ARBITRATION AND THE COURTS: COLLABORATORS OR COMPETITORS?*

Abstract
The relationship between arbitral process and the courts is not new in the resolution of disputes. Arbitration which is one of the alternative means of resolving conflicts other than through the courts does not exist in isolation. This study examines whether arbitration and the courts are collaborators or competitors. The research methodology adopted was doctrinal. The study collected data from primary and secondary sources of law like the Constitution of the Federal Republic of Nigeria 1999 (as amended), Arbitration and Mediation Act 2023 and several other juristic literature, as well as other judicial authorities, to mention but a few. It was found, amongst other things, that arbitration and the courts compliment and complete each other. Arbitration had existed traditionally or customarily side by side the court system even before the statutory recognition of same. The study recommended an amendment of the Arbitration and Mediation Act 2023 in order for the Act to streamline what should constitute public policy and to reduce the period to set aside an arbitral award to seven days with express prohibition for extension of time, given the unique nature of arbitration.

Keywords: Arbitration, Arbitrators, Courts, Disputes, ADR.

1. Introduction

Conflicts and disputes are an inevitable phenomenon of human relationships. The natural tendency is for the disputants to invite a third party, to intervene and resolve the issues. In other words, man has evolved various mechanisms to resolve their versatile and competing interests. From the interpersonal level, family council, to community council of chiefs and elders, the king is the ultimate arbiter. In communities that are republican in their settings, the king-in-council that is the king assisted by his principal chiefs holds sway. The decisions reached at such fora are sacrosanct and binding.[1] Failure to adhere or comply with the decision is often visited by sanctions. Worse still, a party that fails to accept such decisions runs the risk of been ostracized from the community.[2] The methods adopted by these institutions can properly fit into what is today loosely referred to as Alternative Dispute Resolution and Arbitration. Arbitration is generally regarded as a specie of Alternative Dispute Resolution process and is seen as a better and more harmonious alternative method of dispute resolution in recent times. This is because it has come to lighten the workload and tasks of the judges. It is cheaper, quicker, flexible, informal, private and confidential and also preserves the relationship of the parties.

Arbitration as a method of settling disputes is as old as man himself. Traces of this activity can be found in the lives of primitive cave dwellers and our forebears. It is to be noted that the practice of submitting these contending issues for settlement by a neutral body or person was consensual. There was no imposition. None would our fore-fathers allow to be a judge even in the most trifling money matter, not to speak of affairs concerning the dignity of a man unless the opposition parties were agreed upon save and except in those circumstances where the agreed terms and procedures by the parties offend the rules of public police.[3] The Supreme Court of Nigeria recently corroborated this position when it observed in the case of *Mekwunye* v *Imoukhuede*[4] that the consensual nature of the agreement to refer disputes to arbitration is the most distinguishing feature of arbitration proceedings. The parties not only choose the method of resolving dispute, they also choose the venue, the umpire, and the law that will govern the proceedings. This is why a valid award operates between the parties as a final and conclusive judgment upon all matters referred.[5]

In medieval England, the merchants developed arbitration as a means of settling their disputes. These merchants due to their itinerant nature always travelled outside the English cities, quite removed from the reach of the common law. Smith and Keenan posited that foreign matters and many of these commercial disputes did involve either a foreign merchant or a contract made to be performed abroad, were left to some other body, especially if it could raise questions about the relations between the King and foreign sovereign.[6] Arbitration therefore came to the rescue as it afforded these merchants and traders a quicker method of settling their disputes without going through the labyrinth of the king's Courts. The concept of arbitration has now been entrenched as one of the major alternative means of resolution of disputes outside the court system of litigation. However, there still appears to be concerns on whether arbitration as a means of dispute resolution comes as a collaborator or competitor with the court system. It is this issue that this article seeks to address. Consequently, before a discussion on whether or not arbitration and the courts are corroborators or competitors, it is germane to clarify on the concepts of arbitration, courts, collaborators and competitors.

