IS CAUSE OF ACTION IN COMMERCIAL ARBITRATIONS *SUI GENERIS*? A REVIEW OF THE APPLICATION OF LIMITATION OF ACTION TO THE ENFORCEMENT IN NIGERIA OF AN ARBITRAL AWARD*

Abstract

To maintain an action in court, there must be in existence facts a combination of which gives a person the basis to seek redress in that forum. When facts the proof of which entitles a person to a remedy against the defaulting other have crystallized, it is said that cause of action has accrued. In arbitration, the law, like in other civil matters, provides for time within which to enforce an arbitral award. The Supreme Court of Nigeria has held that for the purpose of enforcement of an award, time begins to run from the period of the breach leading to the arbitration but not from when the award is made except in cases where the award is made a condition precedent to its enforcement. The aim here is to examine the foregoing position with a view to determining whether cause of action in an action for enforcement of an award is in a class of its own (sui generis); or whether it assumes the same meaning and connotations as it is understood in other civil causes. This enquiry reveals that the decisions of the apex court in the cases reviewed are not in consonance with well-known jurisprudential underpinnings of cause of action. Since no award can be enforced until it is made, accrual of cause of action for its enforcement should be reckoned, not from the time of the breach giving rise to the arbitration, but from the time the award is made and the unsuccessful party fails to comply with its terms.

Keywords: *Action, Award, Arbitration, Limitation, Enforcement, Cause*

1. Introduction

An award or arbitral award is a decision of an arbitrator or an arbitral tribunal delivered after hearing the cases presented before him or it by the respective parties to the arbitration. It has been defined as a final judgment or decision, especially one by an arbitrator or by a jury assessing damages.[1] An award shall be in writing and signed by the arbitrator or arbitrators.[2] Except the parties agree that no reasons should be given or that the award is one on agreed terms as settled by the parties, an award shall state the reasons upon which it is based, the date it is made and the place of arbitration.[3] Where at the end of arbitral proceedings an award is made, it is expected of the party against whom the award is made to comply with the terms of the award. If this is done, no issue arises. It is, however, not in all cases that the unsuccessful party willingly complies with the award. At a time like that, the successful party usually takes steps towards ensuring coercive enforcement of the award against the recalcitrant unsuccessful party. To achieve this, the successful party usually seeks the enforcement in court of the award made in his favour. This is done by way of an action in court. The problem thus arises with respect to the time cause of action accrues for the enforcement of the award for the purpose of determining when the action becomes time-barred for enforcement. The significance of this is that the successful party can no longer enforce the award if he delays beyond the permissible time to seek enforcement by way of action in court.

2. Applicable Law

The Arbitration and Conciliation Act[4] which is the principal legislation in Nigeria on arbitration matters has not specified the limitation period for the enforcement in Nigeria of arbitral awards or when cause of action is deemed

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[1] B. A. Garner (ed), *Black's Law Dictionary*; 8th Edition, West Publishing Company, St. Paul, Minnesota, p.147

[2] S.26(1) of the Arbitration and Conciliation Act, Cap A18 Laws of the Federation of Nigeria, 2004 (hereinafter simply referred to as ACA, 2004)

[3] S.26(2) (a)(b)(c), ACA, 2004

[4] Cap A18 Laws of the Federation of Nigeria, 2004

to have accrued for the purpose of limitation of action. In the Foreign Judgment (Reciprocal Enforcement) Act,[5] it is provided that a judgment or an award rendered in a foreign country may be enforced in Nigeria within six years of the judgment or award. Such an award must have, however, been capable of enforcement in the country of its origin. In Lagos State, the time limit for the enforcement of an award is also six years.[6] There are decided cases, especially those of the Supreme Court of Nigeria on when cause of action accrues for the purpose of determining the time limit within which to enforce such awards. These decisions are reviewed here with a view to ascertaining whether they accord with the connotations of accrual of cause of action as enunciated by the same Court. At the centre of this review is the concept of cause of action with respect to enforcement of arbitral awards through the courts in Nigeria.

