

**AN EXAMINATION OF THE LEGAL GROUNDS FOR SETTING ASIDE AN
ARBITRAL AWARD IN NIGERIA**

AMAMCHUKWU CHISOM VERA

GOU/U22/LAW/477

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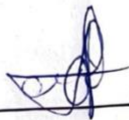
BEING A LONG ESSAY PRESENTED TO THE FACULTY OF LAW, GODFREY
OKOYE UNIVERSITY, ENUGU STATE, IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD FO THE BACHELOR OF LAW (LL.B) DEGREE

SUPERVISOR: HONORABLE DR. JOSEPHAT OKIKA EMMANUEL

JULY 2026

DECLARATION

I, Amamchukwu Chisom Vera, with the Registration Number GOU/U22/Law/477, hereby affirm that this work was duly and diligently carried out by me. The primary and secondary sources used to carry out this legal research, are acknowledged appropriately and referenced herein, within this project. This work is an original and has not been submitted in part or in full for the award of any degree in this or any other Faculty of Law within and outside Nigeria.



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Date



APPROVAL PAGE

I, Amamchukwu Chisom Vera, with Registration Number GOU/U22/Law/477, hereby certify that this project research was done by me, with the direct and diligent supervision of Dr. Josephat Okika Emmanuel, has been approved by the administrative and academic staff of the Faculty of Law, Godfrey Okoye University, Enugu. In partial fulfilment of the requirement for the award of Bachelor of Law (LL. B) Degree.

Apart from the references made and acknowledged herein within this research work, this research work is an original work and has not been presented in part or in full, for any degree of this University or any other University.



Dr. Josephat Okika Emmanuel.
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Date



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Date



External Examiner



Date

DEDICATION

This academic research work is profoundly dedicated to Almighty God, the sovereign source of my life, wisdom, and strength, whose sustaining grace and divine guidance made this entire journey possible.

It is equally dedicated to my beloved family, whose endless sacrifices, unceasing prayers, and unwavering support formed the baseline of my education. To my amiable parents, most especially my supportive father, Mr. Nwankwo Benson Amamchukwu, my loving siblings and ever present friends.

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LIST OF ABBREVIATIONS

ACA	Arbitration and Conciliation Act
ADR	Alternative Dispute Resolution
AJLSR	Academic Journal of Legal Studies and Research
AMA	Arbitration and Mediation Act
ART	Award Review Tribunal
CA	Court of Appeal
CFRN	Constitution of the Federal Republic of Nigeria
CUP	Cambridge University Press
ECtHR	European Court of Human Rights
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
FAA	Federal Arbitration Act
FCT	Federal Capital Territory
FHC	Federal High Court
FRN	Federal Republic of Nigeria
ICCA	International Council for Commercial Arbitration
IPCO	International Petroleum Company
LCIA	London Court of International Arbitration
LFN	Laws of the Federation of Nigeria
LL.B	Bachelor of Laws
LPELR	Law Pavilion Electronic Law Reports
M.V.	Motor Vessel
NCJIL	North Carolina Journal of International Law
NNPC	Nigerian National Petroleum Corporation
NOCSL	Nigerian Overseas Chartering and Shipping Limited
NWLR	Nigerian Weekly Law Reports
OLJ	Orient Law Journal
P&ID	Process and Industrial Developments Limited
QB	Queen's Bench
SC	Supreme Court
SDRP	Savezno Direkcija za Robni Promet
SSRN	Social Science Research Network
UK	United Kingdom
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UNCITRAL	United Nations Commission on International Trade Law
US	United States
USC	United States Code

ABSTRACT

Arbitration has become a major mechanism for resolving commercial disputes in Nigeria because it offers parties a private, flexible as well as speedy alternative to litigation. However, although arbitral awards are intended to be final and binding, they are not immune from judicial control. Courts may set aside an arbitral award where the award. Therefore, this study examines the legal grounds for setting aside arbitral awards in Nigeria and make recommendations for improvement. The research adopted a doctrinal methodology and it relied on primary sources such as statutes, conventions and judicial decisions, as well as secondary sources such as textbooks, journal articles and internet materials. This study found that the Arbitration and Mediation Act (AMA) 2023 is the principal legislation which govern the setting aside of arbitral awards in Nigeria. Section 55 of the Act which provides a closed list of grounds. It also found that the Constitution, the New York Convention and the UNCITRAL Model Law remain relevant to the legal and institutional framework. Furthermore, the study found that the grounds for setting aside awards include incapacity, invalid arbitration agreement, lack of proper notice, inability to present a case, excess of powers, improper tribunal composition, non-arbitrability, public policy, fraud and corruption. However, the study identified several challenges. These includes judicial interference, ambiguity in interpreting the statute, delay in court proceedings, abuse of setting-aside applications, difficulty in proving fraud and corruption, and limited judicial authorities under the new Act. This study recommends that the judiciary should adhere to section 55 strictly; public policy and substantial injustice should be interpreted clearly; there is need to fast-track the procedures for arbitration-related applications; arbitration agreements should be drafted properly; and Award Review Tribunal should be utilised carefully. This study concludes that the AMA 2023 has strengthened the framework for arbitration in Nigeria. However, judicial interpretation must be disciplined.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

According to Black's Law Dictionary,¹ arbitration is a process for resolving conflicts that includes one or more impartial individuals, typically chosen by the parties in disagreement, and whose ruling is obligatory. Arbitration has emerged as a crucial method for settling business conflicts. Parties routinely insert arbitration clauses into cross-border contracts. This is because arbitration ensures neutrality, flexibility, confidentiality and, above all, a relatively speedy and final resolution.

An arbitral award is issued once the arbitral tribunal has finalised its examination of the dispute and provides its written decision regarding the matters presented by the parties. It is issued at the conclusion of the proceedings as a final award (although interim or partial awards may be made earlier where necessary).² Arbitral awards are designed to be conclusive and obligatory, allowing for minimal judicial intervention. This is due to the fact that arbitration gains its authority from the agreement of the involved parties and basic principles of fair procedure. However, arbitral awards are not entirely insulated from judicial control. Consequently, many legal systems offer reasons that allow a court to nullify an arbitral award.³

Nigeria is a significant arbitration jurisdiction in Africa. Historically, the Arbitration and Conciliation Act (ACA)⁴ was the principal statute which governed arbitration. It was influenced by the 1985 Model Law. This law was criticised because it utilised outdated terminology. In addition, it had an ambiguous ground of "misconduct" for challenging awards

¹ BA Garner (ed), *Black's Law Dict.* (9th edn, Thomson Reuters 2009) 119.

²GB Born, *Intl Commercial Arbitration* (3rd edn, Kluwer Law Intl. 2021).

³*ibid.*

⁴Arbitration and Conciliation Act, Cap A18, LFN 2004 (ACA).

and this enabled the judiciary to intervene excessively. Hence, finality and commercial certainty were undermined. In response to this challenge, Nigeria enacted the Arbitration Mediation Act (AMA).⁵ It aligned with international standards. It also established more predictable rules on the setting aside of awards. Section 55 of AMA⁶ adopts a closed list of grounds. It mirrors Article 34 of the Model Law and the New York Convention. Concurrently, the Act omits “error on the face of the award” and other expansive concepts as valid reasons for annulment. The AMA additionally establishes the Award Review Tribunal (ART). This mechanism is not mandatory and it enables parties to submit the award to a specially constituted arbitral tribunal for review (instead on going directly to the courts).⁷ It also necessitates that challengers demonstrate that any irregularity has resulted in or will result in significant injustice.

Nigeria is a signatory to the New York Convention. It serves as a venue for international arbitrations. Furthermore, a connection exists between the act of setting aside and the enforcement across borders. This introduces an additional level of intricacy. According to Article V(1)(e) of the New York Convention, a court may refuse to enforce an award if it has been invalidated at the location where it was issued. Nonetheless, this is optional; it is not required. In certain jurisdictions, courts have sometimes upheld awards even following their annulment at the seat. This situation often arises when the annulment appears to contradict essential tenets of due process or international public policy.⁸ Consequently, the reasons for nullifying an award in Nigeria affect its viability or demise internationally. Consequently, this research will examine the similarities and differences in the legal bases for annulment of arbitral awards in the two nations.

⁵ Arbitration and Mediation Act 2023 (AMA).

⁶ibid.

⁷ibid s 56.

⁸Born (n 2) 3258–3265.

1.2 Statement of the Problem

This study is driven by the increasing significance of arbitration as a means of settling disputes in Nigeria and the necessity to comprehend the ways in which arbitral awards can be contested following their issuance. Arbitration is appreciated for providing parties with efficiency, privacy, control over the process, and conclusive outcomes. Nonetheless, the conclusiveness of an arbitral award is not unconditional. A party that is unhappy with the award and wants to contest it should be aware of the grounds for seeking the court's intervention to annul the award. This creates a tension between preserving the finality of arbitration and ensuring that arbitral proceedings are fair and legal.

Going further, this research is also motivated by the recent reform of arbitration law in Nigeria through the Arbitration and Mediation Act (AMA).⁹ The Act brought modifications to the legal framework regarding the annulment of arbitral awards. It took the place of the broader and occasionally ambiguous areas linked to the ACA.¹⁰ The updated legislation incorporates clearer criteria for annulment of awards. Furthermore, it presents ideas like significant unfairness and the Award Review Tribunal.

These pose significant enquiries regarding the extent to which the judiciary can engage with arbitral decisions without compromising the fundamental objectives of arbitration. The study fundamentally seeks to elucidate the legal basis for which an arbitral award can be annulled in Nigeria according to the existing legislation. It also seeks to examine whether the new legal framework balances party autonomy, arbitral finality, judicial control and justice. In that sense, this research is necessary for legal scholarship and arbitration practice in Nigeria.

⁹AMA 2023.

¹⁰ACA (n 4).

1.3 Research Questions

This study is guided by the following research questions:

- i. What legislative and institutional framework governs the setting aside of arbitral awards in Nigeria?
- ii. What are the legal grounds for setting aside an arbitral award in Nigeria?
- iii. What challenges arise in the application of the legal grounds for setting aside an arbitral award in Nigeria?

1.4 Aim and Objectives of the Research

The aim of this project is to examine the legal grounds for setting aside an arbitral award in Nigeria and make recommendations for improvement. To accomplish this, the study will pursue the following objectives:

- i. To examine the legislative and institutional framework governing the setting aside of arbitral awards in Nigeria.
- ii. To identify and analyse the legal grounds for setting aside an arbitral award in Nigeria.
- iii. To appraise the challenges associated with the application of the legal grounds for setting aside an arbitral award in Nigeria.