2. Clarification of Terms

Arbitration

Arbitration is ordinarily the practice of voluntarily submitting a dispute by the disputants to a neutral body, a third party for adjudication. There is an underlying willingness and agreement by the feuding parties to abide by the outcome or decision of the umpire. Arbitration has for a long time been an alternative dispute resolution method used by many, especially in commercial transactions to settle disputes without recourse to litigation (the Courts). Arbitration has some far-reaching benefits over litigation which makes it alternative to litigants.[7] Nobody has seen justice on a walk; nobody knows the latitude or the longitude of justice. But somehow, instinctively, we know when justice was been done, and we felt happy and satisfied. Conversely, we feel sore and distressed, and even appalled, at the

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[1] A Chuka, *Nigerian Arbitration Jurisprudence* (Allied Press 2010) 14.
[2] *Ibid.*
[3] J Parris, *The law and Practice of Arbitration* (George Godwin Ltd 1974) 1.
[4] [2019] 13 NWLR (Pt. 1690) 439, 500.
[5] (n 1).
[6] R Smith and D Keenan, *English Law* (Pitman Publishers 1983)10-11.
[7] S Omoregie, 'Judicial Review of Domestic Arbitral Awards, Some Suggestions' [2001] 5[2] *MPJFIL*, 183.

sight of grave injustice. Justice is the cornerstone of human togetherness. It is the only sure foundation on which to build peace and progress. It is the oil that lubricates social, individual and commercial relations.[8] When two or more persons agree that a dispute or potential dispute between them must be decided in a legally binding way by one or more impartial persons in a judicial manner on the basis of evidence put before him, her or them, they enter into an arbitration agreement or agree to submit to arbitration. Arbitration is the process of presenting the dispute to the arbitrator(s) for adjudication, which process ends when the arbitrator(s) hands down a decision. The decision is called an award.[9]

Arbitration is a decision of the parties that a dispute between them be settled by a tribunal of their choice.[10]Arbitration is essentially a very simple method of resolving disputes. Disputants agree to submit their disputes to an Individual whose judgment they are prepared to trust. Each puts it case to this decision maker, this private individual - in a word, this arbitrator.[11] In a similarly stead, arbitration has been observed to mean a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not[7]. The underlying point in Russell's definition is the emphasis on written agreement. A written arbitration is with respect cognisable only in an agreement made under the arbitration and conciliation Act. Lack of a written agreement does not invalidate an arbitration agreement under the common law and customary law. An arbitration agreement can be oral.[12] Accordingly, it is worthy of note to state that arbitration is different from formal litigation. In fact, it is the arduous and costly legality and technicalities associated with formal litigation, among other factors, that lead to the birth and emergence of Alternative Dispute Resolution of which arbitration is a major component.[13] Some of the reasons for the growing popularity of the alternative modes of dispute resolution include: time efficiency, cost efficiency and specialized adjudicator for resolving disputes.[14] Arbitration, therefore, is a system of justice, born of merchants; in one form or another, it has been in existence for thousands of years.[15] Hence, in the case of *Onuselogu Enterprises Ltd v Afribank Nigeria Plc*,[16]Galadima J.C.A observed that under the common law, an oral agreement to submit present or future differences to arbitration may be valid and enforceable.

Court

A reference to the court in Nigeria is basically not a reference to the Bar nor the staff of the judiciary but a reference to the Bench, which consists of Justices of the Supreme Court (SC) and Court of Appeal (CA), Judges of the Federal High Court (FHC), National Industrial Court (NIC), High Court of the State (SHC) and Federal Capital Territory (FCT), Abuja; Customary Court of Appeal (CCA) of the State and Federal Capital Territory (FCT), Abuja, Kadis of Sharia Court of Appeal of the State and Federal Capital Territory (FCT), Abuja; Magistrates, Members of the Customary Court and Kadis of the Sharia Court.[17] In the strict sense, it does not ordinarily include members of administrative Tribunals and Panels involved in adjudication except tribunals like the Code of Conduct Tribunal (CCT). To fall within the definition of judiciary, the tribunal or panel must be under the supervision and discipline of NJC or State Judicial Service Commission (JSC) and the Federal Judicial Service Commission (FJSC). Thus, the NJC referred 'the petition written against the Chairman of the CCT to the FJSC for investigation and to make appropriate report to NJC.[18] The Court can also be referred to as the institution comprising of the entire court system other than just the personnel manning the court.