3. Cause of Action

Cause of action is the facts a combination of which gives a person the right to remedy against another. It has been defined by the Supreme Court in the case of *Adimora v. Ajufo*[7] along the following lines:

> In its best of definition, it consists of every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. *Cooke v. Gill (1873) L.R. 8 C.P 107; Read v. Brown (1888)22 QBD 128.*
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> When these facts have occurred and provided there are in existence, a competent plaintiff, and a competent defendant, a cause of action is said to accrue to the plaintiff because he can then prosecute an action effectively. *Thus the accrual of a cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action.* (Underlining for emphasis)

Cause of action is 'a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in court from another person.'[8] In the case of *Nigerian Ports Plc v. S.E. S. Ltd.*[9] cause of action was also defined by the apex court thus –

> It simply means the aggregate of facts and circumstances which entitles a person to judicial redress or remedy against another person.
>
> It is the factual situation which if substantiated or established entitles the plaintiffs to a remedy against the defendant.

A salient point common to the foregoing definitions of the term 'cause of action' is that it does not crystallize until all the material facts which if established by an aggrieved person, would entitle such a person to a remedy as provided by law become complete. Thus in an action for the enforcement of an arbitral award, the facts cannot be complete except upon the making of the award, and, of course, the unsuccessful party defaults in his implied undertaking to comply with the terms of the award. It is the failure by the party against whom that award is made to satisfy same that would necessitate the action for its enforcement.

For the purposes of determining when an action for the enforcement of an award becomes time-barred and incapable of enforcement, the weight of judicial authorities in Nigeria tilts towards the position that generally time begins to run from the breach or default leading to the arbitration but not from the time the award is made. For a better appreciation of this, two decisions of the Supreme Court of Nigeria dealing with this issue are discussed below. The rationale behind choosing the decisions of the Supreme Court is that by the doctrine of judicial precedent, all other courts and including the Supreme Court itself are bound by such decisions and are obligated to apply them to other cases of similar facts and circumstances. Simply put, a decision of the Supreme Court on an issue represents the law on that issue.

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[5] Cap F35 Laws of the Federation of Nigeria, 2004; section 2

[6] See section 8(1)(d) of Arbitration Law of Lagos State.

[7] (1988) 6SCNJ 18, 30 – 31; [1988] 3NWLR (Pt.80)1. See also the cases of *Idachaba v. Ilona* [2007] 6 NWLR (Pt. 1030) 277; *Attorney - General Kwara State v. Olawale* [1993] 1NWLR (Pt. 272) 645; *Ogunsanya v. Dada* (1992) $SCNJ 162 , 169

[8] B. A. Garner; *Black's Law Dictionary,* 8th Edition, West Publishing Company, St. Paul, Minnesota, p. 235

[9] *[2016] 17 NWLR (Pt. 1541) 191, 208 Paras. B – C.* See also the cases of *Egbe v. Adefarasin (No.2) (1987) !NWLR (Pt.47) 1; Yusuf v. Co –operative Bank Ltd. [1994} 7 NWLR (Pt. 359) 676, 692; Sanda v. Kukawa Local Government & Another [1991] 2 NWLR (Pt. 174) 379, 390 -391*

4. Decisions of the Supreme Court

In the case of *Murmansk State Steamship Line v. Kano Oil Millers Ltd*,[10] the respondent/defendant entered into a charter-party agreement in Kano, Nigeria with the plaintiff/appellant. Under the agreement, the respondent was to provide a cargo of groundnuts for shipment in a ship to be provided by the respondent in Nigeria. The respondent defaulted under the agreement by failing to load the cargo of groundnuts when the ship was presented by the appellant within time at the Apapa port. The charterparty agreement had a clause to refer any dispute to arbitration under the Russian law. The breach occurred in Nigeria in February, 1964. Parties referred the dispute to arbitration as stipulated in the agreement. The award was made in 1966 in Moscow in favour of the appellant and the appellant then brought an action in Kano, Nigeria for the enforcement of the Moscow award. The learned trial Judge dismissed the action for the enforcement of the award in Nigeria on the ground that it was statute –barred. Dissatisfied with the decision of the High Court, the appellant appealed to the Supreme Court contending that the action was on the Moscow award and not on the charterparty agreement; and that since the award was made in 1966, period of limitation should be reckoned from that date and not from the date of the agreement. The Supreme Court was not persuaded by the foregoing argument but held, first, that the appeal was to be dismissed on the grounds that (i) the action had not been brought with the leave of the High Court or the Judge as required by the applicable law[11] and that (ii) the Writ of Summons commencing the suit was taken out in the month previous to that when Nigeria became signatory to the Convention relied on by the appellant as permitting enforcement of such awards in Nigeria. On the issue of whether the action for the enforcement in Nigeria of the Moscow award commenced in 1972 was statute-barred, the Supreme Court held that the suit was caught up with statute of limitation, as time began to run from the date of the breach of the charterparty agreement and not from the date of the making of the award. In the words of Elias CJN,

