



Arbitration Mechanisms in Nigeria's Maritime Disputes Settlement: Challenges and Prospects

Ekundayo Oluwaremilekun Babatunde^a

^aDepartment of Private and Commercial Law,
Faculty of Law, Bowen University, Iwo, Nigeria
Email : oluekundayo@yahoo.com

Submitted : 2019-01-03 | Accepted : 2019-03-25

Abstract: *The maritime industry is globally recognized as one of the most economically viable industry capable of facilitating sustainable development thus, amicable settlement of maritime disputes is paramount to guarantee unhindered trade and commerce environment. Arbitration is an age-long Alternative Dispute Resolution (ADR) mechanism applied in the amicable settlement of disputes in a relaxed and semi-formal environment. It is particularly suitable for resolving commercial disputes because of the enforceability of arbitral awards as depicted by the existing international arbitral jurisprudence. Various law of the Sea tribunals such as the International Tribunal for the Law of the Sea (ITLOS) or an ad hoc panels expressly recognizes arbitration as one of the models for settlement of disputes as a suitable alternative to litigation. In Africa, as nations recover from the era of ocean blindness, maritime practice and administration is prioritized to aid economic growth. The objective of this study is to evaluate application of arbitration as an ADR mechanism for settling maritime disputes in Nigeria's maritime practices with the aim of identifying the challenges confronting Nigerian's involvement in maritime business, particularly as it relates to application of Arbitration to dispute settlement. It was found that there are certain loopholes in relevant laws which work hardship against local businesses in cases of maritime disputes settlement. The study suggests viable solutions based on lessons from other climes to create level playing field for parties who opt for arbitration to settle maritime related disputes.*

Keywords: *arbitration; maritime industry; dispute settlement; nigeria; challenges and prospects.*

I. INTRODUCTION

Oceans are an important part of life as water covers two-thirds of the earth surface, serving as an important means of transporting goods and services as well sustaining life.

More than half of the oxygen needed by living organisms is produced by marine biodiversity, which also helps to moderate the weather and climatic condition on earth.¹ In the twenty first century, the global maritime

¹ Emmett Duffy et al, 'Biodiversity Effects in the Wild and are Common and as Strong as Key

Drivers of Productivity' (2017) 14(549) *Nature International Journal of Science* 261-264.

industry has attained increased importance in the wake of globalization, scientific and technological advancement. Maritime spaces holds immense viability capable of sustaining the global economy as such it is described as the “blue gold” or “blue economy”. Globally, the maritime industry supports environmental sustainability, social stability and economic development. Maritime shipping accounts for 90% of international commodity trade traffic, in addition to deposits of living and non-living resources found in various maritime spaces.²

The contemporary importance of maritime domain is born out of the historical perception of sea dominance as a symbol of political power. The consciousness of economic importance of maritime shipping came to lime-light in the post-world-War II era during which various sea-routes were discovers as leading to expanded markets to promote capitalism.³ The founders of maritime practice were merchants who navigated the sea to boost mercantile trade and in the process discovered other territories. Thus operation of the World Maritime Industry is in the hands of private individuals and groups, while nation-states played the role of boundary delimitation and enforcement of developmental laws.⁴

The emergence of maritime practice called attention to the strategic importance of the African maritime domain to the international maritime industry. Being the second largest and second most populous continent, Africa offers a large market for

commodities and services. In addition, the continent has a long stretch of coastline exceeding 39,000 km. Africa is a huge island surrounded by the Mediterranean sea, the Suez canal and the red-sea along Sinai Peninsula, the Indian ocean and the Atlantic ocean in the North, north-east, south-east and west respectively. The strategic location of Africa explains its importance to the global economy for facilitating shipping, maritime trade, energy, communication and tourism, historical and cultural purpose.

Out of the 53 states in Africa, 38 are either coastal or island states. In the wake of the 21st century globalization, African waters have assumed increasing importance as suitable alternative route to the Arab Gulf passage hence, the heavy merchant vessel traffic in the African Maritime domain (AMD). The African maritime industry is valued at 1 trillion dollars annually, in addition to the offshore deposit of about 50 billion barrels of crude oil and liquefied natural gas which makes the African maritime space important to the global energy supply.⁵ This does not include other mineral resources such as diamond and biotechnology explored in the African waters and capable of being explored through deep-sea mining. Today, Africa accounts for about 2% of global trade, with a projection that the population of Africans will have doubled by 2050 to 2.5 billion, increased reliance will be placed on marine resources to cater for the needs of the growing population.⁶ It is worthy of mention that by its very nature,

² Abdullahel Bari, ‘Our Oceans and the Blue Economy: Opportunities and Challenges’ (2017) 194 *Procedia Engineering* 5 – 11.

³ Sophus Reinert and Robert Fredona, ‘Merchants and the Origins of Capitalism’ (Working Paper 18-021, Havard Business School 2017) 2-10.

⁴ Ekpo Imoh, ‘Impact of Shipping on Nigerian Economy: Implications for Sustainable Development’ (2012) 2(7) *Journal of Educational and Social Research* 107-109.

⁵ Institute for Security Studies, Pretoria, ‘Africa should wake up to the importance of an integrated maritime strategy’ (8 October 2012) <<https://issafrica.org/iss-today/africa-should-wake-up-to-the-importance-of-an-integrated-maritime-strategy>> accessed 20 November 2017.

⁶ United Nations Economic Commission for Africa, Policy Dialogue, Abidjan, Côte d’Ivoire *Governance of resources and maritime activities for sustainable development in Africa* (21-23 June

maritime space are wide-spread making express boundary demarcation such as is obtainable on land difficult and necessitating inter-state cooperation in its management. As a result, various regional economic communities exist for the purpose of aiding the joint management of maritime spaces. Examples of such regional bodies in Africa include the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Maritime Organization of West and Central Africa (MOWCA) and the Gulf of Guinea Commission (GGC).⁷

The Nigerian maritime space is particularly important to the nation, the West African region and the African continent. Nigeria is blessed with a vast coast line having a stretch of about 850 square kilometers and navigable inland waters which flows into the West African Atlantic coast. Nigeria is one of the largest producers of crude-oil and liquefied natural gas and the nation also account for about 76% of shipping business in West Africa.⁸ The Nigerian maritime industry though not fully harnessed as such it takes after the oil and gas sector, already accounts for 120 million tons of maritime shipping.⁹ The nation's maritime

space experiences heavy traffic, while Nigerian ports are also often busy as such port activities constitute an important income source for the nation. Besides, international shipping and trade often involve several parties, huge sums of money and complex terms of contract, as such the possibility of disputes occurrence is often high. Thus, frequency of occurrence of commercial transactions in the Nigerian maritime space implies frequency of maritime disputes¹⁰ which calls for timely and viable intervention. Although in some instances, parties may successfully resolve such disputes without much ado, in several other situations, a neutral third party involvement of is inevitable. In such occasion, where recourse is not made to court, a virile dispute settlement mechanism becomes a necessity. By its very nature, commercial transactions are prone to misunderstanding among parties. Also, because Nigerian ports are busy with incoming and outgoing cargos, and other transactions involving the active participation of parties with the intention to protect their respective business interest, occurrence of dispute is inexorable. Furthermore, maritime contracts may be relatively complex, whether in form of

2017)
<https://www.uneca.org/sites/default/files/uploaded-documents/CDD/PolicyDialogue2017/concept_note_-_english_version_05_may_2017.pdf> accessed 10 July 2018.

⁷ Chatham House Conference report, London, *Maritime Security in the Gulf of Guinea* (6 December 2012)
<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0312confreport_maritimesecurity.pdf> accessed 20 November 2017.

⁸ Kenneth Jukpor, 'Local Content Vs Tugboats: Which Guarantees Nigeria's Maritime Hub Status?' on *MMS Plus* (6 May, 2017)
<<http://mmsplusng.com/blog/local-content-vs-tugboats-which-guarantees-nigerias-maritime-hub-status/>>.

⁹ Ikenga Oraegbunam and Chienye Okafor, 'Problems of Litigation in Settlement of Maritime Disputes for Nigeria Today: The Preference for Arbitration' (2013) 4 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 31-35.

¹⁰ Adedoyin Rhodes-vivour 'Arbitration in the Resolution of Maritime Disputes' (Paper Presented at the 11th Maritime Seminar for Judges on the 1st-3rd June, 2010) 3
<http://www.drivlawplace.com/media/arbitration-maritime-disputes.pdf> accessed 20 December 2017.

towage agreement, charter party or other similar transactions from which disputes may arise. Consequently, in order for Nigeria to make the most of her maritime facilities and international trade potentials, a virile, effective and efficient maritime dispute settlement system must be in place.

Where maritime disputes occur, the first point of call usually involves making recourse to court, subject to the existence of dispute settlement clauses in the agreement binding the parties. This is in line with Article XV of UNCLOS which permits parties to a maritime dispute to make recourse to a dispute settlement mechanism of their choice in the failure of which compulsory dispute settlement procedure is then triggered. Although the higher level of awareness of the merits of ADR over litigation has increased preference of parties for ADR in cases involving maritime disputes, with preference for arbitration because of its enforceability, applicable rules needs be reviewed to provide equal protection for parties, especially in this present time in a developing economy as Nigeria. This research aims to identify the challenges confronting Nigerian's involvement in maritime business, particularly as it relates to application of Arbitration to dispute settlement.