Collaborators

Collaborators are the plural of the noun collaborator, which means a person who works jointly on an activity or project; an associate or helper.[19] A collaborator is a person that you work with to achieve something good.[20] He is a person who works together with others for a special purpose,[21] a person who works for or cooperates with another on something.[22]

Competitors

Competitors are the plural of the noun competitor, which means rivals or contenders for the same thing, a person who takes part in a competition.[23] Competitors are those who instead of complimenting one another oppose one another to the extent that it may lead to sabotage or acts geared towards undermining another.

3. Arbitration and the Courts: Collaborators or Competitors?

Arbitration is perhaps one of the earliest modes of settling contractual disputes by mankind. However, several authors have attempted to define arbitration as shown above. Arbitration is a matter of contract between the parties. Arbitration has been defined as the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[24] Arbitration is a process of resolving disputes between people or groups by referring them to a third party either agreed on by them or provided by the law, who makes a judgment in the form of an award.[25] According to Ray, in arbitration, disputes are resolved with binding effect, by person or persons acting in a judicial manner

[8]C A Oputa, 'Right to Personal Liberty in Nigeria' [1999] 3[1] *Nigerian Law and Practice Journal*, 73.
[9]Candide -Johnson & Shasore, *Commercial Arbitration Law and International Practice in Nigeria*, (Lexis Nexis 2012) 27.
[10] R Bernstein, *Hand book of Arbitration Practice* (Sweet and Maxwell 1993) 8.
[11] W W Park, *International Arbitration* (Oxford University Press, 2015) 2.
[12] Russell, *The Law of Arbitration* (18thedn, UK: Stevens & Sons Ltd, 1970) 38.
[13]O Obayemi, 'Jurisdiction and Arbitration of Tax Disputes in Nigeria' [2018] 9[1] *The Gravitas Review of Business & Property Law*, 124.
[14]*Ibid.*
[15] D Roebeck, 'Cleopatra Compromised: Arbitration in Egypt in the First Century BC' [2008] 74 *Arbitration*, 263.
[16][2005] LPELR – 11302 C.A.
[17] CFRN 1999, s 6 (5) (a)-(k); s 318.
[18] *Ibid*, 3rd sch pt 1, para f, on the powers of FJSC to recommend suitable persons to NJC for appointment and removal of federal judicial officers which includes the Chairman and members of the Code of Conduct.
[19] <https://www.merriam-webster.com> accessed 23 November 2023.
[20] <https://www.collinsdictionary.com> accessed 23 November 2023.
[21] <https://www.dictionary.cambridge.org> accessed 23 November 2023.
[22] <https://www.dictionary.com> accessed 23 November 2023.
[23] <https://www.vocabulary.com> accessed 23 November 2023.
[24] S Hetherington, *Halsbury's Laws of England* (Butterworth 1973) 255.
[25] L H Marylebone, *Halsbury's Statutes of England* (Butterworth 1985) 270.

in private, rather than by a national court of law that would have jurisdiction but for the agreement of the parties to exclude it.[26] Arbitration is a process by which disputes or differences between not less than two parties are referred to a court of competent jurisdiction for determination in a judicial manner.[27] Arbitration is a procedure for the settlement of disputes under which the parties agree to be bound by the decision of an Arbitrator whose decision is, in general final and legally binding on both parties.[28]