1.5 Scope and Limitation of the study

The research primarily focuses on the legal basis for annulling arbitral awards in Nigeria. The research centers on judicial review after an award within the wider domain of arbitration at the designated seat. It does not focus on the entire life cycle of arbitral proceedings. Furthermore,

it does not address pre-award issues in depth, except to the extent that these matters relate to the reasons for annulment of the award. The research is also restricted to the grounds for setting aside (annulment/vacatur) and the institutional framework that administers those grounds. There is a risk that certain cutting-edge or practice-specific insights are contained in confidential resources which are not accessible to the researcher. Arbitration law is a rapidly developing field. In Nigeria, the AMA is relatively new. Hence, there may be limited judicial authority interpreting some of its provisions.

1.6 Significance of the Study

The research holds importance for a variety of factors. Firstly, Nigeria is in a phase of Arbitration Reform (with the AMA) and it is positioning itself to be an arbitration-friendly hub in Africa.¹¹ Secondly, for multinational parties, this project informs strategic choices. Third, comparative analysis can reveal gaps or tensions in each regime (most especially in Nigeria).

Moreover, by weighing alternatives and critiques, the research may suggest improvements. Nigeria outrightly banned merits-review (error of law) under the new law. This shows that there is a strong commitment to finality.¹² But, one could question if this goes too far in denying justice. This study would inform future legal debates. It also contributes to scholarship by filling a gap.

1.7 Research Methodology

¹¹K Osipitan, E Iluezi-Ogbaudu, T Sinmi-Adetona and A Adebesein, '2023 Arb. Year in Rev. – Nig.' [29 August 2024] Daily Jus <<https://dailyjus.com/world/2024/08/2023-arbitration-year-in-review-nigeria>> accessed 11 December 2025.

¹²Osipitan and others (n 11).

This study employs a doctrinal framework, utilising both primary and secondary materials. The main sources consist of laws and court rulings, whereas the additional sources encompass textbooks, articles, journals, online resources, and more.

1.8 Literature Review

Numerous scholars have contributed immensely to the existing body of knowledge in relation to this project topic.

Born¹³ offered an extensive overview of global commercial arbitration. This covers the reasons and outcomes of annulment (setting aside) of arbitral awards in both Model Law and non-Model Law jurisdictions. Born discovered that the judicial examination of awards at the seat is limited to specific procedural bases in contemporary international arbitration. There is hardly any opportunity for reassessing the advantages.

He emphasises that many national statutes replicate Article 34 of the UNCITRAL Model Law. This is a “closed list” approach and it is designed to balance the autonomy and finality of the party against minimum standards of fairness and legality. Born further notes that even controversial doctrines add little beyond the existing statutory “excess of authority” ground if they survive at all. This work has notable limitations. It is a global doctrinal synthesis. It is not focused on any single pair of jurisdictions; Nigeria is only treated passively.

On the other hand, Yang¹⁴ examined the ongoing reform in Arbitration Law in China. He focused on the proposed and revised rules pertaining to the annulment of international arbitral awards. He evaluated how the reform in China aligns with international standards. He

¹³Born (n 2) 3258–3265.

¹⁴YS Yang, ‘Annulment of Intl Arbitral Awards in Chinese Arb. Law Ref.’ [2024] (17) (1) *Tsinghua China LR* 205 <<https://www.tsinghuachinalawreview.law.tsinghua.edu.cn/UploadFiles/2025-01-31/7rcunxkd91ep8sbq.pdf>> accessed 11 December 2025.

found that the 2021 Draft for Comments aimed to consolidate and update the criteria for annulling both domestic and international awards.

Nonetheless, the 2024 Draft Revision steps back from certain aspects of these reforms. It brings back a two-level system that differentiates between domestic and international awards. Moreover, it maintains that the reasons for annulling foreign-related awards are primarily procedural. Yang concluded that international trends still strongly favour narrow annulment grounds. In addition, substantive re-hearing of the merits are generally disfavoured. This work has notable limitations. It focuses on China heavily. It is not about Nigeria.

Nwakoby and others¹⁵ analysed the “impeachment” (i.e., contesting and nullifying) of arbitral awards in Nigeria under the recently passed AMA. They concentrated on the ways in which the Act has reorganised and restricted the reasons for overturning awards. Nwakoby and others¹⁶ discovered that the AMA positions Nigeria in closer alignment with the UNCITRAL Model Law. It utilises a fixed list of reasons for annulment of awards as outlined in section 55. This mirrors Model Law Article 34.

They also noted that the Award Review Tribunal mechanism is a key innovation. It would allow parties to opt into a specialised arbitral review body instead of going directly to the courts. The study concludes that AMA narrows judicial discretion. This work has notable limitations. First, it is largely descriptive. There is little engagement with empirical data on how Nigerian courts actually apply section 55 or whether the Award Review Tribunal will be utilised in practice. Moreover, the analysis is inward-looking.

¹⁵GC Nwakoby, BC Nwakoby and GK Nwakoby, ‘Impeachment of Arb. Award: Rev. of AMA 2023’ [2024] (10) (6) *AJLSR* 1–23 <<https://topjournals.org/index.php/AJLSR/article/view/620>> accessed 26 June 2026.

¹⁶*ibid.*

Similarly, Onyirioha¹⁷ evaluated the AMA comprehensively. He assessed whether the Act modernises the arbitration regime in Nigeria. Onyirioha¹⁸ found that the AMA introduces several reforms and this indirectly affects the regime for setting aside. Clearer provisions have been established to minimise procedural errors which might later form grounds for annulment. With respect to section 55, he notes that Nigeria has now dropped the vague “misconduct” language. Currently, it adopts a modern taxonomy of annulment grounds. It also offers parties an optional Award Review Tribunal. The author concludes that the Act enhances the arbitration regime in Nigeria. However, reforms depend heavily on judicial attitudes and institutional capacity. This work has notable limitations. It treats the setting aside regime as one element of a very broad legislative appraisal. It only examines section 55 briefly. It also does not examine the relationship between section 55 and the provisions under the New York Convention.

On the other hand, Ikusika¹⁹ focused on the introduction of a “substantial injustice” requirement in the AMA. He examined how this standard operates and how it is a filter in applications for setting aside. He also examined whether it imposes a higher threshold on parties who seek annulment. He found that the AMA relies on U.K. and other common law influences. Hence, it requires parties to demonstrate a recognised ground (such as procedural irregularity or excess of jurisdiction).

Furthermore, it necessitates demonstrating that the irregularity has resulted in or will result in significant unfairness. He observed that this standard aims to avert tactical issues arising from slight technical violations. Thus, it safeguards the conclusiveness of awards. He also observes that Nigerian courts must establish standards for what constitutes “substantial injustice.” This

¹⁷MU Onyirioha, ‘Evaluation of the AMA 2023 of Nig.’ [2025] (6) *OLJ* 153–162
<<https://journals.ezenwaohaetorc.org/index.php/OLJ/article/viewFile/3250/3388>> accessed 26 June 2026.

¹⁸*Ibid.*

¹⁹B Ikusika, ‘Proving Substantial Injustice under the AMA 2023’ [2024] *SSRN Electronic J*
<<https://ssrn.com/abstract=5001046>> accessed 26 May 2026.

may become a focal point of future litigation. This paper delves deeply into the most important innovation in the AMA. However, it has notable limitations. It relies heavily on comparative analogies and hypothetical scenarios.

Bird²⁰ assessed the risks posed by divergent national approaches to enforcing annulled awards from a corporate perspective. He also evaluated whether the New York Convention adequately addresses the problem or requires reform. Bird²¹ found that enforcement of annulled awards remains “aggressively debated.” French courts embrace delocalisation (enforcing awards notwithstanding annulment at the seat). Ultimately, Bird suggests that the New York Convention should be revised or clarified in order to harmonise practice. This work illustrates why the grounds for annulment matter to commercial actors. However, it has a notable limitation. It does not compare the statutory grounds for setting aside awards in specific jurisdictions, let alone in Nigeria.

Silberman and Hess²² synthesised global practice on enforcement of awards that have been set aside at the seat. They assessed whether there is an emerging consensus or continuing fragmentation. Silberman and Hess²³ found that there is no uniform approach. In some jurisdictions (such as France), international awards are delocalised and therefore they are not fully bound by annulments of seat-court. Conversely, others (such as the U.S., Germany and many Model-Law states) give more weight to the annulment.

However, they still recognise a residual discretion under Article V(1)(e) to enforce in exceptional circumstances. They note that most modern statutes reserve annulment to limited procedural grounds. This is influenced by the Model Law and the Convention. They concluded

²⁰RC Bird, ‘Enforcement of Annulled Arbitration Awards’ [2012] (37) (4) *NCJIL* 1014–1058.

²¹*ibid.*

²²LJ Silberman and RU Hess, ‘Enforcement of Arbitral Awards Set Aside at the Seat’ in S Kröll, AK Bjorklund and F Ferrari (eds), *Cambridge Compendium of Intl Comm. and Invest. Arb.* (CUP 2023) 1515–1542.

²³*ibid.*

that a strict uniform rule has not emerged. However there is a broad international trend towards (i) narrow annulment grounds at the seat. (ii) reluctant; however, real discretion for enforcement courts to disregard abusive annulments. This work surveys dozens of jurisdictions. Hence, it provides a panoramic picture. However, it has notable limitations. It condenses each domestic system into a few pages.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Meaning of Arbitration

Arbitration is a process for resolving disputes outside of the court system, where involved parties consent to present their conflict to one or more neutral arbitrators. Their choice will be conclusive and obligatory.²⁴ In contrast to court litigation, arbitration is based on mutual agreement and typically offers greater procedural flexibility and confidentiality. UNCITRAL defines arbitration as a process for settling conflicts through binding resolutions that occur outside of the judicial system.

There isn't one definitive method to define arbitration. Arbitration refers to a procedure where conflicting parties submit their cases along with evidence to an impartial third party, known as the arbitrator, who subsequently makes a ruling.”²⁵ This ruling (the arbitral award) generally needs to be documented in writing and should also provide the rationale (unless the parties consent to a different arrangement). It should additionally bear the signature of the arbitrator. Awards may be final (conclusive on the merits) and they are intended to carry the force of a contract or court judgment. In Nigeria, domestic law and international conventions recognise these general attributes of arbitration.