II. LEGAL MATERIALS AND METHODS

In examining the application of Arbitration to dispute settlement to identify the challenges and prospects in Negeria, this research use juridical normative method,

which examine the consistency between international legal framewrok and Nigeria's law and how those legal framework applied in maritime industry in Nigeria.

Legal materials to be analyzed include the Coastal and Inland Shipping (CABOTAGE) Act 2003 and the Nigerian Oil and Gas Industry Development Act 2010. Also, the Arbitration and Conciliation Act 1988, Admiralty jurisdiction Act of 1991 and the Regional Centre for International Commercial Arbitration Act 1995. In addition to these, other journal articles relevant to the topic are also used.

III. RESULTS AND DISCUSSIONS

Conceptual Clarification

a. Maritime Law

The word maritime is a term which relates to activities concerning sea navigation and commerce.¹¹ Maritime law has been described as a law which provides legal framework for maritime transport.¹² This is a restrictive definition as it limits maritime activities to shipping and transportation without taking cognizance of other recent aspects such as deep-sea mining and bio-diversity. Maritime law has also been described as a body of laws relating to carrying passengers and goods by water.¹³ This definition is also restrictive as it limits maritime activities to the domain of private and business law without considering the public international law aspect that may concern maritime related inter-state activities. This definition distinguishes maritime law

¹¹ Wikipedia, *Black's Law Dictionary*, 7th Edition, 981 <<http://en.wikipedia.org/wiki/Maritime>> accessed November 10, 2017.

¹² Jean Chiazor Anishere, 'Introduction to Maritime Law ad Admiralty Jurisdiction in Nigeria' (Paper Presented at the 14th International Maritime Seminar for Judges 31 May-1st June 2016)

<http://shipperscouncil.gov.ng/assets/uploads/MSJ/Commentary_Introduction_to_Maritime_Law.pdf> accessed 20 December 2017.

¹³ Thomas J et al, *Admiralty and Maritime Law: Cases and Materials* (1st edition, Charlottesville Va 1984) 1.

from the law of the sea.¹⁴ Meanwhile, for the purpose of this article, maritime law broadly covers body of laws, rules, legal concepts, processes and regulations concerning the utilization of maritime resources, maritime trade, investment and shipping.

Admiralty law is sometimes used interchangeably with maritime law, it is thus necessary to set-out the distinction between the two. The term ‘admiralty’, historically traceable to Arabic origin relates to issues over which admiralty court possess jurisdiction as opposed to common law courts. In common law jurisdictions, admiralty law is concerned with water related maritime transactions, activities carried-out in relation to a vessel at sea as opposed to transactions that can be concluded on-shore. There is the traditional practice of distinguishing between private and public aspects of maritime practice. For instance the shipping of goods and maritime transport generally is perceived as fitting more into the private aspect of maritime law. Today, there are aspects of maritime law which does not clearly fall under private or public international law. Similarly, maritime law as used today deals with legal relations arising from the use of ships and could fall into aspects of admiralty law, just as aspects of modern commercial law can incorporate aspects of international law.¹⁵ In Nigeria, maritime law is governed by the 2007 Merchant Shipping Act (MSA), while the

Admiralty Jurisdiction Act (AJA) regulates admiralty law.

b. Arbitration

Arbitration is a form of Alternative Dispute Resolution (ADR) mechanism used in resolving dispute without reference to a formal court procedure. It has been described as the reference of a dispute between two or more parties for determination by a person besides a court of competent jurisdiction, in a semi-judicial manner, after hearing both sides.¹⁶ The concept of ADR is a phenomenon that has been utilized by mankind as early as the time of the ancient civilization of Egypt, Mesopotamia and Assyria.¹⁷ ADR refers to methods “generally and procedures used to resolve disputes either as alternatives to the traditional disputes resolution mechanism of the court or in some cases as supplementary to such mechanism”.¹⁸ The Black's Law Dictionary gave a concise definition of ADR as “a procedure for settling a dispute by means other than litigation such as arbitration or conciliation”.¹⁹ In a similar vein, the Australian National Alternative Dispute Resolution Advisory Committee-(NADRAC) broadly defines it as “processes, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in a dispute to resolve the issues between them.”²⁰

¹⁴ Thomas J et al, *Admiralty and Maritime Law: Cases and Materials* (2nd Edition, West Publishing Co 1994) 1.

¹⁵ Edgar Gold, *Maritime Transport: The Evolution of International Marine Policy and Shipping Law* (Illustrated, Toronto: Lexington Books 1985) 5.

¹⁶ Amazu A. Asouzu, *International Commercial Arbitration Arbitration and African States: Practice, Participation and Institutional Development* (Illustrated, Cambridge University Press 2001) 5.

¹⁷ Ibid 13.

¹⁸ BELLO Adesina, ‘Customary and Modern Arbitration in Nigeria: A Recycle of Old Frontiers’ (2014) 2 *Journal of Research and Development* 50-58.

¹⁹ Bryan A. Garner, *Black's Law Dictionary* (Ninth Edition Thomson West 2009) 9.

²⁰ Melissa Lewis and Les McCrimmon ‘The Role of ADR in Criminal Justice System: A View from Australia’ (2005), (ALRAESA Conference, Uganda 4-8 September 2005) 2 <http://www.justice.gov.za/alraesa/conferences/2005uganda/ent_s3_mccrimmon.pdf> accessed 20 November 2017

Arbitration is a dispute resolution procedure which involves reference of disputes between parties to an impartial neutral third party, known as ‘arbitrator’ who acts in a semi-judicial capacity by delivering judgment which is final and binding on the subject matter.²¹ An arbitral award has a similar effect as the judgment of a court.²² However, Arbitration is not considered as ADR per se because of its unique characteristics. As opposed to other ADR mechanisms, arbitral awards are final and binding and the decision or advice of the neutral third party in the case of applying other mechanisms does not have the effect of a court judgment.²³ ADR could take the form of several procedures tailored to meet the circumstances of the case of the parties. Application of ADR mechanisms is aimed at creating avenue for a flexible dispute settlement procedure through which parties can amicably resolve their disputes, at a low cost, within a relatively short duration while preserving the existing relationship. These may take the form of negotiation, mediation, conciliation and expert determination which include adjudication and dispute review boards. ADR methods also include modern methods like mini - trials, rent-a-judge and hybrids like med-arb. Thus, for the purpose of this article, maritime arbitration therefore refers to the reference of maritime dispute to ADR for amicable settlement as opposed to the litigious court processes and procedures.

Maritime Claims in Nigeria: Nature and Causes

International trade or international shipping is usually characterized by a contractual agreement such as charter party or service contract which involves parties to a definite and specific contract covering a particularly spelt out duration. Disputes may also ensue between parties who are not bound by an agreement. For instance, ship collision or contact damage arising at the ship berth or involving a third party may result in disputes. By its nature, maritime dispute may be a simple disagreement or a complex, multi-party, multi-jurisdictional disagreement worth millions of dollars.²⁴ In Nigeria maritime claims may take any of the following forms; it may be a matter relating to propriety interest in a ship, any matter relating to a ship prior to 1991, ship related case which is subject to limitation of liability or matters arising from liability for offshore oil pollution. Matters may also arise from inland waters declared as national waterway; involve claims for loss or damage of goods in a federal port. Other potential causes of maritime disputes from which claims may arise include issues of constitution and powers of a government agency like the Nigerian Ports Authority or National Maritime Authority particularly concerning documentation of cargo, imported or exported. Maritime claims may also include criminal causes and monetary or non-monetary carriage of goods agreement.²⁵

²¹ *The Encyclopedia of Forms and Precedents: Arbitration and Alternative Dispute Resolution, Auctioneers, Estate Agent and Valuers, Bailment* (2nd edition, Butterworths LexisNexis 1995) Vol 3(1), para 2(11).

²² *Ras Pal Gazi Construction Company Ltd vs. FCDA* (2001) 10 NWLR Part 722, 559.

²³ Jean Timsit, ‘Mediation: An Alternative to Judgment, not an Alternative Judgment’ (2003) 69(30) *JCI Arb* 159.

²⁴ Nick Coleman, ‘Conflict and Compromise – Maritime Dispute Resolution’ on *GARD* (27 July, 2017) <<http://www.gard.no/web/updates/content/23769855/conflict-and-compromise-maritime-dispute-resolution>> accessed 20 November 2017.

²⁵ Adedoyin Rhodes-vivour, ‘Maritime Arbitration in Lagos’ (International Bar Association Conference, Hamburg Germany, 26th-28th April 2007)

By the provision of the Admiralty Jurisdiction Act of 1991²⁶, a maritime claim may be 'proprietary' or 'general' in nature. Proprietary are claims that affect the res or subject matter directly. While general claims only affect the subject matter indirectly and may only arise out of dealings with the res. Proprietary claims may include claims relating to possession of a ship, title or ownership of a vessel or any part thereof, mortgage of a ship or any part thereof or mortgage of ship freight. On the other hand potential general claims are numerous and may include claims arising from collision, ship wreck, loss of life or personal injury, cargo loss, carriage of goods or vessel-hire agreements. General claims may also emanate from salvage, pilotage, towage of ship or water-borne aircraft, claims relating to ship construction, claims resulting from port charges, charter or agent agreement, insurance claims, claims for payment of crewmen, claims for enforcement of arbitral awards, proprietary maritime claims or claims for interest in proprietary maritime claims.²⁷

In addition to the general and proprietary claims, maritime claims may also assume the form of a lien. This is because a ship upon registration acquires legal personality similar to that of a registered company. Thus, a ship is perceived as a real property with separate legal personality from its owners and not a personal property. As a result, maritime claim over a ship transcends its ownership. Such claims are known as Liens. A Lien related claim may either be Maritime lien or statutory lien.²⁸ A maritime lien may include salvage relating to life,

cargo or wreck based found on land, claims for wages related damages by master or crew members²⁹ and claims by the master for disbursement of a ship's account.³⁰ Statutory lien on the other hand includes claims arising from the supply of necessities, claims for repair of ships and mortgage claims.