> It follows, therefore that if the action in such a case is really one on the charterparty and not on the award, which we think is the case in the present appeal, the statutory period of limitation must begin to run from the breach of the charterparty in 1964 and not from the making of the award in Moscow in 1966.[12]

The reasoning of the Supreme Court in this case was, *inter alia,* that except in cases where the making of an award is made a condition precedent to the institution of an action, otherwise known as the *Scott v. Avery* clause, time starts running from the date of breach of the agreement of the parties activating the arbitration clause and not when the award is made. This is made clear from the words of the Court in the manner following:

> We have underlined the portions in the passage just quoted in order to emphasis the fact that the period of limitation is deemed to run after the date of the award only when a party has by his own contract expressly waived his right to sue as the cause of action has occurred. If there is no such *Scott v. Avery* clause, the limitation period begins to run immediately. A party is, however, precluded from setting up such an agreement as a defence if he had waived his right to insist on arbitration as a condition precedent. *Toronto Railway v. National etc. Insurance Co. (1914) 20 Com. Cas.1.*

The Supreme Court in deciding the appeal also relied on the English case of *Pegler v. Railway Executive*[13] where the English House of Lords held that 'cause of arbitration' is the same as 'cause of action' so that the action brought by a fireman more than six years after his conditions of service had been altered to his detriment was statute-barred from the date of the alteration and not from when his exact losses were later determined in an arbitration. In another case, *City Engineering Nigeria Ltd v. Federal Housing Authority,*[14] the plaintiff/appellant by her agreement on 17/12/74 with the defendant/respondent was to build a number of housing units in Festac Town, Lagos. Clause 31 of the agreement provided for reference to arbitration any dispute arising therefrom. According to that clause, parties were to refer any dispute arising from the contract to a single arbitrator appointed jointly by the parties failing which either party can apply to the High Court. In a letter of 10/7/79, appellant invited respondent to agree to the appointment of an arbitrator in accordance with their agreement. Respondent turned down the request by its letter of 24/7/79. The appellant then commenced an action at the High Court sitting in Kano. In the proceedings of 8/10/79 in the matter, parties were represented by counsel and the respondent's counsel applied that pleadings be filed and exchanged and the application was granted by the trial High Court. After filing her Statement

[10] (1974) ANLR 893

[11] Section 13 of Arbitration Law of Northern States applicable to Kano State. Although this law did not deal with foreign awards, it nevertheless provided that in order to enforce any arbitral award in the high Court, leave of the court or of the Judge must first be obtained. This was not done by the plaintiff/appellant.

[12] *Murmansk State Steamship Line v. Kano Oil Millers Ltd, supra, p. 899*

[13] *(1948) 1 All E. R. 559; (1948) A. C. 332*

[14] *[1997] 9 NWLR (Pt. 520) 224*

of Claim, appellant's counsel applied to the court in line with Clause 31of the agreement for the court to appoint an arbitrator. Although the respondent opposed the application, the learned trial Judge was of the view that the matter ought to be referred to arbitration and then transferred the suit to the Honourable Chief Judge of Kano State within whose competence the appointment of an arbitrator was. Subsequently, parties agreed on an arbitrator and the court was so informed on 11/12/81 and, without opposition from the respondent's counsel, further proceedings in the matter were stayed while parties proceeded with the arbitration.