Arbitration is a not like the regular court process which is public but a private arrangement where a disinterested person usually called an arbitrator is chosen by the parties to a dispute to act in a judicial capacity without legal technicalities but applying laws agreed by the parties or regular laws, and acting in accordance with equity, good conscience resolves disputes between the parties ending in an arbitral award.[29] Arbitration has also been said to be the submission of a dispute between two or more parties for decision by a third party of their choice.[30] For Orojo and Ajomo, arbitration is a legal technique for the resolution of disputes outside of the Courts, in which the parties to a dispute refer it to one or more arbitrators by whose decision in the form of an award they agree to be bound.[31] It is a method of dispute resolution involving one or more neutral third parties who are usually appointed by the disputing parties and whose decision is binding.[32] Arbitration is a procedure for settlement of disputes, under which the parties agree to be bound by the decision of an arbitrator whose decision is, in general, final and legally binding on both parties.[33] The parties agreement defines the scope of the disputes subject to arbitration. Arbitration is a method of settlement of disputes as an alternative to the normal judicial method. It is one of the methods of alternative dispute resolution (ADR). Arbitration is a legal and a private alternative use in settlement of contractual disputes. Arbitration is a binding and enforceable form of dispute resolution.[34] Arbitration can be differentiated from the courts systems because of its private nature and from other ADR processes through its enforcement and binding element that is associated with the final decision of the arbitral tribunal where both parties have consented.[35]

Beyond the issue of this study, one controversial issue is whether Arbitration can be categorized as an ADR mechanism. It is worthy to note that despite its challenges, arbitral proceedings before an independent international tribunal have predominantly replaced conventional litigation as a means for parties to reconcile their commercial disputes. Evidence of this can be found in the staggering growth after the late 1970s petroleum disputes of the number of arbitration centers, arbitrators and arbitrations.[36] International arbitration is supposed to be an easy, user-friendly process and less expensive. However, the classic model of arbitration vastly differs from what some commentators refer to as the modern arbitral litigation[37] of today as there are lots of similarities with litigation. Arbitration is meant to be an informal means for the resolution of contractual disputes that is entered into consensually by both parties, who submit their case to an arbitral tribunal formulated by one arbitrator representing each party and a final neutral head arbitrator appointed by the institution in order to receive a private and final equitable decision or award.[38] Over time the increasing popularity of international arbitration has seen the classic model evolve towards modern arbitral practice. In essence rather than the informal setting, it tends to be formal and adjudicatory. The adjudication of international arbitration has been said to bear increasing semblance to private litigation, and indeed modern arbitral practices have been referred to by commentators as private arbitral litigation.[39] Arbitration is a process by which parties to a dispute submit their cases to a neutral third party for settlement.

On the role of the courts on arbitration process in Nigeria, Ajetunmobi states the role of the courts before arbitration ranges from the enforcement of the arbitration agreement since people can change their mind or differ in understanding what was agreed, the establishment of the arbitral tribunal if there is a complete failure of the appointment procedure agreed between the parties, or concern over the validity of the constitution of an arbitral tribunal, and there are no institutional or other rules for the parties to use to take care of these inadequacies, final resolution of challenges to jurisdiction of the arbitral tribunal.[40] He went further to posit that the role of the court during arbitration is limited to such issues as the appointment of an arbitral tribunal or substitute arbitrators, the removal of an arbitrator on grounds of misconduct, making of interim orders, compelling attendance of witnesses, enforcement and recognition of awards or refusal of same, and the setting aside of awards.[41] Furthermore, on the role of the court at the end of arbitration, it was argued that the court can address the issue of jurisdiction and competence of an arbitral tribunal after the award has been made and proceedings have been instituted for setting aside or refusal of recognition and enforcement of the award; lack of jurisdiction is not an express ground for setting aside or refusal of recognition and enforcement of an arbitral award but it can constitute misconduct on the part of the tribunal for which an award may be set aside under the Arbitration and Conciliation Act.[42]

Orojo and Ajomo agree that the first ruling on the challenge of the jurisdiction of the tribunal rests with the tribunal but that the final decision is for the court should the unsuccessful party appeal.[43] The extent to which a court can intervene in arbitration matters is circumscribed within the allowable limits in the *Arbitration and Conciliation Act (ACA)*, to the effect that a court shall not intervene