Settlement of Maritime Disputes in Nigeria

Where disputes arise from maritime related activities and parties are unable to reach an agreement, naturally the first point of call is to make recourse to the court for legal intervention. In Nigeria, settlement of maritime disputes can be undertaken using various approaches known to Nigerian laws. These approaches are hereunder examined.

a. Settlement of Maritime Disputes via Litigation

Where court action is to be instituted in relation to maritime or admiralty claims, the 1999 constitution of Nigeria, vest the Federal High Court with exclusive jurisdiction to entertain such matters. Section 251(1) (g) provides

“[1] Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters

[g] any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and

<<http://www.drivlawplace.com/media/MaritimeArbitration.pdf>> accessed 30 November 2017.

²⁶ Admiralty Jurisdiction Decree No 59, 1991, S.2(2).

²⁷ Ibid S 2(3).

²⁸ Ibid S. 59.

²⁹ Fernando & Ors V Owners of MV "Rhodesia Trader" (1980 – 1986) 2 N.S.C. 339.

³⁰ Maxwell Ebube v. Gold Star Line Limited 4 N.S.C. 226].

their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal Ports, [including the constitution and powers of the Ports Authorities for Federal Ports] and carriage by sea;"

In a similar vein, Section 19 of the Admiralty Jurisdiction Act provides that without regard to the provision of any contrary law, the Federal High court shall have exclusive jurisdiction to entertain both civil and criminal admiralty cases. In order to fully exercise its jurisdiction over maritime cases, the Federal High Court is also empowered to apply the English principles of common law and doctrines of equity applicable for the settlement of maritime disputes.³¹ Furthermore, the combined provisions of *Sections 254 of the 1999 Constitution* and *section 21 of the Admiralty Jurisdiction Act, 1991* empower the Chief Judge of the Federal High Court to make rules of procedure on admiralty matters. In lieu of this provision, the 2011 Admiralty Jurisdiction Procedure Rules was made to repeal the old rules of 1993. The Chief Judge of the Federal High Court made the Admiralty Jurisdiction Procedure Rules 2011, which came into force on 14 March 2011 ("the new Rules"), thereby repealing the old Rules which had been in force since 1993. A progressive provision of the act is the power it vests on the court to encourage parties to a dispute to make recourse to amicable settlement through any of the recognized mechanisms including arbitration, negotiation and reconciliation.³²

b. Limitations and Challenges of Settling Maritime Disputes via Litigation in Nigeria

Litigation is the process of resolving a dispute through adjudication in courts. Litigation is adversarial in nature; it involves filing a suit or process in courts and subsequent appearance of parties as well as presentation of evidence in support of their cases. In most parts of the world, ADR is gradually taking precedence over litigation in various parts of the world, because of its numerous benefits which include but not limited to conservation of time, money and energy. In Nigeria, maritime claims are exclusively heard by the Federal High Court, the Admiralty Jurisdiction Procedural Rules and the Federal High Court Civil Procedure rules set out the procedural requirements for filing a suit to recover claims in maritime or admiralty matters.³³

However, enforcement of maritime claims via litigation in Nigeria is confronted with several limitations which make litigation undesirable. One of the most pronounced challenges is the extent of admiralty jurisdiction of the Federal High Court as set-out in Section 251 of the 1999 constitution. There have been several cases when it is unclear to litigants whether a particular matter falls within the admiralty jurisdiction of the Federal High Court. The cause of action is the right which the litigant has to institute an action, in the absence of which the court will not have the requisite jurisdiction to proceed with the suit. In the case of *NV.SCHEEP v. MV "S.ARAZ"*³⁴ where the plaintiff in the capacity as agents for Messrs.' N.V. ScheepVaalmijUnidor Willie Mstad of Curacoa instituted an action

³¹ Federal High Court Act 2005, S 10 and 11.

³² Admiralty Jurisdiction Procedure Rules 2011, S17.

³³ Ibid, S19 and Federal High Court Civil Procedure Rules (n-20) S.20.

³⁴ *NV. SCHEEP v MV. "S.ARAZ* [2001] 15 NWLR [PART 691] 622.

to recover demurrage over the use of the vessel by the second defendant, a matter that was on-going before an arbitral panel in London at the time of filing the suit. An interlocutory application by the defendant challenging the jurisdiction of the court was dismissed by the Federal High Court but upheld on appeal to the Court of Appeal and the Supreme Court on grounds that the Plaintiff's claims were not inherently maritime claims.

On the other hand, in the case of *G & C LINES v. HENGRACE [NIG] LTD*³⁵ where the plaintiff filed a suit before the Lagos state high court for waiver of demurrage payable to the 1st and 2nd Defendants, the defendant's application requesting that the matter be struck-out for lack of jurisdiction was struck-out by the high court. The appeal by the Defendant against the High Court's interlocutory decision was decided in favour of the Defendant. To the effect that such claims were maritime claims within the jurisdiction of the Federal High Court. This is quite confusing, whereas in the former case the Appeal court and Supreme Court held that demurrage claims were not within the Federal High Court's jurisdiction as they were not substantive maritime claims, in the latter case with the same claims were said to be within the jurisdiction of the federal high court.

Another major problem faced in the course of litigating a maritime claim is procedural bureaucracy. Nigerian court system has a back-log of cases yet to be cleared as such any suit filled, except in cases of urgency which calls for accelerated hearing, will join the long queue and will take a relatively long duration before its final

conclusion. Delay tactics adopted by legal practitioners, sometimes to buy time, also contributes to the waste of time. Traditionally, maritime suits involving shippers in Nigeria are known for taking long time, rendering the essence of justice futile. In some cases, arrested vessels stayed at anchor for such a long duration that upon completion of the case, the ship would have been dilapidated. On several occasions, shippers have had to abandon their claims.³⁶ Where there are cargos in the ship, it may have become expired.

The use of interlocutory application as a delay tool is also a major problem which renders maritime trials unattractive. Interlocutory applications are interim prayers presented to the court in the course of the claim, which must be heard before the substantive suit. In a maritime suit, interlocutory applications may be genuinely filed to preserve the res, and it may be filled out of malice to delay proceedings. The federal high court civil procedure rules does limit the number of interlocutory applications that can be heard in the course of a suit, in the interest of justice. Frustration resulting from undue delay of litigation through interlocutory application has been obviated by the case of *Maersk & anor v Adidide Investment Limited & anor*³⁷. In this case, the substantive suit which was filed in 1996 was placed on hold while interlocutory appeal proceeded to the supreme court and was only finally determined after seven years, in 2003. Similarly in the case of *Amadi v NNPC*³⁸ in taking cognizance of the procedural delay, the learned judge, Uwais JSC stated that

³⁵ *G & C LINES v HENGRACE [NIG.] LTD*[2001] 7 NWLR [Part 711] 51.

³⁶ Lanre Adedeji 'Dispute Resolution and the Practice of Arbitration' on *The Lawyers Chronicle* <[www.thelawyerschronicle.com/dispute-](http://www.thelawyerschronicle.com/dispute-resolution-and-the-practice-of-arbitration)

[resolution-and-the-practice-of-arbitration](http://www.thelawyerschronicle.com/dispute-resolution-and-the-practice-of-arbitration)> accessed on 12th November, 2017.

³⁷ *Maersk & anor v Adidide Investment Limited & anor* (2002)1 SC vol. II 157.

³⁸ *Amadi v. NNPC* [2000] 10 NWLR (pt 676)76.

The chequered history of this case once more brings to light the dilatory effect of interlocutory appeals on the substantive suit between the parties. The action in this case was brought on the 29th day of April 1987... the final judgement on the interlocutory appeal is delivered today by this court. It has taken thirteen years for the case to reach this stage... the case is to be sent back to the High Court to be determined hopefully on the merits after a delay of 13 years... I believe that counsel owe it as duty to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections, as the one here, so that the adage of "Justice delayed is justice denied" may cease to apply to the proceeding in our courts.

Several other reasons exist why litigation is not in any way really desirable when it comes to maritime trade and commercial activities; first, the outcome of litigation is uncertain. The presiding Judge considers several principles of law before coming to a decision; as such neither party is assured of possibility of winning the case. In addition, litigation could be unduly expensive and may lead to unnecessarily publicity. The long duration may lead to loss of the subject matter and it destroys the relationship between the parties; thus affecting the economy in the long run. The individual business men lose out, so also the nation.

c. Arbitration as an Alternative to Litigation

Arbitration is a dispute settlement process involving two or more persons who submit their disputes to an impartial third

person or persons referred to as 'arbitrators' appointed specially for the purpose of privately interfering in that dispute, in a seemingly judicial capacity and delivering a final and binding judgment. The final decision of the arbitrator is known as 'An Arbitral' award and it has the same effect as the decision of a court of law.³⁹ Arbitration and indeed ADR is a traditional and historical practice in Nigeria.⁴⁰ This position was buttressed by Niki Tobi JSC in the case of John Onyenge & Ors vs. Chief Love day Ebere & Ors.⁴¹ However, arbitration law in Nigeria has metamorphosed over decades from the customary operation of arbitration to meet the demands and complexity of contemporary business transactions.