2.1.2 Seat of Arbitration

The seat or official venue of an arbitration is an important idea. It pertains to the authority whose legislation regulates the arbitration process (the *lex arbitri*). Parties usually specify the

²⁴Born (n 2) 213–220.

²⁵UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended), art 2(a).

location in their arbitration agreement; if they do not, rules or tribunals may determine it. The seat matters because it determines which courts have supervisory authority (the curial courts). It also determines which procedural law applies. As Blackaby and others²⁶ notes, “The selection of a seat also signifies a consensus among the parties to identify the courts that will fulfil a ‘curial role.’” Essentially, only the courts located at the seat possess the authority to invalidate (overturn) the award. If an arbitration takes place in Lagos, Nigeria, then the challenges would be governed by Nigerian law and courts. The *lex arbitri* is frequently referred to as the “law of the seat.” It provides default rules (for example, how the tribunal is constituted and how awards may be challenged) which are not explicitly fixed by the parties.²⁷ It is crucial to note that certain arbitrations might take place in a country that differs from the one whose substantive law applies to the contract. For example, a contract might be subject to the laws of New York and then it might be arbitrated in England as the seat.

2.1.3 Meaning of Arbitral Awards

An arbitral award represents the ruling of tribunal on the issues submitted by the parties.²⁸ Awards may be final awards (deciding the merits of the dispute, often including costs) or interim awards (addressing subsidiary issues, such as preserving assets), and sometimes partial awards (deciding only part of the dispute). According to their definition, awards are obligatory for the involved parties and are also open to restricted examination. Furthermore, they are intended to produce an effect equivalent to that of a court ruling. The arbitration law in Nigeria defines "award" in a general sense. Nonetheless, each includes global standards. The

²⁶N Blackaby, C Partasides, A Redfern and M Hunter, *Redfern and Hunter on Intl Arb.* (7th edn, Oxford University Press 2023).

²⁷Blackaby and others (n 26).

²⁸Born (n 2).

UNCITRAL Model Law mandates that an award must be documented in writing and include the rationale behind it.²⁹ Practical attributes of an award include:

- i. it must decide the parties' dispute
- ii. it is final (subject to challenge under specific grounds)
- iii. it is enforceable under domestic law or the New York Convention.

Awards are typically signed by arbitrators (a minority dissenting opinion may be included if allowed).

2.1.4 Forms of Arbitral Awards

Arbitral Tribunals do not issue a single uniform type of decision. There are several forms of arbitral awards. They include the following: final, partial, interim or interlocutory, consent, default and additional or corrective awards. Each has different implications for finality, enforcement and setting aside. This is recognised by the legislation in Nigeria.³⁰

(a) Final awards

A final award is the determination that resolves all matters presented to the tribunal. This is the format primarily envisioned in the regulations regarding acknowledgement, implementation, and annulment under both the AMA and the New York Convention.³¹ In *Baker Marine (Nig) Ltd v Chevron (Nig) Ltd*³² The Court of Appeal emphasised that the court's function when considering a final arbitral award is limited to the statutory grounds. It is unable to assess the value or replace its own opinion with that of the tribunal. This is due to the fact that it would

²⁹UNCITRAL Model Law (n 25) art 31.

³⁰AMA 2023, s 55.

³¹AMA 2023, ss 55–57; Convention on the Recog. and Enforc. of Foreign Arb. Awards 1958 (New York Convention), arts III–V.

³² [2000] 12NWLR(Pt681)393(CA).

have arrived at an alternative conclusion. More recently, in *NNPC v Fung Tai Engineering Co Ltd*,³³ the Supreme Court reaffirmed that a properly rendered award is final and binding. It warned that opportunistic attempts should not use court processes to frustrate enforcement. Notably, final awards are the primary targets of setting-aside applications in both Nigeria. Hence, they attract the strictest judicial scrutiny.

(b) Partial awards

A partial award ultimately resolves certain contested matters. It leaves other matters for a subsequent award. They may still be “final” as to the issues they resolve. Hence, they are capable of separate enforcement or challenge. This presents a challenge to the court. If a partial award on jurisdiction or liability may be challenged immediately under AMA s 55, an early annulment may prevent the waste of time and costs on a jurisdictionally defective arbitration.

On the other hand, if there is early court involvement during the partial-award phase, the procedure could become disjointed. Consequently, there are drawn-out court battles seen in cases such as *M.V. Lupex v NOCSL*³⁴ when challenges to partial awards to entertained excessively. A partial award is reviewable only if it finally resolves a separate, independent claim. Interlocutory decisions remain immune from vacatur until the end of the arbitration.³⁵ The label “partial” is less important than the substantive effect. Courts would ask whether the tribunal intended to decide a claim once and for all.

(c) Interim or interlocutory awards

Interim or interlocutory awards deal with procedural or provisional issues and this arise during the arbitration. They include interim measures or bifurcation of issues. Section 26 ACA

³³ [2023] 15NWLR(Pt1906) 117(SC).

³⁴[2003] 15 NWLR(Pt844) 469(SC).

³⁵Born (n 2) 3298–3305.

expressly authorised tribunals to make “interim or partial awards or interlocutory.” The AMA continues this approach. Conversely, New York Convention hold that some interim decisions may be “awards” depending on content and effect. Interim measures are increasingly used in high-value disputes where there is need to preserve assets or the continuity of project.

This is common in oil and gas and infrastructure projects involving NNPC and other state-linked entities. However, commentators have criticised the uncertainty around whether particular interim orders are enforceable or challengeable as awards.³⁶ Nigerian courts will need to draw similarly careful lines if they are to avoid both under-protection (which leaves parties stuck with unjust but “interim” decisions) and over-intervention (where every procedural is a potential occasion for setting-aside).

(d) Consent awards

A consent award is an award which embodies the terms of a settlement agreement reached by the parties and it is recorded by the tribunal at their request. In Nigeria, it is now recognised that settlement agreements may be enforced as contracts, as court consent judgments or as arbitral consent awards. Consent awards are especially attractive in banking and construction disputes where commercially sensible settlements are common.

However, parties still prefer the coercive enforcement associated with an award. From the perspective of setting aside, consent awards remain vulnerable where the underlying settlement was tainted by fraud, duress, misrepresentation or illegality. Courts in Nigeria have permitted annulment in exceptional cases. In addition, they generally uphold the principle that parties should be held to bargains they freely concluded.³⁷

³⁶Born (n 2) 3298–3305.

³⁷AMA 2023, s 55(3)(a)–(b) and (f); Federal Arbitration Act 1925, 9 USC § 10(a)(1); *Stolt-Nielsen SA v Animal-Feeds International Corp* 559 US 662 (2010).

(e) Default awards

A default award occurs when one party, typically the respondent, does not engage in the proceedings. The tribunal then continues without the presence of the other party based on the evidence at hand. The AMA implicitly supports this by permitting the tribunal to proceed with the case even if a party does not show up or present their argument. However, proper notice must have been given. Default awards are common in domestic commercial disputes where respondents ignore notices.

Critically, default awards are especially susceptible to the challenges of setting-aside on due-process grounds. Unsuccessful parties frequently invoke the AMA's grounds relating to lack of proper notice or inability to present one's case³⁸ or even public policy.³⁹ Nigerian courts have occasionally been receptive. This is common where it is proven that there were defects in service or serious procedural irregularities. Courts should not reward deliberate non-participation. A party that intentionally declines to participate in arbitration should not be permitted to utilise the setting-aside procedure as a covert means of appeal.⁴⁰

(f) Additional and corrective awards; domestic and foreign awards

Many arbitration statutes, (including the AMA) also provide for additional awards (to address claims inadvertently omitted from a final award) and corrective awards (to rectify clerical or computational errors).⁴¹ These mechanisms are narrow. They are not a back-door route for

³⁸AMA 2023, s 55(3)(a)(iii).

³⁹*ibid* s 55(3)(b)(ii).

⁴⁰Born (n 2) 1410–1425.

⁴¹AMA 2023, s 58.

tribunals to revise their reasoning or revisit the merits. An attempt to do so may give rise to an application for setting-aside on the ground that the tribunal has exceeded its powers.

Finally, awards may be classified as domestic or foreign/international. In past, there have been difficulties under the ACA⁴² when courts try to set aside foreign awards. Currently, the AMA clearly distinguishes between seat-state annulment⁴³ and recognition or enforcement.⁴⁴ This aligns Nigerian practice more closely with the framework of the New York Convention.

2.1.5 Lex Arbitri

The term *lex arbitri* denotes the law of the seat of arbitration.⁴⁵ It regulates the process of arbitration and its interaction with the judiciary. The law governing arbitration decides the validity of an arbitration agreement. It also specifies the process for appointing arbitrators. Furthermore, it establishes the level of procedural protections and the reasons for contesting an award.⁴⁶ In practice, *lex arbitri* aligns with international models or treaties. However, it is always the domestic law of the seat. For our purposes, “law of the seat” and “*lex arbitri*” will be treated synonymously. This typically means Nigerian law if the arbitration is seated in Nigeria.

⁴²ACA (n 4).

⁴³AMA 2023, s 55.

⁴⁴*ibid* ss 56–57.

⁴⁵Blackaby and others (n 26) 3.54–3.58.

⁴⁶*ibid*.

2.2 Theoretical Framework

Under this section, broad jurisprudential theories and an arbitration-specific theory would be discussed.

2.2.1 Legal Positivism

Legal positivism asserts that the legitimacy and substance of law are determined by social realities, such as legislative acts and court rulings, recognised norms). It does not rely on any moral merits. Under a positivist approach, a system is judged by what the legislature and courts have enacted. It is not evaluated by the external notions of justice.⁴⁷ Nigeria predominantly apply positivist reasoning to arbitration. Courts look to statutes and binding precedents to determine grounds for annulment. They do not introduce new equitable grounds. Similarly, in Nigeria, the AMA's enumerates exact grounds.⁴⁸ Deviation (like reviewing for legal error) is prohibited by statute. This is a positivist impulse to constrain judicial power strictly to the law "as posited." It should not be the judges' ideas of fairness.

2.2.2 Natural Law

In contrast, the theory of natural law claims that certain components of law are inherently tied to moral or ethical principles. It blurs the line between law and justice. Hence, egregiously unjust outcomes are not valid "law." In arbitration, a natural-law perspective might support vacatur on broad grounds of unfairness even if not spelled out in statute.⁴⁹ For instance, corruption or gross injustice automatically invalidates an award. Nigeria includes *public policy* in its annulment grounds. This has a the flavour of natural-law. It acknowledges that awards contrary to fundamental societal values (e.g. bribery, criminality) should not stand A natural-

⁴⁷T Spaak and P Mindus (eds), *Cambridge Companion to Legal Posit.* (CUP 2021).

