

EMERGING TRENDS IN THE ENFORCEMENT OF MARITIME ARBITRATION AWARDS AND ADR SETTLEMENTS¹

INTRODUCTION

Admiralty law as developed from the law of the merchants or *lex mercatoria* is said to be the only true body of International law: a lingua franca through which people of different nations can come together to deal with the promise, profits and perils of voyages at sea.² Shipping as a means of transportation is unrivalled and serves as a backbone of commerce as we know it today. The growth of shipping laws has always been characterized by the need to provide an effective and efficient means of dealing with disputes. The peculiarities of shipping are clearly apparent. There is often a foreign element, although there could of course be contractual or non contractual disputes arising from activities in coastal waters and other navigable waters adjacent to the sea in which maritime activities take place (cabotage disputes can be arbitrated instead of recourse to litigation). Ships and cargoes are by their nature often transient since they travel between countries. The ability of ships to transit freely in and out of ports is important. Consequently, the desire for business efficacy in dealing with vessels and cargo is understandable.

It is no wonder that arbitration and alternative dispute resolutions have been very appealing to the maritime industry. Arbitration is recommended where confidentiality must be preserved, where the parties wish to avoid the time, expense and publicity of a court trial, and where specialized expertise of the tribunal will assist the parties in resolving their dispute.

Arbitration may be contractually agreed by the parties in advance of the dispute, ordered by a court in a pending lawsuit, or initiated voluntarily after the dispute has arisen. Arbitration is seen as a more effective means to resolve disputes than litigation, not least because it is confidential in nature and much more informal than courtroom proceedings. Arbitration is particularly useful in technical cases, or those involving specialized knowledge, such as maritime disputes. Most importantly, parties can choose their own arbitrator—unlike the court system, where judges are assigned to the case. In arbitration the parties choose a decision maker who has experience in the subject matter of the dispute. In contrast to courtroom proceedings, in arbitration the parties can

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² George d'Angelo, Esq., *Introduction to the law of Admiralty*, 2003

agree on the location and schedule for the hearing, the manner of obtaining and using evidence, the use of live testimony or declarations, the confidentiality of proprietary information, the identity and number of arbitrators, and the scope of issues to be arbitrated.

The arbitral tribunal's decision can be final (binding) or not final (non-binding), depending on the rules of the arbitration, which are usually set in advance by the parties themselves, by the court, or by law or contract. The arbitral tribunal may spell out in writing the reasons for a particular decision, but often it gives only the decision. That decision, if properly filed with a court, can have the same weight and effect as a formal court judgment.

The fact that this method of dispute resolution allows for the relatively speedy resolution of disputes in a confidential and informal manner makes it perfectly suited to maritime disputes. Indeed, the development of the maritime arbitration market has been hinged on respect of the proceedings, encouragement by the judicial system and the enforcement of the awards by the vast majority of seafaring nations.³

The last factor is of immediate concern in this paper. If maritime arbitration awards are not enforced or cannot be easily enforced the facility for rapid resolution of maritime disputes offered by arbitration would be largely defeated.

This paper is divided into three main parts. The first looks at the nature, peculiarities and growth of maritime arbitration and ADR mechanisms. The second examines the methods of enforcing maritime arbitration awards and ADR settlements, while the third identifies some continuing puzzles in the enforcement of maritime awards in Nigeria.

MARITIME ARBITRATION AND ADR PROCESSES

Arbitration is a lively and important part of international trade, in particular, the carriage of goods by sea. It is consensual, which means a person cannot generally be forced to arbitrate, the arbitral tribunal is often chosen by the parties, the tribunal is supposed to comprise men and women who are experts in maritime matters, the procedure is often faster and therefore cheaper

³ ibid

than court processes and the award is often rendered quickly. These features of maritime arbitration combine to make it an attractive way to settle maritime disputes.