Legal Framework for International Commercial Arbitration

There are numerous treaties that are relevant to arbitration at the international arena. However, international commercial arbitration is based on the duo of the *United Nations (UN) Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law)* and *The New York Convention on Recognition and Enforcement of Foreign Awards 1958*. The UNCITRAL model law which emanated from unification of relevant provisions from arbitration laws globally was adopted by the UN General Assembly in 1985. It has however enjoyed universal acceptance in the international business arena as an acceptable international standard and yardstick which protects investors from being subjected to discriminatory dispute settlement provisions and unfair practices. The UNCITRAL mode

³⁹ Ras Pal Gazi Construction Company Ltd vs. FCDA (2001) 10 NWLR Part 722 page 559.

⁴⁰ Oparaji v. Ohanu (1999) 9 NWLR (Pt 618) 290 at 304.

⁴¹ John Onyenge & Ors v. Chief Love day Ebere & Ors (2004) 11 MJSC 184 at 199-200.z.

lay down the principle of non-intervention⁴² to the effect that in any matter to which the model apply, the domestic courts shall not interfere except as provided in the model law. The article excludes residual powers of the court not expressly recognized by it, with the intent to get-rid of undue delay and speed-up arbitral process. The model law has enjoyed extensive acceptance globally and this has aided recourse to arbitration for the settlement of maritime disputes globally. The successful application of the UNCITRAL model law led to the adoption of International Commercial Conciliation law in 2002, about two decades later. Efforts towards improving the UNCITRAL model law has been continuous as seen in the recent review of interim measures, preliminary, orders and recognition and enforcement of interim orders.

The *New York Convention* was adopted in 1958. It imposes obligation on domestic courts of state signatories to refer to arbitration any matter before it, which incorporates a contractual arbitration clause. It also requires that domestic courts grant foreign arbitral awards recognition and enforcement without subjecting it to fresh review, but for the few permissible exceptional circumstances.⁴³ The primary objective of the convention is to ease the process of recognition and enforcement of an arbitral award outside the country where it was delivered. In order to ensure compliance,

the *New York Convention* considers as breach of treaty obligations any failure by the court of a state signatory to apply the provisions of the convention. Another important instrument in the settlement of commercial dispute internationally is the *Washington convention of 1965 (ICSID Convention)* which has been ratified by several nations of the world. The ICSID Convention deals with investment disputes involving citizens of state signatories. The subject of international arbitration is also mentioned in Other relevant international instruments including *the 1961 European Convention on International Commercial Arbitration, Moscow Convention of 1972, the Panama convention of 1975, the Ohada Treaty of 1993, the North American Free Trade Agreement of 1994 (NAFTA)*.⁴⁴ Besides the multilateral arena, there are regional bodies that address the subject of arbitration. They include regional bodies' set-up under the auspices of Asian African Legal Consultative Committee. Like the *Lagos Regional Centre For International Commercial Arbitration, International Court of Arbitration of the International Chamber of Commerce ("ICC")*.

Whereas existence of international dispute settlement is important to protect foreign regime, it is necessary for such instruments to instruments to provide equal protection for all investors. A typical example of failure to create level playing

⁴² UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72, 40 U.N. G.A.O.R. Supp. (No. 17), U.N. Doc. A/40/17 (June 21, 1985), revised in 2006, G.A. Res., Article 5; This is the principle of nonintervention, adopted into various National Laws including the English Arbitration Act section (c) 1996.

⁴³ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), Articles II & V.

⁴⁴ *European Convention on International Commercial Arbitration of 1961 Geneva, United*

Nations, Treaty Series, vol. 484, p. 364 No. ; 1972 Convention on The Settlement by Arbitration of Civil Law Dispute Resulting From Relations of Economic and Scientific-Technical Cooperation Moscow, Article I-XIII 1972; Inter-American Convention on International Commercial Arbitration - Panama Convention, January 30 1975, Treaty on the Harmonisation of Business Law in Africa (the Ohada Treaty 1993), Title 4; the North American Free Trade Agreement 1994 (NAFTA), Chapter 11.

field is seen in Article 5 of the UNCITRAL Model Law which has far reaching effects. The effect of Article 5 of the UNCITRAL Model Law is to grant preferential treatment and protection to foreign investors over domestic businesses. The extent of suitability of the model for the protection of domestic businesses in Africa is questionable. The compulsory recognition of foreign arbitral awards as prescribed by the New York Convention speaks to the effectiveness and importance of the institutional frame work for ADR at the national level. It also more favourable to businesses from nations with well-developed legal systems, where contracting parties from such nations incorporate in their agreement dispute settlement clause requiring that commercial disputes be referred to his home country for settlement.

The mode of operation of arbitration is to permit parties to freely adopt rules that will govern the dispute settlement process. Parties are to reach an agreement on rules of evidence, applicable laws, number of arbitrators, venue of arbitration etc. The rules applicable for admission of evidence in International Commercial Arbitration were set-out by the International Bar Association (IBA), though parties are at liberty to adopt this rule or any other suitable rules. In addition, there are other applicable rules set-out by various international bodies; their application to cases however depends on the choice of parties. Article 22 (3) of the Hamburg Rules prescribe that the place of arbitration may be determined by the Claimant provided the chosen location is a

state within the territory where the claimant resides. The rules also consider the Defendant by stating that place of arbitration may also be the Defendant's principal place of business, the Defendant's permanent resident, a place where the contract was signed and in which the Defendant also has a branch office or office of the agency through which the contract was signed. The Hamburg rules expressly envisage settlement of maritime disputes by stating that the place of arbitration may also be the port of loading or port of discharge of goods forming the subject matter of contract and any other place designated in the contract or arbitration agreement. It is also important to look at the Hague Rules⁴⁵ and the Hague Visby Rules.⁴⁶ Although the duo have no provisions on maritime arbitration they specify time limits for commencing maritime actions which might affect the right to resort to legal intervention whether via litigation or ADR. Article 3(6) of The Hague and Hague Visby Rules require that legal actions against a carrier and a ship must be commenced within the duration of one year from the date set for the delivery of the goods. While Article 22(2) of the Hamburg rules⁴⁷ requires that an arbitration clause in a charter party be specifically incorporated into the bill of lading with binding effects on anyone who acquires the bill in good faith; the claimant has the right of choice of place of arbitration and the Arbitral panel is to apply the rules of the convention. Thus, any clause or term of an agreement that is inconsistent with the rules shall be null and void to the extent of such inconsistency. The convention stipulates a

⁴⁵ The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, August 25 1924 and in force June 2, 1931 (Hague Rules).

⁴⁶ The Protocol to Amend the International Convention for the Unification of Certain Rules of

Law Relating to Bills of Lading, signed at Brussels February 23, 1968 and in force June 23, 1977.(Hague Visby Rules).

⁴⁷ The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules).

limitation period of two years for instituting legal action or arbitration⁴⁸ proceedings, as opposed to the one year duration specified in The Hague and Hague Visby rules.

Legal Framework for Arbitration in Nigeria and its Application in the Maritime Industry

Globally, trade, business and transactions generally referred to as commercial activities constitute a major driver of the economy. Conducive business environment attracts investors, especially foreign investors who import capital through both foreign direct investment and foreign port-folio investment with positive impacts on government earnings. However, because disputes often arise in the course of business dealings, availability of a conducive environment for dispute settlement is a matter of serious concern to investors. Often times, an investor is interested in ensuring that there is easy access to avenue for fair settlement of disputes and that judgment or awards can be enforced within a reasonable time. Investors are concerned about the availability of dispute settlement window, unbiased dispute settlement, ease of recognition and enforcement of awards.⁴⁹ In the absence of a trusted judiciary, traders will be reluctant sign business contracts as there may be no avenue for the aggrieved party to seek redress timorously if the agreement is breached. In the contemporary, arbitration is the most suitable ADR mechanism applied to

commercial disputes. Most especially in cases of international commercial transactions in which investors are often reluctant to submit commercial disputes to court for litigation. In Nigeria for instance, the performance of the judiciary is marred by several inadequacies including court-room congestion, un-profession practices among lawyers who often explore delay tactics and judicial corruption. In developing countries, investors are particularly wary of submitting commercial disputes to courts because most contracts are state-owned and in most of those states sovereign immunity principle operates to protect state interest.⁵⁰ However, since commercial disputes would require enforcement of awards, Arbitration is the most applied ADR because of the enforceability of arbitral awards. In Nigeria, arbitration has long been established and accepted as a suitable tool for the settlement of commercial disputes.⁵¹ This is because as far back as 1914, the English Arbitration Act of 1889 was made applicable to commercial disputes in the country and subsequently replaced with the Arbitration Ordinance Act of 1958.⁵²

Business related arbitration whether investment arbitration or commercial arbitration may take place for settlement of disputes relating to various aspects of law. However, the commonest aspect of law under which arbitration may arise includes industrial arbitration, maritime arbitration and tax related arbitration. Maritime

⁴⁸ Ibid, Article 20 (1).

⁴⁹ Sophie Pouget, 'Arbitrating and Mediating Disputes Benchmarking arbitration and mediation regimes for commercial disputes related to foreign direct investment' (The World Bank Group – October 2013) 4-18.

⁵⁰ A.A. Asouzi, *International Commercial Arbitration and African States* (Cambridge University London 1999) Chapter 7 – ICSID Arbitration and Conciliation: The African Experience. See also Yves Derains, 'Soverign

Immunity and Financial obligations' (2000) 3 *Business Law International issue* 141. Delaume, 'Sovereign Immunity and Transnational arbitration' (1987) 3(28a) *Arbitration International*.