⁴⁸AMA 2023, s 55.

⁴⁹T Angier (ed), *Cambridge Companion to Nat. Law Ethics* (CUP 2019).

law thinker might criticise any limitation on judicial review (for instance, the exclusion of error-review under AMA).

2.2.3 Legal Realism

Legal realism asserts that the application of law is influenced by societal interests and the personal aspects of judicial decision-making. Realists would note that judicial annulments of awards depend on the judges' practical views of fairness and policy as much as on formal rules.⁵⁰ In arbitration matters, realism might manifest in how certain circuits prioritised perceived "wrongness" of an award. Conversely, others have reverted to strict textualism. A realist analysis focuses on how real-life factors influence court decisions. In Nigeria, courts have been more interventionist. Thus, realism helps explain why similar legal rules may lead to different outcomes depending on the approach of the judiciary.

2.2.4 Seat Theory

The Seat Theory, which is also referred to as the Country-of-Lex-Arbitri theory, pertains specifically to international arbitration. It asserts that the law of the seat (lex arbitri) regulates the arbitration process. Only the courts located at the seat possess the authority to invalidate an award.⁵¹ Other jurisdictions may only refuse enforcement if allowed by grounds under the treaty (for example, fraud, public policy). This theory contrasts with an older *delocalisation theory* (largely abandoned) which tried to divorce arbitration from any national law.

According to the Under Seat Theory, the annulment of an award is a sovereign action linked to the location where the arbitration "officially occurred." Hence, Nigeria cannot normally set aside an award made abroad. Each award lives or dies under its seat's law. The seat thus is the focal point of judicial review. This theory will inform the comparative analysis. It would

⁵⁰BZ Tamanaha, *A Realistic Theory of Law* (CUP 2018).

⁵¹Blackaby and others (n 26) 3.54–3.58.

highlight that differences in the grounds for annulment are only relevant to awards made under that jurisdiction's law.

CHAPTER THREE

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR SETTING ASIDE AN ARBITRAL AWARD

3.1 Core Legislation for Setting Aside an Arbitral Award in Nigeria

3.1.1 Arbitration and Mediation Act 2023

This Act⁵² is the core statute which the the annulment of arbitration decisions in Nigeria. It is the most significant reform in arbitration law since the ACA.⁵³ The Act was enacted on 26 May 2023 and it is an attempt to modernise its arbitration regime.⁵⁴ The key provision relevant to the current context is section 55. Section 55 outlines the process and reasons for annulling an arbitral award. It holds importance as it dismisses the previous and dubious foundations linked to wrongdoing and legal mistakes evident in the award. Section 55(2) clearly states that a request to annul an award cannot be based on an error apparent in the award or any other reason aside from those specifically enumerated in the Act.

Scholars⁵⁵ note that the AMA has intervened by removing the error of law on the face of the award and restricting setting-aside applications to the reasons outlined in section 55. The reasons outlined in section 55 align closely with the Model Law. A party can contest an award if the arbitration agreement is not valid, if a party did not have the necessary capacity, if there was insufficient notice or an inability to present their case, if the award addressed issues outside the agreed scope, if the tribunal was improperly formed, if the procedure deviated from the parties' agreement or the relevant Act, if the dispute is not suitable for arbitration, or if the

⁵²AMA 2023.

⁵³ACA (n 4).

⁵⁴AMA (n 5).

⁵⁵A Atake and OA Uka, 'Error of Law on the Face of the Award' [2023] Templars Arb. Pub. <<https://www.templars-law.com/knowledge-centre/error-of-law-on-the-face-of-the-award-the-arbitration-and-mediation-act-2023-comes-to-the-rescue/>> accessed 26 May 2026.

award contradicts public policy. These reasons do not pertain to whether the arbitrator arrived at the “right” business or legal decision. Instead, their focus is on the validity of the arbitration procedure itself.

This approach is consistent with the doctrine of limited curial intervention. The role of the court is not to ask whether it would have decided the dispute. Rather, it asks whether the award was produced through a process which is recognised by law. The courts in Nigeria had recognised this principle even before the AMA. In *Baker Marine (Nig) Ltd v Chevron (Nig) Ltd*,⁵⁶ Baker Marine and Chevron were engaged in a contractual disagreement that was submitted to arbitration. The arbitration decision was in favour of Baker Marine. Nonetheless, Chevron sought to annul the award. The Nigerian courts annulled the award, and Baker Marine sought to implement the award in the United States. The United States Court of Appeals declined to enforce the awards as they had been invalidated by the Nigerian courts. It concluded that upholding awards annulled at the location would compromise finality and lead to contradictory rulings. In that regard, when the court of the seat nullifies an award, it could lose its enforceability on an international level. Therefore, the AMA therefore improves the position in Nigeria because it narrows the grounds of attack and align them with international categories.

Section 56 is another innovation under AMA.⁵⁷ It creates the Award Review Tribunal. According to section 56, the parties can consent to having any application for reviewing an award based on the grounds specified in section 55(3) initially submitted to an Award Review Tribunal.⁵⁸ This is a novel mechanism. It creates an optional second arbitral layer before court intervention. The ART is not an ordinary appellate tribunal. Rather, it reviews the award on the same limited grounds that would have been available before the court. Section 56 allows

⁵⁶191 F 3d 194 (2d Cir 1999).

⁵⁷AMA 2023, s 56.

⁵⁸*ibid* s 55(3).

parties, regardless of section 55, to stipulate that a request for reviewing an award based on section 55 reasons should be submitted to an ART. Critically, the ART may promote efficiency if used properly. It allows arbitration specialists to examine alleged defects before the court is invited to intervene. However, it may also create delay if parties treat it as another tactical layer.⁵⁹

3.1.2 Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

Section 1(1) of the constitution⁶⁰ declares its supremacy. Section 1(3) states that any legislation that contradicts the Constitution is null and void to the degree of that contradiction. Consequently, the legitimacy of any law aimed at annulling an award is contingent upon the constitution. Section 6 of the Constitution⁶¹ grants judicial authority to the courts set up for the Federation and the States. Certainly, reserving an award is a demonstration of judicial authority. An arbitral tribunal has the authority to resolve the dispute; however, the right to nullify an award is held by the appropriate court of the seat, unless the parties have consented to an ART review as a provisional arbitral process.

Section 36 of the Constitution guarantees fair hearing. In arbitration, this indicates that all parties should be adequately informed, given a fair chance to present their arguments, and have their conflict resolved by an unbiased panel. Where an award is made in breach of fair hearing, section 55 of the AMA⁶² and section 36 of the Constitution⁶³ converge. Even so, this does not allow a party to complain after refusing to participate deliberately.⁶⁴ A party that received proper notification but decided not to take part should not subsequently wield section 36 as a

⁵⁹E Oger-Gross, T Obamuroh and T Singla, 'New Arbitration Regime in Nigeria' [21 June 2023] White & Case <<https://www.whitecase.com/insight-alert/new-arbitration-regime-comes-force-nigeria>> accessed 26 May 2026.

⁶⁰Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), s 1(1).

⁶¹*ibid* s 6.

⁶²AMA 2023, s 55.

⁶³CFRN (n 60) s 36.

⁶⁴*Vigilantibus non dormientibus jura subveniunt* — the law assists the vigilant, not the indolent; see *M.V. Lupex* (n 34).

tool. Nonetheless, if the notice was flawed or the tribunal barred a party from submitting evidence, the court is required to step in.

The Constitution also determines which court has jurisdiction. Section 251 of the constitution⁶⁵ grants the Federal High Court sole authority over certain federal issues, such as those related to federal government income, maritime law, corporations, banking, and relevant federal agencies when applicable. Section 272 grants extensive civil authority to State High Courts, in accordance with the Constitution. Consequently, the decision of whether to submit an application for setting-aside to the Federal High Court or a State High Court is contingent upon the nature of the subject matter and the involved parties. Section 251(1) of the Constitution⁶⁶ grants the Federal High Court sole authority over certain civil cases and issues, particularly when the Federal Government or its agencies are engaged in matters outlined in that provision.

3.1.3 New York Convention 1958

The New York Convention is central to enforcing arbitral awards.⁶⁷ It fails to establish the local process for annulment of awards in Nigeria. Instead, it governs the acknowledgement and implementation of international and non-local awards. Nonetheless, it holds significance as the reasons for denying enforcement in Article V reflect the reasons for annulment in contemporary statutes.⁶⁸ The primary objective of the convention is to guarantee that foreign arbitral awards (FAA) are acknowledged and can be enforced in contracting states without bias.⁶⁹ Article V (1)⁷⁰ states that acknowledgement and implementation can only be denied if the opposing party demonstrates one of the specified reasons. These encompass lack of capacity, invalid arbitration agreement, absence of adequate notice, inability to present one's case, overstepping

⁶⁵CFRN (n 60) s 251.

⁶⁶*ibid.*

⁶⁷Convention on the Recognition and Enforc. of Foreign Arb. Awards 1958 (New York Convention).

⁶⁸New York Convention (n 67) art V; AMA 2023, s 55(3).

⁶⁹*ibid* arts III–V.

⁷⁰New York Convention (n 67) art V(1).

of jurisdiction, improper tribunal composition or procedure, and the circumstance that the award has not become enforceable or has been annulled or suspended by the appropriate authority of the country in which, or under the law of which, the award was issued. Article V(2)⁷¹ also permits rejection when the subject matter is not subject to arbitration or enforcement would violate public policy.

Article V(1)(e) states that a court responsible for enforcement may deny recognition if the award has been invalidated by the court located at the seat. If a Nigerian court annuls an award issued in Lagos, Abuja, or Port Harcourt, that award could encounter opposition abroad. Conversely, if an award is made in London, Paris or Dubai, the court in Nigeria should not set it aside because Nigeria is not the seat. Nigeria may refuse enforcement on Convention grounds. Nonetheless, annulment is under the jurisdiction of the supervisory court located at the seat. The location establishes the governing law and the overseeing judiciary. In that sense, Article V(1)(e)⁷² necessitates that a qualified entity from the nation where the award was issued, or according to its legal framework, must order the annulment or pause.

3.1.4 UNCITRAL Model Law on International Commercial Arbitration 1985

The UNCITRAL Model Law does not constitute a treaty in itself. Instead, it serves as a framework for legislative text aimed at assisting states in updating arbitration law. Its impact on arbitration is significant. The former ACA⁷³ drew from the Model Law. The AMA continues and improves the orientation of the Model Law.