[26] S Ray, *Alternative Dispute Resolution* (Eastern Law House 2020) 9.
[27] C A Obiozor, *Nigerian Arbitration Jurisprudence* (Allied Press & Co 2010) 1.
[28] J D Peters, *Alternative Dispute Resolution and the Resolution of Employment Disputes* (Hybrid Consultants 2019) 193.
[29] F J Maxwell, *Commercial Alternative Dispute Resolution* (The Law Book Co Ltd 1989) 55.
[30] J Parris, *The Law and Practice of Arbitration* (George Godwin Ltd 1974) 1.
[31] O Orojo and A Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates Nig. Ltd 1999) 3.
[32] B A Garner, *Black Law Dictionary* (West Group Publishers 1991) 43.
[33] C R Drahozal, Commercial Arbitration: Cases and Problems (2nd Edn, LexisNexis 2006) 1.
[34] C Buhring-Uhle, *Arbitration and Mediation in International Business: Designing Procedure for Effective Conflict Management* (Kluwer Academic Publishers, 1996) 1.
[35] *Kano State Urban Development Board v Famz Construction Company Ltd* (1986) 5 NWLR [Pt. 39] 74; *Agu* v *Ikewibe* [1991] 3 NWLR (Pt 180) 385.
[36] E Torgbor, 'Opening Up International Arbitration in Africa' (2015) 130 *A.A.*158.
[37] T W Walde, "Mediation/Alternative Dispute Resolution in Oil, Gas and Energy Transactions: Superior to Arbitration/Litigation from a Commercial and Management Perspective" (2003) 2 OGEL <www.ogel.org/article.asp?key=65> accessed 20 November 2018.
[38] *Ibid*.
[39] (n 37).
[40] A O Ajetunmobi, *Alternative Dispute Resolution & Arbitration in Nigeria* (Princeton 2017) 196-198.
[41] *Ibid*, 199-200.
[42] *Ibid*, 201.
[43] J O Orojo & M A *Ajomo, Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates Nigeria Limited 1999) 169.

in any matter governed by the Act except where so provided in the Act. This statement of principle underscores and elucidates the policy of party autonomy underlying the Act and the aspiration to limit and define the court's role in arbitration so as to give effect to that policy. The intendment of the section is not to limit the jurisdiction of the court in determination of matters within its jurisdiction but rather, that no application may be made to the court in any matter where there is an available process in the Act. The essence is to ensure that arbitration process is not rendered nugatory and unattractive within our jurisdiction by incessant and unnecessary interventions by the courts.[44] Chinyere recognises that the court may be the place which decides whether particular disputes are to be arbitrated and that the assistance of the Court may be sought if one of the parties seeks to frustrate the arbitration process. She went further to posit that the Courts are handy where there is a hitch during the arbitration, for instance, where there is need to order a stay of court proceedings or to compel attendance of a witness. The enforcement machinery of the court is available where parties fail to comply with arbitral awards and the Courts may also intervene to set aside awards in within the allowable grounds of undue influence, bias duress and fraud.[45] Furthermore, Idornigie posited that an arbitration agreement does not operate as an ouster clause as to undermine the role of the court in arbitration process in Nigeria, thus the court can exercise its discretion to order for a stay of proceedings pending arbitration.[46] He went on to elucidate that the role of the court in arbitration in Nigeria extend to recourse against an award for the purpose of it being set aside, as well as enforcement of awards,[47] but that the extent of the court's intention in the arbitration process is as circumscribed in the *Arbitration and Mediation Act* and not beyond, even though he admitted that the role of the court is most limited where an arbitral institution as opposed to *ad hoc* arbitration is involved.[48] He went further to identify matters expressly provided for in the *Arbitration and Mediation Act* requiring court's assistance to include: the irrevocability of arbitration agreement except by agreement or leave of court, stay of proceedings, appointment of arbitrators, challenge of arbitrators/failures or impossibility to act, interim measure of protection, power of court to order attendance of witness, application for setting aside an arbitral award and remission of award, setting aside in case of misconduct by arbitrator and removal of an arbitrator, recognition and enforcement of award and refusal of enforcement of award.[49]