⁵¹ Okpuruwu vs. Okpokam (1998) 4 NWLR Part 90, 554 at 586.

⁵² J.Olakunle Orojo & M. Ayodele Ajomo Law and Practice of Arbitration and Conciliation in Nigeria (Mbeyi & Associates (Nigeria) Limited 1999) Chapter 1, pages 3 & 13.

arbitration in Nigeria is particularly important, being key to unfolding the immense economic potential which the maritime sector holds for the nation. The Nigerian maritime industry is a multi-million dollars industry which if fully explored may create the much desired room for diversification from current oil dependence thereby diving economic growth and sustainable development. However, maritime disputes are often complex in nature. As a result of complexity of maritime disputes, a single dispute may be multi-national, multi-party, multi-jurisdictional and expose parties to loss of billions of dollars with the risk of ending their business. Hence, development of maritime arbitration is important in order to maximize the potentials of the nation's maritime sector. The laws governing commercial arbitration in Nigeria are as follow:

a. Arbitration and Conciliation Act 1990

Nigeria has adopted various relevant international instruments relevant to arbitration proceeding. Nigeria was the first African state to accede to the UNCITRAL model law and the United Nations Convention on recognition and Enforcement of Foreign Arbitral Awards (New York) Convention was acceded to in 1970. These two instruments were domesticated in the *Arbitration and Conciliation Decree* which came into force in 1988 and was later known as the *Arbitration and Conciliation Act (ACA) (1990)* by virtue of Section 315 of the 1999 constitution.⁵³ The applicability of the ACA covers all disputes resulting from commercial transactions, including

international commercial transactions. The preamble to the ACA describes it as:

An Act to provide a unified legal framework for the fair and effective settlement of commercial disputes by arbitration and conciliation and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of International Commercial Arbitration

Part I of the Act borrows from the UNCITRAL model Arbitration law, while Part II is modeled after the UNCITRAL conciliation rules. Part II contains further provisions on International commercial arbitration while Part IV specifies Nigeria's treaty obligations under the New York Convention towards the recognition and enforcement of foreign arbitral awards. In addition to the three parts, the Act also has three schedules. The First Schedule contains rules of arbitration similar to the UNCITRAL model arbitration law, the Second schedule incorporates provisions of the New York Convention in relation to the recognition and enforcement of foreign arbitral awards, while the third Schedule contains provisions similar to the UNCITRAL conciliation rules.

b. Arbitration Process under the Arbitration and Conciliation Act

The Act provides all requisite guides for successful arbitration process. Section 15(1) of the Act requires that the applicable rules in any arbitral proceedings shall be in accordance with the Arbitration rules in the first schedule of the ACA. The provisions of

such existing law are to be deemed to be made by an Act of the National Assembly dependent on the powers of the National Assembly or a House of Assembly to make such laws.

⁵³ Constitution of the Federal Republic of Nigeria 1999, Section 315. The section stipulates that an existing law shall have effect with such modification as necessary to bring it into conformity with the provision of the constitution

the first schedule uphold the autonomy of the parties to the extent that even the mandatory provisions off the rule are subject to the agreement of the parties. In order to further promote international commercial arbitration, Section 53 of the ACA empowers parties to set-aside the provisions of the Act and forge the applicable rules to be relied upon in the course of settling their disputes. This may be in line with the provisions of the First Schedule of the Act, the UNCITRAL model law or any other relevant international instrument.

The parties are also at liberty to make confidential the arbitral award at the end of the arbitration process.⁵⁴ An arbitral award can only be publicized subject to the agreement of the parties. Except where the rules specifically agreed to by the parties expressly provides otherwise, there shall be no presumption of waiver of confidentiality of an arbitral process or award. Except as provided by the Act in certain specifies circumstances, court intervention in an arbitration process is expressly prohibited.⁵⁵ Where an arbitration agreement binds parties to a contract, such can only be revoked by subsequent express agreement of the parties or by leave of court.⁵⁶ Where parties to a contract have failed to first make recourse to arbitration before referring the dispute to court, the court is empowered to stay proceedings and refer parties to arbitration.⁵⁷ Parties to a contract including international commercial contract may have arbitrators to their dispute chosen by an appointing authority.⁵⁸ In order to facilitate

arbitration, the court has the power to order the attendance of a witness or production of a document for examination.⁵⁹ At the completion of an arbitration process, the arbitral award may be set aside or an arbitrator can be removed on grounds of misconduct.⁶⁰ International arbitral awards may also be set-aside.⁶¹ The Act provides for the recognition of arbitral award and the various grounds for refusal to recognize an arbitral award.⁶² The duty of the court to uphold arbitration agreement entered into by parties was confirmed by the Supreme Court in *Owners of the M.V Lupex v. NOCS Ltd*⁶³

However, where an arbitration process has been concluded, an arbitral award cannot be appealed. It may however be set-aside in case of a domestic award, on grounds of misconduct or improper procurement.⁶⁴ International awards may also be set-aside on grounds contained in Article V of the New York Convention. For the purpose of awarding cost, the ACA contain specific provisions to the effect that costs shall be reasonable taking into cognizance the amount in the dispute, complexity of subject matter, the duration of the arbitration and other relevant circumstances.⁶⁵ The Act also seeks to regulate the Arbitrator's fees to avoid exploitation. Although the ACA is a principal instrument on arbitration in Nigeria, it takes into cognizance other relevant laws which shall not be rendered inapplicable in the course of the arbitration.⁶⁶

c. The Admiralty Jurisdiction Act 1991

⁵⁴ Arbitration and Conciliation Act 1988, S. 32.

⁵⁵ Ibid S 34.

⁵⁶ Ibid S 2.

⁵⁷ Ibid S 4 and 5.

⁵⁸ Ibid S 7.

⁵⁹ Ibid S 23.

⁶⁰ Ibid S 29, 30.

⁶¹ Ibid S 48.

⁶² Ibid S 51 and 52.

⁶³ *M.V Lupex v. NOCS Ltd* (2003) 15 NWLR Pt 844, 469.

⁶⁴ Arbitration and Conciliation Act (n-45) 30 (1) and (2).

⁶⁵ Ibid S 49(2) and Article 38 of Arbitration Rules in the First Schedule.

⁶⁶ Ibid S 35.

The Admiralty Jurisdiction Act (AJA) is a federal legislation, enacted in 1991, which empowers the Federal High Court to assume jurisdiction over admiralty matters. The Act describes admiralty jurisdiction as inclusive of jurisdiction to determine questions relating to proprietary interest in a ship or any interest specified in Section 2 of the Act. The act specifies the grounds for jurisdiction of the court as including the place of performance of contract, parties' domicile, place of payment being Nigeria or where plaintiff expressly submits to court jurisdiction, financial consideration involved accrued in Nigeria, Nigeria is a party, or the court is of the opinion that the matter be tried in Nigeria.⁶⁷ Basically, the AJA provides”

“Any agreement by any person or party to any cause, matter which seeks to oust the jurisdiction of the Court shall be null and void if-

- 1) the place of performance, execution, delivery, act or default is or takes place in Nigeria; or
- 2) any of the parties resides or has resided in Nigeria; or
- 3) the payment under the agreement (implied or express) is made or is to be made in Nigeria; or
- 4) in any admiralty action or in the case of a maritime lien, the plaintiff submits to the jurisdiction of the court and makes a declaration to that effect or the res is within Nigerian jurisdiction; or
- 5) it is a case in which the federal (Military) Government or a State of the Federation is involved and the Government or State submits to the jurisdiction of the Court; or 17 (1989) 3 NSC 588 10
- 6) there is a financial consideration accruing in, derived from , brought into

or received in Nigeria in respect of any matters under the admiralty jurisdiction of the Court; or

- 7) under any convention for the time being in force to which Nigeria is a party the national court of a contracting state is either mandated or has a discretion to assume jurisdiction; or
- 8) in the opinion of the Court, the cause, matter or action should be adjudicated upon in Nigeria.”

This provision contained in Section 20 of the AJA has huge implications on the validity of arbitration agreements with foreign forums, particularly where such an arbitration clause is contained in a standard contract, this will be considered in details under the next sub-heading.

Arbitration of Maritime Disputes in Nigeria

Maritime disputes are disputes resulting from maritime related commercial activities. Maritime arbitration involves the settlement of maritime disputes through reference to arbitration. The Arbitration and Conciliation (ACA) referred to maritime arbitration in describing the forms of transactions from which disputes may be referred to arbitration. The act provides that arbitration may be explored for settlement of disputes resulting from various commercial transactions including trade in goods and services, distribution contract, commercial representation, agency, factoring, leasing, construction, engineering work, licensing, investment, financing, banking, insurance, concession agreement, Joint Venture Agreement, industrial or business cooperation, carriage of goods or persons by air, rail, road or sea.⁶⁸

⁶⁷ Admiralty Jurisdiction Act 1991, S 20.

⁶⁸ Arbitration and Conciliation Act (ACA) in section 57 (1).