Article 34 of the Model Law serves as the essential clause regarding annulment. It states that one can only seek court intervention regarding an arbitral award through a request for annulment and solely on specific grounds. These reasons align with the New York Convention:

⁷¹ibid art V(2).

⁷²ibid art V(1)(e).

⁷³ACA (n 4).

lack of capacity, invalid arbitration agreement, absence of adequate notice, inability to present one's case, exceeding jurisdiction, improper composition or procedure of the tribunal, non-arbitrability, and public policy concerns. The Model Law establishes a three-month deadline for submitting an application for setting aside.

Scholars⁷⁴ note that it is commendable that Nigeria adopted this approach. It brings Nigeria law closer to international best practice and it reduces the danger of parochial judicial intervention. However, it is not enough to transplant the language of the model law into Nigeria. Scholars⁷⁵ point out that the courts in Nigeria must also adopt the discipline of the Model Law. If courts interpret public policy too broadly or treat procedural complaints as merits complaints, the Model Law framework will be defeated in practice.

3.2 Core Institutions for Setting Aside an Arbitral Award in Nigeria

3.2.1 High Court

The High Court is the primary institution for setting aside arbitral awards in Nigeria. This may be the Federal High Court, a State High Court or the High Court of the FCT. This depends on the subject matter. The High Court performs the seat-court supervisory function.⁷⁶ It receives applications to set aside awards. It also determines whether the statutory grounds have been established.⁷⁷ In addition, it decides whether the award should be annulled. The role of the High Court is not appellate. It is supervisory.⁷⁸ This distinction must be emphasised because most abuses of the proceedings for setting-aside arise from the losing party's attempt to reargue the merits.

⁷⁴Born (n 2) 3258–3265.

⁷⁵Blackaby and others (n 26) 10.01–10.14.

⁷⁶AMA 2023, s 55(1).

⁷⁷*ibid* s 55(3).

⁷⁸Born (n 2) 3260–3265.

Scholars⁷⁹ note that the High Court must ask whether the complaint falls within section 55.⁸⁰ If it does not, the application should be dismissed. They⁸¹ also noted that the court must also ask whether the purported flaw has resulted in or will result in significant unfairness. This stops minor grievances from undermining legitimate accolades. At the point of setting-aside, scholars⁸² emphasize that the High Court must also be attentive to fraud, corruption and public policy. The ground for public policy is necessary but dangerous. If interpreted narrowly, it may fail to prevent injustice. If interpreted broadly, it may become a back door appeal. Experts propose that the judiciary ought to limit public policy to core tenets of fairness, lawfulness, ethics, and the welfare of the nation. In that sense, fraud and corruption affecting the arbitral process justify judicial intervention. However, ordinary dissatisfaction with the amount awarded should not.

3.2.2 Court of Appeal

The Court of Appeal serves as the intermediary appellate body within the system for annulment of arbitral awards. The original application to annul an award is not received. Instead, it examines rulings made by the High Court concerning legal questions, jurisdiction, interpretation of the constitution, and appropriate use of statutory provisions. The Court of Appeal plays a significant role as it influences the perspective of the courts in Nigeria regarding arbitration. If the Court of Appeal upholds the proactive rulings made by the High Court, arbitration will become vulnerable. If it corrects intervention that are excessive, it strengthens finality. Going further, scholars⁸³ suggest that the Court of Appeal should also discourage delay tactics. Arbitration loses value when award debtors file weak appeals to postpone payment. The maxim *justice delayed is justice denied* applies with force in commercial arbitration. At

⁷⁹Atake and Uka (n 55).

⁸⁰AMA 2023, s 55.

⁸¹*ibid* s 55(5).

⁸²Blackaby and others (n 26) 10.88–10.95.

⁸³Born (n 2) 3676–3685.

the same time, they⁸⁴ emphasise the Court of Appeal must remain available where a High Court annuls an award wrongly or enforces an award tainted by fundamental defects wrongly.

3.2.3 Supreme Court

The Supreme Court stands as the highest body within Nigeria's judicial system.. Its decisions bind all lower courts.⁸⁵ In arbitration, the Supreme Court performs a policy-setting function. Its pronouncements determine whether Nigeria is perceived as arbitration-friendly or arbitration-hostile.

In *NNPC v Fung Tai Engineering Co Ltd*,⁸⁶ The Supreme Court upheld the importance of arbitration agreements and emphasised the restricted function of courts in arbitration issues. The Court determined that individuals who consent to arbitration must accept the result unless a valid reason for contesting it is proven. It also rejected the attempt of NNPC to rely on the provisions of pre-action notice as if arbitration were ordinary court litigation. The Court determined that arbitration processes differ from judicial processes and that the requirement for pre-action notice which are applicable to suits did not apply in the same way to arbitration.

This ruling holds significance for three key reasons. Initially, it affirms that arbitration does not represent a lesser form of justice. Secondly, it warns litigants and counsel against spurious challenges to awards. Thirdly, it supports the legislative policy of the AMA even though the dispute arose under the former Act. It signals that the Supreme Court is prepared to protect finality of arbitration. However, scholars⁸⁷ suggest that the Supreme Court must also ensure that finality does not become impunity. If an award is procured by fraud, corruption, denial of fair hearing or excess of jurisdiction, the court must intervene.

⁸⁴*Ibid.*

⁸⁵CFRN (n 60) ss 230, 233 and 287(1).

⁸⁶*NNPC v Fung-Tai Eng.*(n 33).

⁸⁷Blackaby and others (n 26) 10.01–10.14.

3.2.4 Arbitral Tribunal

The arbitral tribunal does not “nullify” its own award in the precise legal context. Nonetheless, it serves as a fundamental entity within the structure, as numerous reasons for annulment stem from the actions of the tribunal. The tribunal controls procedure, determines jurisdiction, receives evidence, hears the parties and renders the award. If the tribunal acts within its mandate and respects due process, the award survives. If it exceeds its mandate or denies a fair hearing, the award becomes vulnerable. The authority of the tribunal is based on agreement.⁸⁸

In the first instance, the principle of *kompetenz-kompetenz* allows the tribunal to rule on its own jurisdiction.⁸⁹ However, this does not decide its jurisdiction ultimately.⁹⁰ A court may later review whether the tribunal actually had jurisdiction. This is why invalid arbitration agreements, excess of submission and improper composition remain grounds for setting aside.⁹¹ The tribunal is required to uphold principles of natural justice.

The common law maxim *audi alteram partem*⁹² ensures that each side has an equitable chance to put forth their arguments. The court is required to also remain within the scope of the submission. Tribunals may make legal or factual errors, but such errors should not lead to annulment unless they amount to jurisdictional excess or breach of statutory grounds.

3.2.5 Award Review Tribunal

The Award Review Tribunal is a distinctive innovation of the AMA.⁹³ It represents an attempt to keep the review of award within the arbitral ecosystem before full judicial intervention. Under section 56, parties may agree that applications for review of an award on section 55

⁸⁸Born (n 2) 213–220.

⁸⁹AMA 2023, s 14.

⁹⁰[2010] UKSC46.

⁹¹AMA 2023, s 55(3)(a)(i)–(vii).

⁹²Audi alteram partem — hear the other side; see CFRN (n 60) s 36.

⁹³AMA 2023, s 56.

grounds should be referred to an ART. Therefore, the ART operates as a specialised review body, only where parties have opted into it. The ART has some advantages.⁹⁴ It may reduce pressure on courts, preserve confidentiality, promote specialist review and prevent inexperienced judicial interference.

In complex disputes involving construction, energy, maritime contracts or finance, an ART composed of arbitration experts may understand the procedural and commercial context better than a generalist court. However, the ART also raises serious concerns.⁹⁵ Firstly, it may increase cost. Parties who expected one arbitration may find themselves in a second arbitral review before court proceedings even begin. Secondly, it may increase delay if used tactically.

Thirdly, questions may arise about independence and the procedure for appointment. There may also be question about the extent to which courts should defer to the decision of the ART. The statute manages these concerns because it limits the review of the ART to the ground in Section 55. This is intended to protect finality.

However, scholars⁹⁶ recommended that courts should analyse section 56 with caution to prevent any potential constitutional and procedural misunderstandings. The ART cannot entirely eliminate the supervisory authority of the court since judicial power is constitutionally retained within the courts. However, parties might consent to an arbitration review process as a component of their arbitration agreement.

⁹⁴ibid s 56(1); Oger-Gross, Obamuroh and Singla (n 59).

⁹⁵Oger-Gross, Obamuroh and Singla (n 59).

⁹⁶Atake and Uka (n 55).

CHAPTER FOUR

THE LEGAL GROUNDS FOR SETTING ASIDE AN ARBITRAL AWARD IN NIGERIA

4.1 Legal Grounds for Setting Aside an Arbitral Award in Nigeria

4.1.1 Incapacity or Invalid Arbitration Agreement

The initial reason for nullifying an arbitral award is that one of the parties involved in the arbitration agreement lacked legal capacity or that the arbitration agreement was itself not valid. Clause 55(3)(a)(i) of the AMA⁹⁷ states that an award can be annulled if one of the parties involved in the arbitration agreement lacked legal capacity. Going further, Section 55(3)(a)(ii)⁹⁸ states that an award can be annulled if the arbitration agreement lacks validity according to the law selected by the parties, or, in the absence of a chosen law, according to law.⁹⁹

Both parties need to have consented to resolve their disagreement through arbitration. If a legitimate agreement does not exist, the tribunal does not have authority. Arbitration cannot be imposed on a person who did not agree to it, except where principles of agency, assignment, succession, incorporation by reference or statutory operation justify such extension. Therefore, an award made without a valid arbitration agreement is not merely irregular. Rather, it is defective jurisdictionally.¹⁰⁰

The basis for incapacity may occur when one party did not possess the legal ability to engage in the arbitration agreement. For example, a later award could be contested if a company did

⁹⁷AMA 2023, s 55(3)(a)(i).

⁹⁸*ibid* s 55(3)(a)(ii).

⁹⁹*ibid* s 55(3)(a)(i)–(ii).

¹⁰⁰Born (n 2) 1410–1425.

not have the necessary corporate authority, if an agent exceeded his authority, or if a minor or an individual deemed mentally unfit attempted to engage in an arbitration agreement. Capacity may also be linked with the powers of directors, corporate authority and compliance with internal approvals. The arbitration agreement may be deemed invalid if the arbitration clause lacks clarity, is unlawful, obtained through deceit, or is improperly integrated. In *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan*,¹⁰¹ Dallah secured an arbitration ruling against Pakistan despite the fact that the arbitration contract was executed by a trust. The UK Supreme Court declined to enforce the ruling as Pakistan was not involved in the arbitration agreement. In that sense, arbitral jurisdiction cannot be assumed simply because a state or company was connected to the transaction commercially. The court must ask whether the alleged party consented to arbitration.