Rhodes-Vivour identifies the power of court to declare an arbitration agreement null and void, power to stay proceedings where there is submission to court, circumstantial power of the court to appoint an arbitrator, umpire, or third arbitrator, power of court to set aside the appointment of an arbitrator nominated by the parties to fill, power to state special case for the opinion of the Court, power to enlarge time to make an award, power to remit an award, power to set aside an award, power to enforce an award, power to compel the attendance of a witness, and power to direct or consider statement of case pending an award.[50] Rhodes-Vivour further identifies the role of the court in issuing anti-arbitration injunctions in some jurisdiction and anti-suit injunctions.[51] Courts in some jurisdictions have been known to issue anti-arbitration orders- an order forbidding a party from commencing or continuing its claim in arbitration, which is based on the courts findings that there is no valid arbitration agreement in the first place upon which parties can proceed, this obviously violates the competence-competence principle.[52] Anti-suit injunction is an injunction issued against the continuation of a suit in a foreign or local jurisdiction commenced in breach of an agreement to arbitrate, which in relation to a local jurisdiction like Nigeria may be in form of order for stay of proceedings pending arbitration.[53] For Russell, the role of the court extends to the consideration of appeal by the court of appeal where necessary leave have been sought for and obtained in respect to the interlocutory decision of the trial court ordering for a stay of proceedings.[54] He further opined that court's role while arbitral proceedings are pending includes but is not limited to granting of extension of time, appointing and removing arbitrators, determining disputes over jurisdiction, granting orders in respect to of the arbitration proceedings and determining preliminary points of law.[55]

According to Drahozal, the court has adopted the separability doctrine, which is to the effect that prima facie, an arbitration clause is separate from the contract made by the parties, such that the agreement to arbitrate is treated separately from the main contract as not to be affected by any fraudulent inducement whatsoever.[56] In the same stratum, for Candide-Johnson and Shasore, the role of the courts in the arbitral processes in Nigeria ranges from removal of an arbitrator guilty of misconduct and appointment of a replacement on the application of any of the parties, to issuing subpoenas and granting injunctions since the Supreme Court of Nigeria has long upheld the a non-exclusion position,[57] to determination of the validity of an arbitration agreement,[58] to grant of summary judgment for undisputable debt notwithstanding the arbitration clause because there is really no dispute to refer to arbitration,[59] to ordering for stay of proceedings pending arbitration is far as the defendants has not taking steps in the proceeding by filing of statement of defence or similar defence fillings like counter affidavit to an originating summons or in opposition to summons for summary judgment,[60] to recognition,