The implication of the above provision is that maritime arbitration is similar to arbitration relating to other aspects of law as such similar rules and procedure is applicable. Nonetheless, the frequency of occurrence of maritime arbitration in Nigeria is relatively low because maritime contracts such as Bill of Lading often oust the jurisdiction of Nigerian courts through their arbitration clauses. Although the AJA contains provisions seeking to remedy this limitation, while bodies like the Maritime Association of Nigeria established in 2005 seeks to create increased awareness about maritime arbitration in the country, much is yet to be achieved. Like other form of arbitration, the procedure for maritime arbitration includes:

a. Referrer of cases to arbitration

In order to refer a maritime dispute to arbitration, parties may either agree that arbitration is a preferred dispute settlement means at the point when the dispute arise or may have included an arbitration clause in the contract which forms the basis of their transaction. In form, an arbitration agreement must be in writing.⁶⁹ It may however be incorporated into the written contract binding the parties or be contained in a separate writing document. The essence of the requirement that an arbitration agreement be written is targeted at ensuring that parties to the transaction agree to with freely, without any form of duress or undue influence. An arbitration agreement may also be inferred from the written correspondences exchanged between the parties and from the wordings of a state. The Nigerian Investment Promotion Commission (NIPC) Act for instance, provides that any foreign investor who

registers under the Act is automatically entitled to bring treaty arbitration under the ICSID system. Since maritime transactions are investment related, an investor may choose to invoke this provision. However, this may work against the free will of the other party and the right of choice of dispute settlement method. In addition, an arbitration agreement can only be applicable to an arbitrable dispute.⁷⁰ The arbitrability of a dispute relates to whether or not it is capable of being referred to arbitration, determinable from the nature of the contract from which the dispute emanated.⁷¹ Maritime dispute being commercial in nature is however arbitrable. Parties to an arbitration agreement must possess requisite legal capacity, and the agreement must be capable of being performed. Generally, a matter is said to be non-arbitrable where the subject matter of the agreement incapable of being settled by arbitration under the Nigerian laws or where such award made will be contrary to public policy in Nigeria.⁷² However, where a matter is arbitrable, court intervention is prohibited.⁷³

b. The arbitration process

There may be need for parties to apply for stay of proceedings prior to commencement of an arbitration process, where court proceedings are already ongoing on the matter before a court of competent jurisdiction. Where either of the parties to an arbitration agreement institute an action in court, application for a stay of proceedings becomes a necessity as the mere existence of an arbitration clause or commencement of arbitration process does not operate as an automatic stay, and when the application for stay of proceedings is

⁶⁹ Section 1 and 2 ACA.

⁷⁰ Ibid (n 68) S48 (b)(i) and 52(b)(i).

⁷¹ Ogunwale v. Syrian Arab Republic (2002) 9 NWLR (Part 771) 127.

⁷² (n-70).

⁷³ Ibid S 34 ACA.

made the court has the discretion on granting it. This was clearly spelt-out in Section 4 and 5 of the Arbitration Act that:

4. (1) a court before which an action which is the subject of an arbitration agreement is brought shall, if any party so requests not later than when submitting his first statement on the substance of the dispute, order a stay of proceedings and refer the parties to arbitration. (2) Where an action referred to in Subsection (1) of this section has been brought before a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court.

5. (1) If any party to an arbitration agreement commences any action in any court with respect to any matter which is the subject of an arbitration agreement, any party to the arbitration agreement may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.

(2) A court to which an application is made under subsection (1) of this section may, if it is satisfied- (a) that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration agreement; and (b) that the applicant was at the time when the action was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, make an order staying the proceedings.

Before an arbitration process commences, parties are at liberty to decide the number of arbitrators to be appointed. But

where they are unable to arrive at an agreement as to the number of arbitrators, the law presumes that there shall be three arbitrators.⁷⁴ A maritime transaction often has an international flavor as such resulting arbitration may readily fall under international commercial arbitration.⁷⁵ Where the parties to a maritime arbitration are desirous of appointing a sole arbitrator, either of them may propose the name of the sole arbitrator.⁷⁶ Where disputing parties are desirous of appointing three arbitrators, each party shall appoint an arbitrator each, and the two arbitrators shall jointly appoint the third.⁷⁷ However, where parties are unable to arrive at a consensus on the choice of arbitrators, recourse shall be made to the Secretary General of the Permanent Court of Arbitration in Hague who shall make the choice of arbitrators.⁷⁸

c. Jurisdiction of Arbitral Tribunal

The jurisdiction of a court or tribunal over a matter describes the legal authority to seat over, decide and resolve the issues in such dispute. A party to an arbitration process may challenge the jurisdiction of the tribunal at any stage before the entering of defense. However, where there are convincing grounds, the arbitral tribunal may still permit its jurisdiction to be challenged after defense has been entered. The ruling on jurisdiction of the tribunal may address preliminary question or the substantive suit.⁷⁹ Parties to a maritime contract cannot expressly agree to oust court jurisdiction, where such agreement exist, it shall be null and void.⁸⁰ Thus in *M.V. PANORMOS Bay v. Olam (Nig.) Plc*⁸¹ where through Clause 7 of their agreement, parties

⁷⁴ Ibid, S 6.

⁷⁵ Ibid 44(1).

⁷⁶ Ibid 44(5).

⁷⁷ Ibid 44(2) and (6).

⁷⁸ Ibid S. 54(2).

⁷⁹ Ibid S 12 (3) and (4).

⁸⁰ Admiralty Jurisdiction Act S. 20 AJA.

⁸¹ *M.V. PANORMOS Bay v. Olam (Nig.) Plc* 2004 5 N.W.L.R. Part 865, C.A.1.

ousted the jurisdiction of Nigerian courts the Court of Appeal invoked the combination of sections 2(1) and 4(2) of the Foreign Judgment (Reciprocal Enforcement) Act⁸² and Section 20 of the Admiralty Jurisdiction Decree of 1991.

Where the forum of an arbitration process is outside Nigeria, the enforcement of the award is based on the provisions of the New York Convention as domesticated in the ACA. Schedule 2 of the ACA which addresses recognition and enforcement of foreign awards is to the effect that foreign awards are recognized in Nigeria subject to reciprocity based on statutory recognition of Nigerian Arbitral awards in such state.⁸³ In order to determine validity of a judicial award, Nigerian courts are empowered to carry-out judicial review of arbitral awards.⁸⁴ However, such review must have been initiated by an aggrieved party who has the right to apply to the High Court to set-aside the award within three months from the date the award was pronounced and in the case of an additional award, from the date the request for the additional award was disposed-off by the tribunal.⁸⁵ The power of the court to set-aside a judicial award was expressly recognized by the Supreme Court in the case of *KSUDB V Fanz Limited*.⁸⁶ The fundamental grounds for setting aside an arbitral award are the commission of improper conduct by the arbitrator in the course of the proceedings and the existence of error of law on the face of the award. In the absence of a fundamental error, an arbitral award is final and binding on the parties to the agreement and all persons claiming there from.

Limitations of Maritime Arbitration in Nigeria

The Nigerian maritime industry has assumed increased importance which needs be maximized to drive economic growth and sustainable development. Crude-oil which constitutes the major source of national income for the Nigerian government is exhaustible. More so, global crude oil prices have continued to plummet while advocacy for environment protection drive the preference for clean energy. In order to achieve desired economic growth, Nigeria must cease to be a monoculture oil dependent nation, by developing other viable economic sectors, among which is the maritime sector.

Nigeria is geographically at an advantageous position for maritime trade, having a long stretch of coast line and being situated along international trade route. A look at the economic performance of other states with similar coastal potentials like Singapore, Shenzhen, Hong Kong and Dubai reveals the extent of economic prospect which Nigeria maritime industry holds. More so, the current drive towards trade liberalization, facilitation of regional and transnational trade is a foundational step towards increased maritime activities. However, from ship leases, to trade in goods and services, increased port activities, fishing agreements, marine tourism, biodiversity and deep sea exploration, increased maritime activities increases the tendency of disputes among stake holders and calls for an effective dispute settlement system. In the wake of globalization and the increased volume of maritime trade globally easy access to avenue for fair settlement of disputes and enforcement of awards within a reasonable

⁸² Foreign Judgments (Reciprocal Enforcement) Act Chapter F35 (Chapter 152 LFN 1990) Laws of the Federation of Nigeria S 2(1) and 4(2).

⁸³ Arbitration and Conciliation Act S. 54(1) ACA.

⁸⁴ *Ibid* S 29-30.

⁸⁵ *Ibid* S 29.

⁸⁶ *K.S.U.D.B vs. FANZ Limited* (1990) 4 N.W.L.R. Part 142 SC1).

time are prerequisites for attracting investors.⁸⁷ Maritime activities are time sensitive; excessive time waste may cause economic loss to parties as such lack of access to seek redress timorously discourages investors. Consequently, ADR mechanisms have become very important tools for facilitating timely settlement of commercial disputes while preserving the relationship of parties and saving cost. Arbitration is mostly suitable for settlement of commercial disputes including maritime suitable, however, maritime arbitration in Nigeria is generally faced with certain challenges which limit its desirability.

One of the challenges of maritime arbitration in Nigeria is the commonly adopted standard form of maritime contracts. Most maritime contracts such as shipbuilding agreement, ship repair agreement, ship purchase agreement, bills of lading and charter parties are based on standard form contracts with little enabling environment for negotiation of terms by the weaker party. The contracts usually contain arbitration clauses which stipulate the forum of dispute settlement to be established centers for international arbitration like London, Singapore and New York.⁸⁸ This work hardship on Nigerian parties in terms of the associated cost of travelling, mobilizing and paying the legal team. Furthermore the foreign parties are often better equipped to succeed in the arbitration, since they have the wherewithal to hire the best hands available. In most cases, Nigerian partners resort to abandonment of legitimate cargo and claims

to foreign ship owners as a result of inability to bear the cost. Section 20 of the AJA attempts to address this jurisdiction issue relating to the forum of the arbitration, as the section renders void any arbitration clause which purports to oust the jurisdiction of the Federal High Court, where an admiralty case has a strong link to Nigeria.