The arbitrator gave an award in favour of the appellant who thereafter applied to the High Court for the enforcement of same. The respondent also applied that the award be set aside. The High Court refused the application to set aside the award and granted the application for the enforcement of same. Respondent was dissatisfied and appealed to the Court of Appeal which allowed the appeal. The appellant was also dissatisfied and equally appealed to the Supreme Court. One of the core questions before the Supreme Court was when the period of limitation started to run for the enforcement of an award the outcome of arbitration: is it when the cause of action arose or when the award was made? The appeal was initially heard by a panel of five Justices of the apex court. Before judgment, a full court of seven Justices was empanelled and the reason for this was that the Supreme Court observed that "… there are conflicting decisions of this Court on Question (2) above."[15] The decisions which were considered to be conflicting are the cases of *Kano State Steamship Line v. Kano Oil Millers Ltd*[16], *Obi Obembe v. Wemabod Estates Ltd* [17] and *Kano State Urban Development Board v. Fanz Construction Co. Ltd.*[18] The decision of the Supreme Court in this case was that the limitation period of six years started to run from the time of the arbitration but not from the time of the making of the award. This was captured thus -

> The conclusion I reach is that Question (2) is resolved against the appellant. The statutory period of limitation of six years began to run from 12/12/80 and appellant's application to enforce the award was statute-barred when it was brought in 1988. The appellant has itself to blame for the catastrophe that has befallen it. Notwithstanding that there was some delay in the arbitration proceedings arising from the various applications made by both sides, the arbitrator gave his award in November 1985, a date still within the statutory period of limitation. For unexplained reasons, the appellant waited another three years before applying to enforce the award in its favour by which time limitation period had set in.[19]

It is noteworthy to observe that part of the reasoning of the Supreme Court in arriving at its decision in the *City Engineering*[20] case is that its earlier decision in *Murmansk case* was binding on it and that it has not been shown why the Supreme Court should depart from its earlier decision. According to Ogundare JSC delivering the unanimous judgment of the apex court in *City Engineering* case,

> In *Murmansk*, this Court per Elias CJN, declared that limitation period runs from the date of the accrual of the cause of action in the arbitration agreement and not from the date of the arbitral award. This decision is binding on this court unless we have any reason to depart from it. I am not convinced that any cause has been shown to inform me to depart from the decision. The decision accords with the weight of judicial opinion and textbooks writers on the subject and has statutory backing. [21]

The above decisions of the Supreme Court of Nigeria also drew strength from *Russell on Arbitration*,[22] where the learned author posits thus –

> Timeous commencement of arbitration. The period of limitation of the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued: 'just as in the case of actions the claim is not brought after the expiration of a specified number of years from the date when the claim accrued' *–Pegler Rly Executive (1948) 1 All ER 559 at 502; (1948) AC 332 at 338.* Even if the arbitration clause is in the '*scott v. Avery'* form (see (1856) 5 HL, cas 811, (1843 – 60) All E. R. Rep. 11, that is,

[15] Per Ogundare JSC at *p. 233 paras F – G*. The 'Question (2) above' is 'In arbitration proceedings where an award has been made when does the period of limitation begin to run for the enforcement of the award – is it when the cause of action accrued or at the time of making an award?'
[16] *(1974) 12 SC 1*
[17] *(1977) 5 SC 115*
[18] *[1990] 4 NWLR (Pt. 142) 1*
[19] Per Ogundare JSC, at p. 246, paras. C - D
[20] *supra*
[21] Per ogundare JSC, at p.243 Paras. C - D
[22] 20th edition, pp. 5 -6

> there is a provision that no cause of action shall accrue in respect of any matter agreed to be referred until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

