence prior to the introduction of English Legal System which established court system in

[85] Convention on the Recognition And Enforcement of Foreign Awards 1958, Article V(I)(a)-(e)

[86] Ibid (2)(a)-(b)

Nigeria. Igbo customary arbitration is in alignment with the principles and features of arbitration.

The implications of the foregoing is that though sovereignty of the parties is the hallmark of arbitration, the law applicable to arbitration cannot be shun in the arbitration agreement and arbitration proceeding as it plays a vital role in the recognition and enforcement of the award afterwards and the same goes for Igbo customary law arbitration which must comply with all the features of customary arbitration. Arbitration agreement as recognized under the Act is borne out of parties' intention and willingness to refer future or present dispute to arbitration. The features of arbitration as a form of alternative dispute resolution particularly its flexibility and voluntariness of the mechanism is recognized. The principle of natural justice and the need to shun technicalities and render substantial justice to the parties are highly recognized. These features and principles apply to Igbo customary arbitration. The Igbo customary arbitration has come to stay. The rural dwellers cannot do without it; it is fast and economical for the parties. It is therefore recommended that the Nigerian Legal System positively develop and improve the age long Igbo customary arbitration.