This is in conflict with the nation's treaty obligation under the New York Convention; as such it has been held that foreign arbitration clauses will be upheld as they do not oust the jurisdiction of Nigerian courts.⁸⁹ Although the Nigerian courts generally align with nullifying arbitration agreements with foreign clauses where the contract in question is carried-out in Nigeria, this is not a universal position as it is subject to the variances in each case. It can therefore be rightly said that there is a lacuna in Nigerian law as regards protection of local content in the maritime industry, which can only be properly addressed by statutory intervention.

This loophole can be taken care-of either by enacting a Federal Arbitration Act or a Carriage of Goods by Sea Act. This approach is adopted in South Africa where the 1986 South African Carriage of Goods Act⁹⁰ permits persons carrying out business in South Africa including transactions based on documents for carriage of goods and arbitration agreements to South Africa to institute legal action before competent courts in the country regardless of any exclusive jurisdiction clause in the agreement. Section

⁸⁷ Sophie Pouget, above n 49.

⁸⁸ Memorandum of Agreement (Norwegian Saleform 1993) Clause 16; Gencon Charter party 1994 of the Baltic and International Maritime Council (BIMCO), Clause 19; Lloyd's Standard Form of Salvage Agreement (1995), Clauses 7 – 10 and Para. I Lloyd's Standard Form of Salvage Agreement (2000), Para. I.

⁸⁹ *Owners of M.V Lupex v. Nigerian Overseas Chartering and Shipping Ltd [2003] 15NWLR Part 844 at 469.*

⁹⁰ Carriage of Goods by Sea Act 1986, <<https://www.golegal.co.za/wp-content/uploads/2016/12/Carriage-of-Goods-by-Sea-Act-1-of-1986.pdf>> accessed 20 December 2017.

46 of the Canadian Admiralty Act contains similar provision to the effect that:

(1) If a contract for the carriage of goods by water to which the Hamburg Rules do not apply provides for adjudication or arbitration of claims arising under the contract in a place other than Canada, a claimant may institute judicial or arbitral proceedings in a court or arbitral tribunal in Canada that would be competent to determine the claim if the contract had referred the claim to Canada, where

(a) the actual port of loading or discharge, or the intended port of loading or discharge under the contract, is in Canada; (b) the person against whom the claim is made resides or has a place of business, branch or agency in Canada; or (c) the contract was made in Canada.

(2) Notwithstanding subsection (1), the parties to a contract referred to in that subsection may, after a claim arises under the contract, designate by agreement the place where the claimant may institute judicial or arbitral proceedings⁹¹

Besides legal intervention, there is need for industry sensitization and enlightenment of players in the maritime industry to create increased awareness on the consensual nature of arbitration which calls for negotiation of all terms in the arbitration contract including the dispute settlement clause. Although the MAAN has been relentless in the attempt to create awareness for instance, in 2011, a joint committee was set-up to review the dispute settlement clause in the standard contract of various trading partners, and the committee produced a sample standard form contract which incorporates the 2010 Incoterms (Terms of Shipment) and sample of dispute settlement clause making Nigeria the forum. Similarly,

in 2016, the association launched a forum to create awareness on the resolution of maritime disputes via ADR to further sensitize Nigerians in the maritime sector on negotiation of dispute settlement clauses in maritime agreements to protect their interests.

Another issue is the contrasting effects of Section 4 and 5 of the Arbitration Act which deals with stay of court proceedings prior to the commencement of arbitration. Where a matter before a court is subject of arbitration, Section 4 makes it compulsory for the court to stay proceedings and refer the matter to arbitration. On the other hand, Section 5 does not compel the court to grant a stay of proceeding, rather the section leaves the decision at the discretion of the court. The implication being that each section may be invoked by different applicants to yield varying outcomes. The two provisions lack requisite correlation to back the philosophy of ADR as a preferable alternative to litigation for the settlement of commercial disputes. There are no clear cut distinctions of circumstances when the grant of stay of proceedings is obligatory for the court and when same is discretionary.

Although on the face of it, it would appear that there is no conflict between the provisions of Section 20 AJA and Sections 4 and 5 of the Arbitration Act, however, where an arbitration clause oust the jurisdiction of the court and declare that the arbitral award shall be final, the problem of conflict of laws may arise. In other occasions, the adopted provision for arbitration may be the Scott and Avery clause which delays the right of litigation by prescribing that arbitration shall be the first dispute settlement mode and litigation shall only be resorted to in the event of failure of arbitration. In case of an arbitration agreement which contains the

⁹¹ Canadian Admiralty Act 1934, S 46.

Scott and Avery clause, there is no conflict of laws between the provisions of the two laws in contemplation.

On several occasions, Nigerian courts have had to consider the effect of Section 20 AJA on the validity of arbitration agreements and the combined effect of Section 4 and 5 of the Arbitration Act, with emphasis on the forum stipulated in the arbitration clause. In the case of *M.V. Parnomous Bay v. Olam (Nig) Plc*⁹², it was held by the Court of Appeal that section 20 of the AJA has modified section 2 and 4 of the Arbitration Act and limited enforceable foreign agreements to those specifying Nigeria as a forum. The decision is born out of the popular criticism by Nigerian parties against arbitration clauses in standard form contracts which not only provide for foreign forums but are also known to be oppressive, unfair and unjust to Nigerian parties.

Although this case may be distinguished from the case of *Owners of M.V. Lupex v. Nigerian Overseas Chartering and Shipping Ltd*⁹³ where in addition to a suit filed by the respondent at the Federal High Court Lagos for damages for the loss suffered in a charter party as a result of breach committed by the appellant, the respondent also applied *ex-parte* for the arrest of the vessel. A counter application by the Appellant that the arrest of the vessel be set-aside, the ship be released and the matter adjourned *sine die* on the grounds that the contract contained an arbitration clause, with the forum being London under the English law, as a result of which arbitration proceedings had commenced was declined by the trial judge. The Appellant's appeal to the Court of

Appeal was also refused. However, at the Supreme Court, the further appeal was granted, litigation was adjourned *sine die* to enable the arbitration proceedings continue in London. In reading the lead judgment, The Hon. Justice Utham Mohammed JSC stated that:

These uncontroverted facts explain clearly that by submitting to arbitration the respondent had compromised its right to resort to litigation in court.⁹⁴ Where parties have chosen to determine for themselves that they would refer any of their dispute to arbitration instead of resorting to regular courts a prima facie duty is cast upon the courts to act upon their agreement. See *Willesford v. Watson* (1873) 8 Ch. App.473⁹⁵

Here the court did not consider the question whether an arbitration agreement will have the effect of ousting the jurisdiction of the court. Nonetheless, one cannot but ask the question as to the reasons for the change in the view of the court in the subsequent *MV Paranomous* case. It is however important to note that in the *MV Lupex* case, the respondent had not only signed the charter party agreement but had also submitted to the commencement of the arbitration proceedings in London, before turning around for the intervention of the Nigerian courts. Nonetheless, the current position of Nigerian courts is unfavourable to arbitration agreement with foreign forums where Nigeria is the place of performance, execution, delivery of the default contract or any party to the dispute resides or has resided in Nigeria.⁹⁶

⁹² *M.V. Parnomous Bay v. Olam (Nig) Plc* (2004) 5 NWLR Pt 865.

⁹³ *Owners of M.V. Lupex v. Nigerian Overseas Chartering and Shipping Ltd* (2003) 15 NWLR pt 844, 469.

⁹⁴ *Ibid.* 486 – 487 paras A – A.

⁹⁵ *Ibid*(n-60) 488.

⁹⁶ *Lignes Aeriennes Congolaises v. Air Atlantic Nigeria LTD.* (2005)11 CLRN 55.

IV. CONCLUSIONS AND SUGGESTIONS

Since maritime sector serves as one of the most viable alternative sources of national income in Nigeria, the Nigerian maritime industry continue to expand. While this brings economic benefit, it also increases the possibility of maritime disputes and therefore calls for installing a well-structured dispute settlement system. Where any dispute arises, litigation is usually the first point of call. However, considering disadvantages of litigation process for business, arbitration becomes the next consideration due to its enforceability which makes it suitable for commercial disputes. Unfortunately, maritime arbitration is unattractive to Nigerians in the maritime industry. This is because foreign partners who are often party to maritime agreements adopt foreign drafted standard contracts which contain unfair arbitration clauses. The arbitration clauses either oust court jurisdiction or require that arbitration forum shall be a foreign country. Although Section 20 of the AJA attempt to remedy this and the Nigerian court has lend its voice by intervening to protect local content and domestic interest in cases of businesses that are closely connected to Nigeria, more needs be done in this regard.

The study therefore recommends the enactment of a federal carriage of goods act with the intent to provide level playing ground for all thereby protecting local content as regards settlement of maritime disputes. Increased public sensitization and adoption of a standardized national arbitration clause in all maritime contracts involving Nigerians will also go a long way to in the protection of local content in maritime arbitrations in Nigeria.