To appreciate the exception stated in those decisions, it is pertinent to clarify that generally, arbitration clauses fall into two categories. In one category, the provision for arbitration is a mere procedural matter for determining the rights of the parties without anything in it to exclude a right of action on the contract itself. The party against whom such an action may be maintained is at liberty to apply to the court to stay proceedings in the case so as to enable parties resort to that procedure to which they have agreed - arbitration. The Court to which the application is made exercises its discretionary powers in considering whether to stay further proceedings in the matter or not. The other category covers situations where arbitration followed by an award is a condition precedent to any other proceedings being taken, such as enforcement of an award product of the arbitration. A clause or provision in an agreement which falls under this second categorization of arbitration agreement or clause is usually referred to as the *Scott v. Avery*[23] clause. It is, therefore, correct to infer from the foregoing decisions of the Supreme Court of Nigeria, that the law on limitation of action with respect to enforcement in Nigeria of an award is that except where the arbitration agreement contains *Scott v. Avery* clause, cause of action accrues from the date of breach giving rise to the arbitration but not from the date of the arbitral award. This current position of the law in Nigeria thus raises the issue of the distinction, if any, between cause of arbitration and cause of action.

5. Cause of Action *v.ersus* Cause of Arbitration

Available academic and judicial authorities tend to suggest that for the purpose of determining when cause of action arises for the enforcement of arbitral awards, cause of action means the same as cause of arbitration. According to the House of Lords, 'cause of arbitration' is the same as 'cause of action' such that a fireman who instituted an action more than six years after his conditions of service had been altered to his detriment was caught up by the limitation period from the date of the alteration, not from when his exact losses were later quantified at arbitration.[24] In *Russell on Arbitration*,[25] the learned author posits thus –'Date from which time runs: The period of limitation runs from the date on which the 'cause of arbitration' accrued: that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned.'The opinions expressed in *Russell on Arbitration* and in *Peglar v. Railway Executive* appear to be in tandem with the decisions of the Nigerian Supreme Court and thus does not draw any clear distinction between 'cause of action' and 'cause of arbitration'.

With respect, there is a distinction, or at least there ought to be a distinction, between cause of action and cause of arbitration. In its plain meaning, cause of arbitration as the expression implies, is the reason for the arbitration. That is, the breach or wrong which calls for reference to arbitration. Where, for instance and for the sake of argument, there is a need for determination of time within which request for reference to arbitration ought to be activated if such a time stipulation is contained in the arbitration clause, it is that dispute which necessitates reference to arbitration that is the cause of arbitration. Time for that cause of arbitration thus starts to run from the date of the breach of the substantive agreement of the parties. Put differently, the cause of arbitration is simply the breach or wrong which necessitates the invocation of the arbitration clause. On the other hand, cause of action for the purposes of enforcement of an arbitral award does not crystallize until an award has been made. Except an award is made, there will be nothing for a party to seek to enforce. The fact which completes that set of facts that will give a plaintiff the basis to seek enforcement of an award in court is the making of the award. As aptly captured by the Supreme Court in one of its recent decisions,

> This court had set down in plain language that the accrual of cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin to maintain his action. *Time begins to run when the cause of action crystallizes or becomes complete*.[26](Underlining for emphasis)

If as stated by the Supreme Court, time begins to run when the cause of action becomes complete, and the completeness of the cause of action is the enforceable award rendered which the other party has failed to comply with its terms, can it then be rightly said that the cause of action in enforcing an award arises when the breach leading to the arbitration occurred? Having regard to the fact that what is sought to be enforced is the arbitral award which only comes into existence when it is made, can it seriously be contended that 'cause of action' for the

[23] *(1856) 5 H.L. Cas. 811.*
[24] *Pegler v. Railway Executive (1948)A.C. 332*
[25] 18th edition, pp. 4 -5
[26] *Sifax Nigeria Limited & Others v. Migfo Nigeria limited [2018] 9NWLR (Pt. 1623) 138, 191 Paras. A - B*

enforcement of that award arises from the time of the breach of the substantive agreement of the parties but not when the award is made? We do not think so. It is submitted that since an award sought to be enforced can only be enforced after it had been made, it stands to reason that cause of action for its enforcement does not accrue or has not become complete until that award is rendered.