In *M.V. Lupey v NOCS Ltd*,¹⁰² The parties engaged in a charter-party that includes a clause for arbitration. Nonetheless, one party initiated legal proceedings rather than honouring the arbitration agreement. The Supreme Court determined that individuals who consent to arbitration must adhere to their agreement. This case concerned stay of proceedings, not setting aside. However, its principle applies equally. Whereas valid arbitration agreement exists, courts should uphold it. Where no valid agreement exists, the award cannot stand.

4.1.2 Lack of Proper Notice

The second ground is lack of proper notice. Section 55(3)(a)(iii) of the AMA¹⁰³ states that an award can be annulled if the applicant did not receive adequate notification regarding the appointment of an arbitrator or the arbitration process, or was otherwise hindered from presenting their case. This foundation is based on the concept of equitable hearing. Section 36

¹⁰¹*Dallah* (n 90).

¹⁰²*M.V. Lupey* (n 34).

¹⁰³AMA 2023, s 55(3)(a)(iii).

of the Constitution¹⁰⁴ ensures an equitable process in resolving civil rights and responsibilities. In arbitration, fair hearing does not require the full technicality involved in litigation. Arbitration is flexible, private and consensual. However, at the minimum, due process must be observed. A party must know that proceedings are taking place and must know who is appointed as arbitrator. A party must also receive reasonable opportunity to respond and must be allowed to present material evidence and submissions.¹⁰⁵ When an arbitral tribunal proceeds without proper notice, the award may be vulnerable to annulment. This is important in default awards, where one party fails to appear. A tribunal may proceed in default only where it is satisfied that proper notice was given. If the respondent refuses to participate deliberately after receiving notice, The award must remain in effect.¹⁰⁶

In *NNPC v Clifco Nigeria Ltd*,¹⁰⁷ an arbitral panel gave an award in favour of Clifco. NNPC challenged the award. They contended among other things that the arbitrators raised the issue of waiver on their own and did not give NNPC an opportunity to address it. The Federal High Court annulled the award. The ruling was partially upheld by the Court of Appeal. In the end, the Supreme Court confirmed certain elements of the Court of Appeal's ruling, which included nullifying portions of the award that lacked evidential support. In that context, when a tribunal resolves a significant matter without allowing the parties a chance to respond, the award is exposed to attack on the grounds of fair hearing

4.1.3 Excess of Powers

The third basis is an excess of powers. According to Section 55(3)(a)(iv) and (v) of the AMA, an award can be annulled if it addresses a disagreement that was not anticipated by, or does not align with, the terms of the arbitration agreement, or if it includes rulings on issues that exceed

¹⁰⁴CFRN (n 60) s 36.

¹⁰⁵Audi alteram partem — hear the other side; *Blackaby and others* (n 26) 6.98–6.105.

¹⁰⁶*Vigilantibus non dormientibus jura subveniunt* — the law assists the vigilant, not the indolent.

¹⁰⁷ [2011]10NWLR(Pt1255) 209 (SC).

the boundaries of the submission. Furthermore, the Act¹⁰⁸ states that when the decisions on issues brought to arbitration are distinct from those not brought, only the problematic portion of the award should be annulled. This area is subject to legal authority. An arbitral tribunal obtains its power from the arbitration agreement and the parties' submission. It cannot decide matters outside that authority. The maxim *delegatus non potest delegare* is relevant in a broad sense. A delegated adjudicatory authority must remain within the limits of the power conferred. A tribunal exceeds its powers if the tribunal awards relief not claimed, determines disputes not referred, binds strangers to the arbitration, or grants remedies outside the contract and submission.

In *LHDA v Impregilo SpA*,¹⁰⁹ the House of Lords distinguished between an error made within jurisdiction and an excess of jurisdiction. The tribunal had awarded sums in currencies different from those claimed. The House of Lords held that the tribunal had not exceeded its powers because it may have made an error in the exercise of its powers. In that sense, an error within jurisdiction is not the same as acting without jurisdiction. A critical issue under excess of powers is separability of decisions. Section 55 allows partial setting aside where matters within submission are separated from matters beyond submission. Scholars¹¹⁰ observe that this is sensible and they¹¹¹ suggest that if an arbitral tribunal decides five claims but exceeds jurisdiction on one, the entire award should not collapse. They also suggest that, where possible, the court should preserve the parts that are valid. This promotes proportionality and it respects the autonomy of the parties.

¹⁰⁸AMA 2023, s 55(3)(a)(iv)–(v).

¹⁰⁹ [2005] UKHL43.

¹¹⁰Born (n 2) 3340–3345.

¹¹¹Blackaby and others (n 26) 10.40–10.45.

4.1.4 Composition of Tribunal

Another ground is improper composition of the arbitral tribunal or non-compliance with agreed procedure. Section 55(3)(a)(vi) of the AMA¹¹² states that an award can be annulled if the tribunal's composition or the arbitration process did not align with the parties' agreement, unless that agreement contradicts the Act's provisions. Furthermore, section 55(3)(a)(vii) states that in the absence of an agreement between the parties, the tribunal's composition or procedure must adhere to the Act.

Parties may choose one arbitrator, three arbitrators, specific qualifications, institutional rules, nationality restrictions, appointment procedures or time frames. If the tribunal is not formed in accordance with the agreement, the award is at risk. If the parties consented to have three arbitrators resolve disputes, but one arbitrator proceeds to hear the case without agreement, the award could potentially be annulled. Nonetheless, not every deviation from the process ought to nullify an award. Section 55(5) requires substantial injustice. This means the applicant must show that the irregularity mattered. In that sense, if the deviation was technical and caused no injustice, setting aside would be refused.¹¹³

In *Taylor Woodrow (Nig) Ltd v S.E. GMBH*,¹¹⁴ the Supreme Court considered what could amount to misconduct by an arbitrator under the old law. The Court noted that misconduct could include non-adherence to the conditions of reference or deciding matters not submitted or receiving evidence behind the parties or refusing to hear material evidence. Misconduct is no

¹¹²AMA 2023, s 55(3)(a)(vi).

¹¹³De minimis non curat lex — the law does not concern itself with trifles; see AMA 2023, s 55(5).

¹¹⁴ [1993] 4NWLR(Pt286)127(SC).

longer an independent ground under the AMA. However, some of those examples survives under section 55 as improper procedure or excess of powers or denial of fair hearing.

4.1.5 Non-Arbitrability of Subject Matter

Section 55(3)(b)(i) of the AMA¹¹⁵ states that an award can be annulled if the court determines that the issue at hand cannot be resolved through arbitration according to Nigerian law. Non-arbitrability pertains to the boundaries of private dispute resolution. Some matters are connected with public authority, status, criminal liability, insolvency, taxation, matrimonial status, or public rights. Hence, they cannot be determined finally by private arbitrators.

Arbitration is appropriate for commercial disputes which involves private rights, contract, construction, maritime, energy, banking, insurance and investment-related disputes. However, arbitration may be inappropriate where the dispute affects public status or statutory power in a way that requires the decision of a public court. The rationale is that parties cannot by private agreement confer jurisdiction on an arbitral tribunal over matters reserved for courts or public authorities.¹¹⁶ In that sense, a tribunal should not enforce illegal bargains or determine matters that the law reserves for public adjudication.

However, Scholars argue that the courts should not interpret non-arbitrability too broadly. A broad interpretation would undermine commercial arbitration. For example, the mere fact that a dispute involves a government agency should not make it non-arbitrable. Many government contracts are commercial in nature. In *NNPC v Fung Tai Engineering Co Ltd*¹¹⁷ is instructive, a disagreement emerged from a contract related to NNPC. The arbitral award was upheld, and

¹¹⁵AMA 2023, s 55(3)(b)(i).

¹¹⁶Ex turpi causa non oritur actio — no action arises from a dishonourable or illegal cause; see Born (n 2) 993–1000.

¹¹⁷*NNPC v Fung-Tai Eng. Co Ltd* (n 33).

the Supreme Court dismissed efforts to classify the issue as standard litigation requiring pre-action notifications. The Court confirmed that the arbitral awards were obligatory.

4.1.6 Public Policy

Section 55(3)(b)(ii) of the AMA¹¹⁸ allows the court to annul an award if it contradicts the public policy of Nigeria. Public policy represents a critical yet perilous basis for annulling an arbitral award. It is important because no legal system should enforce an award that violates its fundamental values. It is dangerous because it may easily become a broad and subjective excuse for judicial interference. Scholars¹¹⁹ point out that public policy should not mean the personal morality of a judge or a vague sense that the award is unfair. It must be limited to the essential tenets of law, fairness, ethics, national safety, integrity in governance, lawful economic practices, and adherence to constitutional frameworks. If public policy is interpreted too broadly, arbitration will become unstable. If it is interpreted too narrowly, courts may be forced to uphold awards tainted by illegality or serious injustice.

In *Westacre v Jugoimport-SPDR*,¹²⁰ the court was requested to deny the enforcement of an award purportedly linked to corruption. The English Court of Appeal highlighted that public policy might warrant a denial in cases where corruption is demonstrated. However, courts must also respect finality and avoid rehearing issues already determined by the tribunal unless strong evidence exists. In *Nigeria v PID*,¹²¹ P&ID obtained an arbitral award against Nigeria and this had grown to over US\$11 billion. In October 2023, the English High Court annulled the award,

¹¹⁸AMA 2023, s 55(3)(b)(ii).

¹¹⁹Blackaby and others (n 26) 10.88–10.95.

¹²⁰ [1999] EWCACiv 1401; [2000] QB288.

¹²¹ [2023] EWHC2638 (Comm).

determining that it had been obtained through fraudulent means and actions that violated public policy, such as bribery, misleading evidence, and the inappropriate withholding of Nigeria's confidential documents.

4.1.7 Fraud or Corruption

Fraud and corruption are not always listed separately from public policy in section 55. However, they justify setting aside. Fraud can influence the arbitration agreement, the foundational contract, the evidence submitted to the tribunal, the behaviour during the proceedings, or the acquisition of the award. Corruption may involve bribery of public officials, witnesses, arbitrators, experts or counsel. An award lacks moral and legal legitimacy where it is procured by fraud or corruption.