Furthermore, In tackling the problem posed by the contrasting provisions of

Sections 4 and 5 of the Arbitration Act in relation to the responsibility of the court to grant stay of proceedings in order to commence arbitration, the Act may be amended to specify circumstances when the grant of stay is compulsory and situations where such grant is discretionary. This study also recommends reinforcement of S.20 AJA through enactment of Carriage of Goods by Sea Act which prohibits any agreement seeking to oust jurisdiction of Nigerian courts in addressing any disputes with strong connection to Nigeria. This will also neutralize the effect of Article 5 of UNCITRAL model law which grants preferential treatment and protection to foreign investors over domestic businesses. This study also calls for increased awareness on negotiation of terms of maritime agreement including dispute settlement provisions, through the activities of non-governmental bodies such as the Maritime Arbitrators Association of Nigeria (MAAN) and other relevant stake holders.

REFERENCES

Books

- Asouzi, A.A., *International Commercial Arbitration and African States* (Cambridge University London 1999) Chapter 7 – ICSID Arbitration and Conciliation: The African Experience.
- Asouzi, Amazu A., *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Illustrated, Cambridge University Press 2001)
- Garner, Bryan A. *Black's Law Dictionary* (Ninth Edition Thomson West 2009)
- Gold, Edgar, *Maritime Transport: The Evolution of International Marine*

- Policy and Shipping Law* (Illustrated, Toronto: Lexington Books 1981)
- J., Thomas et al, *Admiralty and Maritime Law: Cases and Materials* (1st edition, Charlottesville Va 1984).
- J., Thomas et al, *Admiralty and Maritime Law: Cases and Materials* (2nd Edition, West Publishing Co 1994).
- Orojo, J.Olakunle & M. Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates (Nigeria) Limited 1999)
- Pouget, Sophie, ‘Arbitrating and Mediating Disputes Benchmarking arbitration and mediation regimes for commercial disputes related to foreign direct investment’ (The World Bank Group – October 2013)
- The Encyclopedia of Forms and Precedents: Arbitration and Alternative Dispute Resolution, Auctioneers, Estate Agent and Valuers , Bailment (2nd edition, Butterworths LexisNexis 1995)Vol 3(1)
- Journals Articles**
- Adesina, BELLO, ‘Customary and Modern Arbitration in Nigeria: A Recycle of Old Frontiers’ (2014) 2 *Journal of Research and Development*
- Bari, Abdullahel, ‘Our Oceans and the Blue Economy: Opportunities and Challenges’ (2017) 194 *Procedia Engineering*
- Delaume, ‘Sovereign Immunity and Transnational arbitration’ (1987) 3(28a) *Arbitration International*
- Duffy, Emmett et al, ‘Biodiversity Effects in the Wild and are Common and as Strong as Key Drivers of Productivity’ (2017) 14(549) *Nature International Journal of Science*
- Imoh, Ekpo, ‘Impact of Shipping on Nigerian Economy: Implications for Sustainable Development’ (2012) 2(7) *Journal of Educational and Social Research*
- Oraegbunam, Ikenga and Chienye Okafor, ‘Problems of Litigation in Settlement of Maritime Disputes for Nigeria Today: The Preference for Arbitration’ (2013) 4 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*
- Reinert, Sophus and Robert Fredona, ‘Merchants and the Origins of Capitalism’ (Working Paper 18-021, Havard Business School 2017)
- Timsit, Jean, ‘Mediation: An Alternative to Judgment, not an Alternative Judgment’ (2003) 69(30) *JCI Arb*
- Yves Derains, ‘Soverign Immunity and Financial obligations’ (2000) 3 (141) *Business Law International*
- Internet Sources**
- Chatham House Conference report, London, *Maritime Security in the Gulf of Guinea* (6 December 2012) <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0312confreport_maritimesecurity.pdf> accessed 20 November 2017
- Coleman, Nick, ‘Conflict and Compromise – Maritime Dispute Resolution’ on *GARD* (27 July, 2017) <<http://www.gard.no/web/updates/content/23769855/conflict-and-compromise-maritime-dispute-resolution>> accessed 20 November 2017
- Institute for Security Studies, Pretoria, *Africa should wake up to the importance of an integrated maritime strategy* (8 October 2012) <<https://issafrica.org/iss-today/africa-should-wake-up-to-the-importance-of-an-integrated-maritime-strategy>> accessed 20 November 2017

Jukpor, Kenneth, 'Local Content Vs Tugboats: Which Guarantees Nigeria's Maritime Hub Status?' on *MMs Plus* (6 May, 2017) <<http://mmsplusng.com/blog/local-content-vs-tugboats-which-guarantees-nigerias-maritime-hub-status/>>

United Nations Economic Commission for Africa, Policy Dialogue, Abidjan, Côte d' Ivoire, *Governance of resources and maritime activities for sustainable development in Africa* (21-23 June 2017) <https://www.uneca.org/sites/default/files/uploaded-documents/CDD/PolicyDialogue2017/concept_note_-_english_version_05_may_2017.pdf> accessed 10 July 2018

Wikipedia, *Black's Law Dictionary*, 7th Edition, <<http://en.wikipedia.org/wiki/Maritime>> accessed November 10, 2017

Conference Papers

Adedeji, Lanre 'Dispute Resolution and the Practice of Arbitration' on *The Lawyers Chronicle* <www.thelawyerschronicle.com/dispute-resolution-and-the-practice-of-arbitration> accessed on 12th November, 2017

Anishere, Jean Chiazor, 'Introduction to Maritime Law and Admiralty Jurisdiction in Nigeria' (Paper Presented at the 14th International Maritime Seminar for Judges 31 May-1st June 2016) <http://shipperscouncil.gov.ng/assets/uploads/MSJ/Commentary_Introduction_to_Maritime_Law.pdf> accessed 20 December 2017

Ikwuagwu, Omolola, 'The Effect of Jurisdiction and Arbitration Clauses on the Enforcement of Maritime Claims' (Paper delivered at the Annual Seminar of the Nigerian Maritime Law Association held at the Shell Hall, MUSON Centre, Lagos on 13th and 14th May 2003)

Lewis, Melissa and Les McCrimmon 'The Role of ADR in Criminal Justice System: A View from Australia' (2005), (ALRAESA Conference, Uganda 4-8 September 2005) <http://www.justice.gov.za/alraesa/conferences/2005uganda/ent_s3_mccrimmon.pdf> accessed 20 November 2017

Rhodes-vivour, Adedoyin 'Arbitration in the Resolution of Maritime Disputes' (A Paper Presented at the 11th Maritime Seminar for Judges on the 1st-3rd June, 2010) <<http://www.drvlawplace.com/media/arbitration-maritime-disputes.pdf>> accessed 20 December 2017

Rhodes-vivour, Adedoyin, 'Maritime Arbitration in Lagos' (International Bar Association Conference, Hamburg Germany, 26th-28th April 2007) <<http://www.drvlawplace.com/media/MaritimeArbitration.pdf>> accessed 30 November 2017

International Conventions

1972 Convention on The Settlement by Arbitration of Civil Law Dispute Resulting From Relations of Economic and Scientific-Technical Cooperation Moscow, Article I-XIII 1972

European Convention on International Commercial Arbitration of 1961 Geneva, United Nations, Treaty Series, vol. 484, p. 364

- Inter-American Convention on International Commercial Arbitration - Panama Convention, January 30 1975
- The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, August 25 1924 and in force June 2, 1931 (Hague Rules).
- the North American Free Trade Agreement 1994
- The Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels February 23, 1968 and in force June 23, 1977.(Hague Visby Rules).
- The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules).
- Treaty on the Harmonisation of Business Law in Africa (the Ohada Treaty 1993)
- UNCITRAL Model Law on International Commercial Arbitration, G.A.. Res. 40/72, 40 U.N. G.A.O.R. Supp. (No. 17), U.N. Doc. A/40/17 (June 21, 1985), revised in 2006,
- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), Articles II & V
- Federal High Court Civil Procedure Rules (n-20) S.20
- Cases**
- Amadi v NNPC* [2000] 10 NWLR (pt 676)76
- Fernando & Ors v Owners of MV "Rhodesia Trader"* (1980 – 1986) 2 N.S.C. 339
- G & C LINES v HENGRACE [NIG.] LTD*[2001] 7 NWLR [Part 711] 51
- John Onyenge & Ors v. Chief Love day Ebere&Ors* (2004) 11 MJSC 184 at 199-200.z
- M.V Lupex v. NOCS Ltd* (2003) 15 NWLR Pt 844, 469
- Maersk &anor v. Adidide Investment Limited &anor* (2002)1 SC vol. II 157
- Maxwell Ebube v. Gold Star Line Limited* 4 N.S.C. 226]
- NV. SCHEEP v. MV. "S.ARAZ* [2001] 15 NWLR [PART 691] 622
- Okpuruwu v. Okpokam* (1998) 4 NWLR Part 90, 554 at 586
- Oparaji v. Ohanu* (1999) 9 NWLR (Pt 618) 290 at 304
- Ras Pal Gazi Construction Company Ltd v. FCDA* (2001) 10 NWLR Part 722 pg 559
- Ras Pal Gazi Construction Company Ltd v. FCDA* (2001) 10 NWLR Part 722 page 559

Legislations

- Admiralty Jurisdiction Act 1991
- Admiralty Jurisdiction Decree No 59, 1991, S.2(2)
- Admiralty Jurisdiction Procedure Rules 2011, S17
- Arbitration and Conciliation Act (n-45) 30 (1) and (2)
- Arbitration and Conciliation Act 1988
- Article 38 of Arbitration Rules in the First Schedule
- Federal High Court Act 2005, S 10 and 11