Consequently, as the making of the award completes the facts leading to its enforcement in the case of non-compliance by the defaulting party, the cause of action accrues at that point of making the award and time begins to run from that time the award is made. It is only in the context where there is an action, for example, for the enforcement of the arbitration clause that the cause of action in that instance can be taken as cause of arbitration. Where, however, the breach which gives rise to an action is the breach of the terms of an arbitral award made, cause of action in that instance cannot conceivably be the same as cause of arbitration. This means that in an action for enforcement of an award, cause of action is not the same as cause of arbitration for the purpose of computation of the time within which such an award ought to be enforced.

The English case of *Turner v. Midland Railway*[27] illustrates this distinction. In that case, under an Act of Parliament, the defendants had executed in 1903 certain works which injuriously affected the property of the Plaintiff who, not being aware of her right to compensation in that regard, brought her claim in 1909. The matter was referred to arbitration and an award was made in her favour in 1910. When she instituted an action for the enforcement of the award, it was held that the suit was statute –barred, as the cause of action arose at the time of making the award and not at the time of the execution of the work. That is to say that the six years limitation period should be computed from the time of the award. In this case, the 'cause of arbitration' clearly is the improper execution of the works which injuriously affected the plaintiff's property. The 'cause of the action (suit) the plaintiff instituted for the enforcement of the award was the award which the defendants obviously initially failed to comply with, a development which necessitated the suit. The court was therefore on a sound footing in that case when it held that computation of time for the cause of action should commence from the time of the award but not at the time of the execution

Similarly, in *Agromet Moto Import Ltd v. Moulden Engineering Co.(Beds) Ltd,*[28] the decision of the court was that time begins to run from the date of the breach of the implied time to perform the award and not from the date of accrual of the original cause of action giving rise to the submission. The views expressed here relate to an arbitral award in an arbitration in which there is no *Scott v. Avery* clause. This is because in *Scott v. Avery* clause cases, no dispute arises as to when time begins to run, parties having expressly made the making of award a condition precedent to an action for enforcement of the award. The first point to note here is that the suits leading to appeals in those Supreme Court decisions deal with enforcement of an arbitral award. They do not deal with enforcement of arbitration clauses, for instance, where a party has refused to obey the clause requiring reference of the dispute to arbitration. A serene appreciation of the concept of cause of action will readily disclose that the 'action' in those cases was the suit commenced for the enforcement of the awards. The action could not have been commenced before the making of the award. This means that it was the award that completed the factual basis for the suit. Put differently, the cause or reason for the action (suit) was the failure by the unsuccessful party to comply with the terms of the arbitral award. Therefore, if the 'action' which is the suit commenced at the High Court was caused by the failure of the party in default of compliance with the award, does it not then follow that the 'cause of' (reason for) that 'action' is the failure by the unsuccessful party to comply with the terms of the award after the award had been made? We are of the firm view that it inexorably follows that the cause of action in an action for the enforcement of an arbitral award is the breach or failure to comply with the award rendered but not before the award is made. The reverse is also correct. If the unsuccessful party complies with the terms of the award, there would be no reason (cause) to seek enforcement of the award by way of a suit (action) in court. It is the failure to live up to the implied undertaking to willingly satisfy the award that is the fact completing the reason or cause for the action to compel compliance. This breach occurred only after the making of the award. It is then patently incongruous to hold the view that limitation time should start running from the date of the principal contract when the action was in fact not for the enforcement of the principal contract breached but for the enforcement of the award.

For the avoidance of doubt, at all stages of the agreement of the parties, there exists some form of implied undertaking or promise of compliance by the parties. First, there is an implied undertaking to keep to the terms of the substantive contract. Where an arbitration clause is contained in the principal contract, there is also an implied