In *Nigeria v P&ID*,¹²² the English High Court determined that the awards were acquired through deceit and that the method of their acquisition was against public policy. The court based its decision on conclusions related to fabricated evidence, corruption, and the inappropriate holding of Nigeria's confidential legal documents. This is a strong example of why fraud must remain a ground for judicial intervention. Arbitration cannot be a sanctuary for corrupt bargains.

Scholars¹²³ suggest that the courts must guard against tactical allegations of fraud. If every losing public body alleges fraud after an award, Nigeria will be viewed as hostile to arbitration. They recommend that the correct approach is strict proof.¹²⁴ In cases where fraud is established,

¹²²*ibid.*

¹²³Born (n 2) 3620–3635.

¹²⁴*FRN v P&ID* (n 121).

the award ought to be annulled. Where fraud is alleged, the court should reject the challenge and protect the award.

4.2 Challenges in Application of the Grounds for Setting Aside an Arbitral Award

4.2.1 Judicial Interference in Arbitral Proceedings and Awards

The AMA has narrowed the grounds for setting aside. However, the danger remains that courts may interpret the grounds expansively. Historically, arbitration suffered from excessive judicial intervention in Nigeria, especially under the broad concept of misconduct.¹²⁵ This enabled excessive intervention and undermined finality and commercial certainty. The AMA attempts to solve this problem by removing misconduct as an open-ended ground.¹²⁶ However, intervention may still reappear through public policy, fair hearing, improper procedure or excess of jurisdiction.¹²⁷ A court that is hostile to arbitration may stretch these grounds to reach the merits. This would defeat the purpose of section 55(2), which prohibits challenge based on error on the face of the award. The decision of the Supreme in *NNPC v Fung Tai Engineering Co Ltd*,¹²⁸ is consequently a favourable advancement. The Court highlighted that judicial bodies ought not to review arbitral decisions and they should not permit parties to frustrate enforcement through technical objections.

4.2.2 Ambiguity in the Interpretation of Statutory Grounds

¹²⁵ACA (n 4) s 30; *Taylor Woodrow* (n 114).

¹²⁶AMA 2023, s 55(2).

¹²⁷Atake and Uka (n 55).

¹²⁸*NNPC v Fung-Tai Eng.*(n 33).

Although section 55 is a closed list, several grounds remain open-textured. Some terms require judicial interpretation. This include “public policy”, “unable to present its case”, “beyond the scope of submission”, “proper notice” and “substantial injustice.” The substantial injustice requirement is controversial. Ikusika¹²⁹ argues that the requirement of AMA that a successful applicant must also establish substantial injustice raises serious concerns because it may imply that even the denial of fair hearing does not justify setting aside. He criticises the requirement and argued that it is burdensome and misaligned with the UNCITRAL Model Law. This criticism is persuasive to an extent. Where a party was denied notice or where an arbitrator was bribed, substantial injustice should be presumed normally. It would be artificial to require further proof. However, the requirement is useful in minor defects. For instance, if a notice contained a typographical error but the party attended and participated, setting aside would be disproportionate.

4.2.3 Delay and Procedural Bottlenecks in Court Proceedings

The third challenge is delay. Arbitration is chosen because it is expected to be faster and more efficient than litigation. However, once an award is issued, the party that did not prevail may commence actions to annul it, seek appeals to the Court of Appeal, and pursue additional appeals to the Supreme Court. This postpones implementation for several years. In *IPCO (Nigeria) Ltd v NNPC*,¹³⁰ IPCO obtained an arbitral award against NNPC, and the disputes for enforcement continued in several jurisdictions, which includes England. The prolonged litigation created uncertainty and reduced the commercial value of the award. Delay is problematic in Nigeria because of jurisdictional objections and procedural technicalities. Where an award creditor spends a decade trying to enforce an award, arbitration loses its

¹²⁹Ikusika (n 19).

¹³⁰[2017] UKSC16.

value.¹³¹ The AMA tackles delays in part by establishing a three-month deadline for setting-aside requests. Section 55(4) states that an application cannot be submitted later than three months from the date the applicant received the award, or from the date when a request for correction or interpretation was resolved.

4.2.4 Abuse of Applications to Set Aside Arbitral Awards

In practice, many applications are not genuine. They are tactical devices to delay enforcement or pressure the award creditor into settlement, or frustrate the commercial effect of the award. This issue is particularly severe when the entity responsible for the award is a dominant corporation or government body. Previously, the law recognised misconduct and apparent errors in the award as valid reasons. Under the AMA, abuse may shift to public policy, fair hearing or substantial injustice.¹³² Parties may repackage complaints about merits as jurisdictional objections. For instance, one party might contend that the tribunal “overstepped its authority” due to the damages awarded being different from their expectations. Scholars¹³³ suggest that the courts must reject such attempts. The ruling of the supreme court in *NNPC v Fung Tai*¹³⁴ discourages award debtors from using technicalities to avoid compliance with arbitral awards. In that situation, NNPC sought to annul the enforcement of an award granted to Fung Tai. The Supreme Court rejected the challenge and confirmed that the award is valid and can be enforced.

4.2.5 Difficulty in Proving Fraud, Corruption, or Public Policy Violations

¹³¹Interest reipublicae ut sit finis litium — it is in the public interest that litigation should come to an end; see Born (n 2) 3676–3685.

¹³²Ikusika (n 19).

¹³³Born (n 2) 3260–3265.

¹³⁴*NNPC v Fung-Tai Eng*.(n 33).

Fraud and corruption are serious allegations. However, they are difficult to prove. Corrupt arrangements are usually concealed. Documents may be unavailable. Witnesses may be unwilling to testify. Public officials may have left office. In cross-border transactions, evidence may be scattered across jurisdictions. The P&ID case¹³⁵ illustrates how important and difficult it is to prove fraud. Nigeria succeeded only after extensive proceedings in England and after uncovering evidence concerning bribery, false evidence and improper access to privileged documents. The decision of the English High Court was exceptional because the evidence was strong and the misconduct was grave. In Nigeria, proving such allegations may be even more difficult due to weak record-keeping and bureaucratic fragmentation.

4.2.6 Limited Judicial Authorities on the Arbitration and Mediation Act 2023

The AMA is still new and many of the leading cases in Nigeria, including *Taylor Woodrow*, *Arbico*, *Baker Marine*, *M.V. Lupex*, *Clifco* and even *NNPC v Fung Tai*, were decided under the former ACA or related legal regimes. They remain useful. However, they must be applied cautiously because the statutory language has changed. This creates uncertainty for practitioners. Scholars¹³⁶ suggest that the best approach is for the courts in Nigeria to interpret the AMA in light of its text and purpose.

¹³⁵*FRN v P&ID* (n 121).

¹³⁶Nwakoby, Nwakoby and Nwakoby (n 15) 1–23.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This project has examined the legal grounds for setting aside an arbitral award in Nigeria. Firstly, it examined the legislative and institutional framework governing the setting aside of arbitral awards in Nigeria. It was found that the AMA¹³⁷ is the core statute which govern setting aside of arbitral awards in Nigeria. This represents the most important change in arbitration law since the ACA. The Act was established on 26 May 2023 as a measure to update its arbitration framework. The key clause relevant to the current discussion is section 55.¹³⁸ Section 55¹³⁹ defines the method and reasons for annulment of an arbitration decision. It holds importance as it dismisses the previous and ambiguous foundations linked to wrongdoing and legal mistakes evident in the award. Section 55(2)¹⁴⁰ expressly provides that an application to set aside an award shall not be made on the ground of an error on the face of the award or on any other ground except those expressly listed in the Act. The Constitution is supreme and Section 1(1)¹⁴¹ declares its supremacy. Section 1(3)¹⁴² states that any legislation that contradicts the Constitution is nullified to the degree of the contradiction. Consequently, the legitimacy of any law aimed at overturning an award relies on the constitution. Section 6 of the Constitution¹⁴³ grants judicial authority to the courts set up for the Federation and the States. Certainly, reserving an award is an application of judicial authority. Section 36 of the Constitution¹⁴⁴ guarantees fair hearing. The New York Convention is central to enforcing

¹³⁷AMA 2023.

¹³⁸AMA 2023, s 55.

¹³⁹*ibid.*

¹⁴⁰*ibid* s 55(2).

¹⁴¹CFRN (n 60) s 1(1).

¹⁴²*ibid* s 1(3).

¹⁴³*ibid* s 6.

¹⁴⁴*ibid* s 36.

arbitral awards. It fails to establish the local process for annulment of awards in Nigeria. Instead, it governs the acknowledgement and implementation of international and non-local awards. Nonetheless, it is significant as the reasons for denying enforcement under Article V reflect the reasons for annulment under contemporary laws. Article V(1)(e)¹⁴⁵ states that a court responsible for enforcement may deny recognition if the award has been invalidated by the court of the location. The UNCITRAL Model Law does not constitute a treaty on its own. Instead, it is a legal document aimed at assisting states in updating their arbitration processes. It significantly impacts arbitration. Article 34 of the Model Law serves as the principal clause regarding annulment. It stipulates that a court can only be approached regarding an arbitral award through a request for annulment and solely on specific grounds.

In Nigeria, the High Court serves as the main authority for annulling arbitral awards within institutions. This could be the Federal High Court, a State High Court, or the High Court located in the Federal Capital Territory. This is contingent upon the topic at hand. The High Court carries out the supervisory role of the seat court. It accepts requests to annul awards. It also assesses if the legal criteria have been met. Furthermore, it determines if the award ought to be cancelled. The Court of Appeal serves as the intermediary appellate body within the structure for annulment of arbitral awards. The original application to annul an award is not received. Instead, it examines rulings made by the High Court regarding legal questions, jurisdiction, interpretation of the constitution, and appropriate use of the statutory bases. The Supreme Court stands as the highest body within Nigeria's judicial system. Its decisions bind all lower courts. In arbitration, the Supreme Court performs a policy-setting function. Its pronouncements determine whether Nigeria is perceived as arbitration-friendly or arbitration-hostile. The Arbitral Tribunal is another institution and it does not “set aside” its own award in the strict judicial sense. However, it is a core institution in the framework because many grounds for

¹⁴⁵New York Convention (n 67) art V(1)(e).

setting aside arise from the conduct of the tribunal. The tribunal controls procedure, determines jurisdiction, receives evidence, hears the parties and renders the award. The ART is a distinctive innovation of the AMA. It represents an attempt to keep the review of award within the arbitral ecosystem before full judicial intervention. Under section 56, parties may agree that applications for review of an award on section 55 grounds should be referred to an ART.