The range of maritime activities which can be the subject of maritime arbitration is vast and includes the financing, building, sale and acquisition of ships, the deployment of ships, the carriage of goods by sea, fishing, insurance of ships, cargo as well as the other ad hoc contractual relationships arising from the use of ships, for example, salvage. In practice, most maritime disputes are arbitrable and the commonest sources of maritime arbitration are charterparties, carriage of goods by sea, ship sales and shipbuilding. Many of the contracts about these subject matters are also made between relatively equal commercial partners. The parties are rarely of the same nationality and are frequently both strangers to the venue chosen. The ventures with which the contracts are concerned often involve a ship flying one country's flag, owned by a corporation which is itself beneficially owned by the residents of another nation and is established in a third country, carrying cargoes between the ports of yet other different countries.

A key feature of maritime arbitrations, unlike other types of commercial arbitration, is that they are often conducted pursuant to the rules of one or other maritime arbitration association. Maritime arbitration associations tend to be nonprofit organizations concerned with promoting maritime arbitration, educating the maritime community about ADR and administering cases under their Rules. Maritime disputes require specialized expertise by arbitrators of the highest standards of ethics, impartiality and competence. Maritime arbitration associations therefore help to achieve the fair, efficient and cost-effective resolution of maritime disputes, whether they are related to cargo, marinas, passengers, shipyards, or vessels.

The leading arbitral institution for maritime arbitrations is undoubtedly the London Maritime Arbitrators Association (LMAA). Apart from cargo disputes over 80% of maritime arbitrations take place in London and over 70% are conducted by LMAA members pursuant to the LMAA Terms 2006. The ICC and the CMI run the International Maritime Arbitration Organisation (IMAO), the United States has the Maritime Arbitration Association of the United States (MAA) and many regional maritime arbitration associations throughout the United States, while China has the China Maritime Arbitration Commission (CMAC), to mention but these few. In Nigeria,

we have the Maritime Arbitrators Association of Nigeria (MAAN). In short, most seafaring nations have local maritime arbitration organizations ensuring that maritime arbitrations are conducted by highly skilled and experienced arbitrators.

ENFORCEMENT OF ARBITRATION AND ADR SETTLEMENTS

Winning an arbitration award may not immediately end the dispute, especially when it comes to collecting payment from the losing party. Majority of arbitral awards are implemented without recourse to any enforcement procedure. Where an award is paid without any fuss there is no issue. Whilst a majority of awards are paid voluntarily, many are not and have to be collected using enforcement procedures.

What can be done to enforce the decision of the arbitrator embodied in an award? One of the most commonly asked question concerning arbitration is: “What can I do with the arbitration award once it is rendered?” The short answer is that an award can be enforced as an agreement, but generally an arbitration award can easily be confirmed as a court judgment, which can then be used to collect payment from the losing party through judicial enforcement. This is because an award creates a new right in favour of the successful party, which can be enforced in lieu of the contract on which the arbitration and award were based. A final arbitration award is binding and conclusive between the parties to the arbitration and their successors in title as regards all issues which the arbitration dealt with. A final award estops the parties from disputing the issues submitted to and resolved in the arbitration.⁴ Because of the finality of arbitral awards, the courts generally lean in favour of upholding, recognizing and enforcing arbitral awards and should only intervene in very limited circumstances.

Cases involving the enforcement of maritime arbitral awards are few and far between. This may be due to the policy of suing owners of a vessel *in personam* and the actual vessel *in rem*. Therefore the party who receives an arbitral award in its favour can usually satisfy the award through the *in rem* seizure of the vessel. Nevertheless the enforceability of a maritime cargo award can be quite important among other reasons because the vessel may be worth less than the

⁴ Orojo and Ajomo, *The Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos, 1999), 265.

award and the losing party can just as easily ask the court to vacate the award as the winning party can ask the court to enforce it.⁵

Where disputes arising from coastal trade are arbitrated, arbitral awards are likely to be purely domestic although such awards could on occasion be enforceable in third party countries. For purely domestic arbitrations, section 31 of the Arbitration and Conciliation Act 1988 (ACA) provides that such awards shall be binding and upon application supported by a certified copy of the award and a certified copy of the agreement to arbitrate, the award shall be enforced by the High Court. With the leave of the court, a domestic award may also be enforced in the same manner as a judgment or order of the court.