[27] *(1911) 1 K. B. 832*
[28] (1985) WLR 762; (1985) 2 All ER 436. See also *IBSSL v. Mineral Trading Corporation (1996) All ER*

promise on the part of the parties to give effect to the arbitration agreement by referring any dispute to arbitration in accordance with the arbitration clause. This is the second stage. At the stage of arbitration proper where parties have voluntarily submitted to arbitration and neither the arbitral proceedings nor the award is vitiated in anyway, there is also an implied promise or undertaking on the part of the unsuccessful party to comply with the terms of the award. It is at the point of the breach of any of the implied promises at the particular stage of such a promise that the cause of action crystallizes and time begins to run from immediately thereafter. This view that a cause of action for enforcement of award accrues after the award but not before is supported by the following passage from the *Halsburys Laws of England*[29] on the effect of award: 'The publication of the award thus extinguishes any right of action in respect of the former matters in difference but gives rise to a new cause of action based on the agreement between the parties to perform the award which is implied in every arbitration agreement'. It would be most inappropriate to tenaciously hold on to the position that for the purpose of enforcing an award, which is actually occasioned by a breach of the implied promise to satisfy that award when made, time begins to run from any time before the making of the award. That breach could not have occurred before the making of the award. Thus, the reasoning that in computation of time for enforcement of an arbitral award by way of an action in court, time begins to run from the date of the breach of the arbitration agreement is to simply say that time begins to run before the accrual of cause of action. This is not in consonance with the concept of cause of action. It is thus not right to hold as did the apex court in the cases under review that in computation of time for enforcement of an award time started to run from the date of the breach of the substantive contract of the parties. It is not the case that in the Nigerian legal system the term cause of action assumes different and peculiar connotations with respect to its meaning and accrual. It has also not been shown that an action for the enforcement of an arbitral award is in a class of its own divorced from the incidence of cause of action as is known in other civil causes and matters in Nigeria. No local legislation provides that cause of action in commercial arbitrations should predate the cause or breach complained of. For these reasons, the concept of cause of action in other civil causes and matters should be adopted in determining what a cause of action in an action for enforcement of award in Nigeria is and when that cause of action accrues. Nwakoby and Aduaka[30] have expressed the view that the courts in Nigeria have treated limitation of action for the enforcement of arbitral awards in Nigeria as if it is governed by a legal regime different from that governing cause of action in civil matters in Nigeria. This is the factual, but incongruous situation in Nigeria.

6. Conclusion

The reason or occasion that calls for the enforcement of arbitral award by way of an action in court is the failure to comply with the terms of the award made. This reason is the 'cause' while the suit for the enforcement is the 'action'. Thus the cause of action in enforcement of an arbitral award being the breach that occurred after the award is made but not complied with, it is not right to reckon with date of the breach of the arbitration agreement for the purpose of limitation of action in enforcing arbitral awards. There is no case law authority or legislation mandating that cause of action as well as its accrual in an action for enforcement of an arbitral award is in a class of its own. Not being *sui generis*, therefore, in the computation of time for the purpose of limitation of action for such enforcement, the same principle that the facts must be complete before cause of action is said to have accrued becomes the best approach and should apply with equal force. Retaining the position of the Supreme Court as at today that cause of action accrues when the breach in the original agreement of the parties occurred does not align with the fact that cause of action does not accrue until the facts that will sustain the enforcement of the action have crystallized. Decisions of the apex court on the meaning of cause of action and when it accrues also supports this proposition. This completeness does not materialize except an award is made. It is for this reason that the decisions of the Nigerian Supreme Court as exemplified in the *Murmansk* and *City Engineering* cases, though binding until overruled, should be re-visited. The above cases being the decisions of the Supreme Court, they no doubt remain the law until the Supreme Court overrules them. It is, therefore, submitted that in an appropriate case, the Supreme Court should reconsider those decisions and depart from them, as they are no longer in tandem with international arbitration best practices.

[29] 4th Edition, para.611 p.323. Also quoted in *K.S.U. D. B. v. Fanz Construction Ltd [1990] 4NWLR (Pt 142) 1, 37per Agbaje JSC.*

[30] G C Nwakoby and C E Aduaka; 'The Recognition and Enforcement of International Arbitral Awards in Nigeria: The Issue of Time Limitation', *Journal of Law, Policy and Globalization,* vol. 37, 2015 p. 116; See also O Akoni, 'Limitation period for the enforcement of Arbitration Awards in Nigeria – City Engineering Nig. Limited vs. Federal Housing Authority', www.nigerianlawguru.com/articles/arbitration