Additionally, it recognised and examined the legal basis for nullifying an arbitral award in Nigeria. The initial basis for annulling an arbitral award is the legal incapacity of a party involved in the arbitration agreement or the invalidity of the arbitration agreement itself. The parties need to have consented to resolve their disagreement through arbitration. If a legitimate agreement does not exist, the tribunal does not have authority. Arbitration cannot be imposed on a person who did not agree to it, except where principles of agency, assignment, succession, incorporation by reference or statutory operation justify such extension. Therefore, an award made without a valid arbitration agreement is not merely irregular. Rather, it is defective jurisdictionally.

The second ground is lack of proper notice. This ground is rooted in the principle of fair hearing. In arbitration, fair hearing does not require the full technicality involved in litigation. Arbitration is flexible, private and consensual. However, at the minimum, due process must be observed. A party must know that proceedings are taking place and must know who is appointed as arbitrator. A party must also receive reasonable opportunity to respond and must be allowed to present material evidence and submissions. When an arbitral tribunal proceeds without proper notice, the award may be vulnerable to annulment. The third ground is excess of powers. This area falls under jurisdiction. An arbitral tribunal obtains its power from the arbitration agreement and the parties' submission. It is unable to make decisions beyond that jurisdiction. A court goes beyond its authority if the tribunal awards relief not claimed,

determines disputes not referred, binds strangers to the arbitration, or grants remedies outside the contract and submission.

Another reason is the incorrect formation of the arbitration panel or failure to adhere to the established process. This foundation holds significance as arbitration transcends the ultimate decision. Instead, it pertains to the approach taken for resolving conflicts. If the tribunal is formed in a manner that goes against the agreement, the award is at risk. According to Section 55(3)(b)(i) of the AMA, an award can be annulled if the court determines that the dispute's subject matter cannot be resolved through arbitration as per Nigerian law. Non-arbitrability pertains to the boundaries of private dispute resolution. Certain issues are connected with public authority, status, criminal liability, insolvency, taxation, matrimonial status, or public rights. Hence, they cannot be determined finally by private arbitrators. Section 55(3)(b)(ii) of the AMA allows the court to annul an award if it contradicts the public policy of Nigeria. Public policy serves as a critical yet perilous basis for invalidating an arbitral award. Fraud and corruption are not always listed separately from public policy in section 55. However, they justify setting aside. An award lacks moral and legal legitimacy where it is procured by fraud or corruption.

Thirdly, it appraised the challenges associated with the application of the legal grounds for setting aside an arbitral award in Nigeria. It was found the AMA has narrowed the grounds for setting aside. However, the danger remains that courts may interpret the grounds expansively. Historically, arbitration suffered from excessive judicial intervention in Nigeria, especially under the broad concept of misconduct. This enabled excessive intervention and undermined finality and commercial certainty. The AMA attempts to solve this problem by removing misconduct as an open-ended ground. However, intervention may still reappear through public policy, fair hearing, improper procedure or excess of jurisdiction. A court that is hostile to

arbitration may stretch these grounds to reach the merits. This would defeat the purpose of section 55(2), which prohibits challenge based on error on the face of the award.

Although section 55 is a closed list, several grounds remain open-textured. Some terms require judicial interpretation. This include “public policy”, “unable to present its case”, “beyond the scope of submission”, “proper notice” and “substantial injustice.” Delay is another challenge. Arbitration is expected to be faster and efficient than litigation. Yet, after an award is rendered, the losing party may initiate proceedings for setting-aside. They also appeals to the Court of Appeal and the Supreme Court. This delays enforcement. When litigation is prolonged, there is uncertainty and the commercial value of the award is reduced.

In practice, many applications are not genuine. They are tactical devices and they delay enforcement or pressure the award creditor into settlement or frustrate the effect of the award. Going further, Under the AMA, the grounds for challenging an award may include public policy or fair hearing or substantial injustice. Parties may repackage complaints about merits as objections to jurisdiction.

In addition, the allegations against fraud and corruption are difficult to prove. These activities do not happen openly. Documents may be unavailable. Witnesses may be unwilling to testify. Public officials may have left office. In cross-border transactions, evidence may be scattered across jurisdictions. Lastly, The AMA is still new and many of the leading cases in Nigeria were decided under the former ACA or related legal regimes. They remain useful. However, they must be applied cautiously because the statutory language has changed. This creates uncertainty for practitioners.

5.2 Recommendations

Based on the aforementioned findings, the following recommendations are made.

5.2.1 Adhere to the Closed List of Grounds under Section 55

It is recommended that the courts in Nigeria should adhere to the closed list of grounds for setting aside arbitral awards under section 55 of the AMA. One of the major findings of this research is that the AMA has moved away from the broader and uncertain grounds under the former ACA. Therefore, courts should not reintroduce these abolished grounds through an expansive interpretation of public policy, fair hearing, improper procedure or excess of jurisdiction. In practice, judges should treat setting-aside proceedings as supervisory proceedings and not as appeals on the merits. This method will maintain the conclusiveness of arbitration and enhance trust in Nigeria as a favourable location for arbitration. When parties are aware that decisions will remain undisturbed, they opt for Nigeria as the location for arbitration.

5.2.2 Judicial Training on the AMA 2023

It is recommended that judicial training should be organised for judges of the Federal High Court, State High Courts, High Court of the Federal Capital Territory, Court of Appeal and Supreme Court on the interpretation and application of the AMA. This is necessary because the Act is still relatively new and many cases on arbitration were decided under the old statute.¹⁴⁶ Those cases remain useful. However, they must be applied cautiously because the statutory language has changed. The training should focus on the distinction between errors within jurisdiction and excess of jurisdiction, the meaning of substantial injustice, the scope of public policy, the function of the Award Review Tribunal and the relationship between the

¹⁴⁶ACA (n 4).

AMA, the UNCITRAL Model Law and the New York Convention. This would reduce inconsistency in judicial decisions and it would also prevent unnecessary interference with arbitral awards.

5.2.3 Develop Guidelines on Public Policy and Substantial Injustice

It is further recommended that the appellate courts should develop clear instructions regarding the interpretation of public policy and significant unfairness according to the AMA. Public policy serves as an essential foundation, as the court ought not to support an award that violates fundamental values of justice, legality, morality, anti-corruption, national security or constitutional order. However, public policy is also dangerous because it may become an excuse for interfering with awards. For this reason, courts should interpret public policy narrowly. Public policy should apply where the award violates fundamental legal or moral principles.

5.2.4 Fast-Track Procedure for Setting-Aside Applications

It is recommended that fast-track procedures should be introduced for applications to set aside awards. It was found that delay affects arbitration. Arbitration is expected to be faster and efficient than litigation. Nonetheless, the implementation could be postponed for several years if the unsuccessful party submits a request to annul an award, which might then lead to appeals to the Court of Appeal and the Supreme Court. To address this, courts should create special lists for arbitration or commercial divisions to hear applications for setting-aside within a short and definite period. The rules of court should also require timelines for hearing. In addition, adjournments should also be limited. Frivolous applications should attract costs against the applicant. This will discourage award debtors from using the proceedings for setting-aside as a delay tactic.

5.2.5 Control against Abuse of Setting-Aside Applications

It is recommended that courts should impose sanctions against parties who abuse applications to annul arbitration decisions. Numerous applications do not represent authentic efforts to address wrongdoing. They are strategic tools employed to postpone implementation or undermine the financial worth of the decision. Where a court finds that an application was frivolous or intended to delay enforcement, it should dismiss the application promptly and it should award substantial costs against the applicant. Counsel should also be discouraged from disguising complaints about the merits of an award as jurisdictional objections, or complaints about fair hearing.

5.2.6 Drafting of Arbitration Agreements

It is recommended that lawyers and commercial parties should pay greater attention to the drafting of arbitration agreements. Many grounds for setting aside arise from defective arbitration clauses, uncertainty in the appointment procedure, unclear seat of arbitration, improper tribunal composition or confusion over applicable procedural rules. To prevent these issues, arbitration clauses ought to specify the location of arbitration, the quantity of arbitrators, the procedure for their appointment, the relevant regulations, and the language used in arbitration, governing law, and whether parties intend to use an Award Review Tribunal. Arbitration is founded on consent. When the arbitration agreement lacks clarity or is deemed invalid, the tribunal's authority is put at risk. Proper drafting will reduce disputes over jurisdiction. It would also minimise applications to set aside awards.

5.2.7 Continuous Law Reform and Publication of Arbitration Decisions

It is recommended that Nigeria should encourage the publication of arbitration-related court decisions.¹⁴⁷ Since the Act is new, there is limited judicial authority on its provisions. This creates uncertainty for lawyers, arbitrators, commercial parties and scholars. Published decisions will help develop a coherent body of jurisprudence. The National Assembly may also consider future amendments where problems emerge. However, amendments should not widen the grounds for setting aside. Instead, reform should focus on clarity and time limits. It should preserve the balance between the finality of arbitration and the control of the judiciary.

5.3 Conclusion

This study explored the legal ground for setting aside arbitral awards in Nigeria. Initially, it analysed the legal and organisational structure. Additionally, it evaluated the reasons for annulment of awards. Subsequently, it recognised the difficulties linked to the implementation of those bases. The research indicated that arbitration serves as a method for resolving commercial conflicts. This is due to its encouragement of independence, privacy, adaptability, quickness, and conclusiveness. Nonetheless, the conclusiveness of arbitration is not definitive. Courts maintain an oversight function, ensuring that awards are not generated from invalid agreements, absence of notice, denial of a fair hearing, overstepping of jurisdiction, improper composition of the tribunal, non-arbitrable issues, fraud, corruption, or breaches of public policy.

Additionally, the AMA signifies a significant transformation in Nigeria. It utilises a restricted set of criteria as outlined in section 55. Furthermore, it establishes the Award Review Tribunal

¹⁴⁷AMA 2023.

as outlined in section 56. The Act acknowledges that judicial intervention is necessary in cases of wrongdoing or unlawful actions. Nonetheless, there are difficulties linked to the enforcement of the legal bases for nullifying an arbitral award in Nigeria. At times, the courts intervene in arbitration processes and decisions. The legal basis for overturning is unclear. Court proceedings are experiencing delays. Parties frequently misuse the applications to overturn awards. Proving fraud or corruption is challenging. Lastly, there are limited judicial authorities on the AMA 2023. In light of the aforementioned, it is pertinent to consider the recommendations which are proposed in this study.

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