The fact that an award is final and binding does not necessarily mean that it will be recognised or enforced. Section 32 of the Act says that a party to an arbitration agreement may request the court to refuse recognition or enforcement of an award made under the agreement. However, a Nigerian court can only refuse to recognise or enforce an arbitral award on one or more of the three grounds specified in sections 29 and 30 of the ACA.

Section 32 gives the aggrieved a right to ask the court to refuse recognition or enforcement of the award, while sections 29(2) and 30(1) set out the grounds for such application and they are (a) where an award goes beyond the scope of the submission to arbitration; (b) where there is misconduct on the part of the arbitrator; or (c) where an award has been procured improperly. There are no other grounds upon which a domestic award can be challenged. In submitting their dispute to arbitration, the parties choose the arbitrators to be the judges of the dispute between them, and they cannot when the award is good on its face, object to the decision whether upon the law or the facts. There is ample authority, both ancient and modern, in support of these propositions.⁶ The courts exercise a supervisory, but not an appellate, jurisdiction over arbitral tribunals, and can now intervene in arbitral awards only to the extent and in the circumstances

⁵ See generally Curtin, *Arbitrating Maritime Cargo Disputes – Future Problems and Considerations* [1997] LMCLQ 31.

⁶ *Foli v Akese* (1930) 1 WACA 1 at 2, per Deane CJ; *Atta v Amoah* (1930) 1 WACA 15 at 30 and 40, per Deane CJ and Michelin J respectively; *United Nigeria Insurance Company Limited v Stocco* [1973] NCLR 231; *Kano State Urban Dev Board v Fanz Construction Company Ltd* (1990) 4 NWLR (Pt 142) 1 at 37; *Taylor Woodrow (Nigeria) Ltd v Suddesche Etna-Werk GMBH* (1993) 4 NWLR (Pt 286) 127 at 140-141, per Ogundere JSC; *Baker Marina Nigeria Ltd v Danos and Curole Marina Contractors Inc* (2001) 7 NWLR (Pt 712) 337 at 355, per Ogunlade JSC; and *Ras Pal Gazi Construction Ltd v FCDA* (2001) 10 NWLR (Pt 722) 559 at 571 and 574, per Katsina-Alu JSC and Kutigi JSC respectively.

expressly permitted by the Act, as recognized by the Supreme Court in **Ras Pal Gazi Construction Ltd v FCDA**, supra, and confirmed by section 34 of the Act.

The court's approach in determining whether grounds for setting aside an award exist is typified by the following observation of Sawrey-Cookson J made in 1930 in **Atta v Amoah**⁷:

“It is clear that the trend of modern authority is to interpret the submission to arbitration so liberally that when once an arbitrator has been selected the parties must be assumed to have taken him for better or for worse. An arbitrator being something more than a Judge his arbitrament [sic] will require more to upset it than would suffice in the case of an ordinary judgment; and not until this fact is duly appreciated will the time and money spent on such cases as this be saved.”

Unfortunately Sawrey-Cookson J's wise counsel has not always been heeded in recent times. On the contrary, as Orojo and Ajomo observe⁸:

“It is a matter of serious concern that it has become fashionable in Nigeria in recent times for lawyers whose clients lose out in an arbitration to rush to court to apply to set aside an award on the specious ground of the misconduct of the arbitrator. Almost invariably, the particulars of misconduct relied on are the same as the ground of appeal if the proceedings were an action in court. Alleged errors of law, wrong evaluation of evidence and misconstruction of documents are all urged on the unwary judge in support of the application to set aside the award on the ground that the arbitrator has “misconducted” himself.

This is no doubt a misconception, and this practice is often merely aimed at delaying the finality of the award, thus destroying one of the most important advantages of the arbitration process for the settlement of commercial disputes.”