[44] G Nwakoby, 'The Courts and the Arbitral Process in Nigeria' (2004) 4 (1) *Unizik Law Journal*, 2004; 20; A C Chinyere, *The Role of the Courts in Arbitration in Nigeria* <https://www.academia.edu/31853478/THE_ROLE_OF_THE_COURT_IN_ARBITRATION_IN_NIGERIA> accessed 13 October 2023.
[45] J Sweet, *Legal Aspects of Architecture, Engineering and the Construction Process* (St. Paul West Publishing Company 1977) 563.
[46] P O Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Lawlords Publications 2015) 266-268; *Ogun State Housing Corporation* v *Ogunsola* [2000] 14 NWLR (Pt 687) 431, 446; *United World Limited Inc.* v *Mobile Telecommunication Service Ltd* [1998] 10 NWLR (Pt 568) 106, 199.
[47] P O Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Lawlords Publications 2015) 273-308.
[48] *Ibid*, 309-310.
[49] *Ibid*, 314-315.
[50] A Rhodes-Vivour, *Commercial Arbitration Law and Practice in Nigeria through the Cases* (LexisNexis 2016) 584-587.
[51] (n 50) 634-635.
[52] *Ibid*, 634; *Statoil (Nig. Ltd & Anor* v *Nigerian National Petroleum Corporation & 3 Ors* (2013) 7 CLRN 74.
[53] *Ibid*, 635.
[54] F Russell, *Russell on Arbitration* (Sweet & Maxwell 1997) 332.
[55] *Ibid*, 333.
[56] C R Drahozal, *Commercial Arbitration: Cases and Problems* (LexisNexis 2006) 57.
[57] C A Candide-Johnson & O Shasore, *Commercial Arbitration Law and International Practice in Nigeria* (LexisNexis 2012) 119-120; *Obembe* v *Wemabod Estates Ltd* (1977) 11 NSCC 264, (1977) 5 SC 115.
[58] *Ibid*, 122-123.
[59] *Ibid*, 123-124.
[60] *Ibid*, 124-139; *Onward Enterprises Ltd* v *MV* Matrix [2010] 2 NWLR (Pt 1179) 530, 551; *The Owners of MV "Lupex"* v *Nigerian Overseas Chartering & Shipping Ltd* [2003] 15 NWLR (Pt 844) 469 SC; *Obembe* v *Wemabod Estates Ltd* (1977) 11 NSCC 264.

enforcement of local and foreign arbitral wards and setting aside of arbitral awards.[61] Furthermore, Oyekunle and Ojo state that the role of the court in the arbitration process in Nigeria includes but is not limited to appointment of arbitrators in the intervening capacity of the court, compelling the attendance of witnesses, compelling the production of documents where the other party refuses to do so in a arbitration proceeding, setting aside an award, remission of award to afford the arbitral tribunal an opportunity to resume arbitral proceedings or take such other action to eliminate the ground for setting aside an award, enforcement and recognition of award, refusal of award, and enforcing arbitration clauses in contracts.[62] For Asouzu, the role of the court in the arbitral process in Nigeria is not limited to the enforcement of *ad-hoc* and institutional arbitration awards, but extends to the enforcement of an award made by the International Center for the Settlement of Investment Disputes (ICSID) in so far as a copy of the award duly certified by the Secretary-General of the Center is filed at the Supreme Court of Nigeria by the party seeking its recognition for enforcement in Nigeria.[63]

From the going, it suffices to submit that arbitration and the courts are collaborators and not competitors as they not only complement each other but completes each other. In fact, even before the statutory recognition of arbitration, it has existed traditionally or customarily side by side the court system and towards the end of dispute resolution.

4. Conclusion

As part of the complimentary role of the court to set aside an arbitral award, section 55 of the Arbitration and Mediation Act 2023 (AMA) provides for limitation period of three months within which an application to set aside an award will be made. However, the provisions of section 55(3) of AMA that an award can be set aside if it is against the public policy of Nigeria is troubling. Public policy is an "unruly horse" and is capable of manifesting in many forms. Therefore, an amendment of this section becomes necessary to streamline and particularize what should constitute public policy in this circumstance and to reduce the period to set aside an arbitral award to seven days without provision for extension of time, given the unique nature of arbitration. Accordingly, it is the conclusion of this article that the view that arbitration and the courts are competitors is not only erroneous but blinds the eyes to the role of both arbitration and the courts in the dispute resolution process. This is because both arbitration and the courts play a unique role and the chief end of both is to ensure adequate resolution of disputes. The court's support of arbitration, as stated above, is so glaring, that holding that they are competitors and not collaborators may be seen as disservice to the dispute resolution system and the society.

[61] *Ibid*, 149-203.
[62] T Oyekunle & B Ojo, HandBook of Arbitration and ADR Practice in Nigeria (LexisNexis 2018) 215-243.
[63] A A Asouzu, International Commercial Arbitration and African States (Cambridge University Press 2001) 368-377; ICSID (Enforcement of Awards) Act 1967, s 1 (1).