In relation to misconduct as a ground for setting aside an award under section 30(1) of the Act, the Act does not define “misconduct”. However, the courts have interpreted the meaning of “misconduct” in this context in a number of cases. The leading authority is the decision of the Supreme Court of Nigeria in **Taylor Woodrow (Nigeria) Ltd v Suddesche Etna-Werk GMBH**⁹, where the court interpreted the meaning of misconduct in section 12(2) of the Arbitration Law of Lagos State, which is similar to section 30(1) of the Act. The court held that since the expression is undefined in the statute recourse must be had to the common law of arbitration, and that at common law the expression was of wide import, there being no closed list

⁷ (1930) 1 WACA 15 at 42.

⁸ **The Law and Practice of Arbitration and Conciliation in Nigeria** (Lagos, 1999), 274-275.

⁹ (1993) 4 NWLR (Pt 286) 127.

of the matters which could constitute misconduct for this purpose. Examples of misconduct given include failure of an arbitrator to comply with the terms of the agreement to arbitrate, bribery of the arbitrator, failure to decide all issues submitted for arbitration, inconsistency in the award, procedural impropriety, making an award which on grounds of public policy ought not to be enforced, and error of law on the face of the award.

Where an error of law on the face of the award is alleged the error must, first, be identified precisely, second, be shown to be apparent on the face of the award or on the face of a document incorporated by reference into the award, and third, be shown to have formed the basis for the award: see **Taylor Woodrow**¹⁰; **Baker Marina**¹¹. Obviously the error must be found within the four corners of the award and the paragraph or page number where the error is contained must be given.

Where the alleged error relates to the misconstruction of a document, it must be shown that the arbitral tribunal adopted a principle of construction of the contract which the law does not countenance or admitted evidence which is inadmissible. As Ogundare JSC pointed out at page 145 of the **Taylor Woodrow** case:

“where the question referred to arbitration is a question of construction, which is generally speaking a question of law, the arbitrator’s decision cannot be set aside only because the court would itself have come to a different conclusion; but if it appears on the face of the award that the arbitrator has proceeded illegally, as, for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error in law which may be ground for setting aside the award.”

Although “misconduct” is of wide import, it is a jurisdiction which has to be exercised sparingly because the court cannot assume an appellate jurisdiction over the award; hence the court lacks jurisdiction to determine whether the findings of the arbitrator and his conclusions are wrong in law: **Baker Marina**¹². For example, although the proper construction of a contract or other written document is a question of law, an arbitrator’s decision on a question of construction

¹⁰ Supra, at 144.

¹¹ Supra, at 351.

¹² Supra, at 353 and 355.

cannot be set aside on grounds of misconduct merely because the court would itself have come to a different conclusion: **Taylor Woodrow**¹³.

In practice, the parties often treat arbitrations as if they were court proceedings from which an appeal lies to High Court if they are unhappy with the award or any aspect thereof. Applications to Nigerian courts to set aside awards often allege all the three grounds set out above, but in substance are almost always indistinguishable from the grounds of an appeal against the challenged award. The particulars given in support of the bare allegations of “improper procurement” or “misconduct” are virtually the same as would be given in support of grounds of an appeal and will often show that none of the three grounds is in fact available, so that in almost every case the application to set aside an award is merely a ploy to suspend the enforcement of the award in Nigerian courts. Since most of the parties have assets only in Nigeria, the effect of an application to set aside an award is that for periods of several or many years, the award would not be enforced.

To make matters worse, applications to set aside can often be complicated by interlocutory skirmishes between the parties, often generating satellite proceedings of their own, which can and often will be chased all the way from the High Court through the Court of Appeal to the Nigerian Supreme Court, before the set aside application can be dealt with on its merit. The ruling on the merits of the application to set aside will often go through the same process to the Supreme Court before a final unappealable judgment can be obtained. Given the slowness often attending the disposal of the interlocutory skirmishes and the set aside proceedings, in many cases more than ten years would have elapsed before any final decision on the merits can be obtained, much to the disappointment of the party in whose favour the award was made.

Whilst these grounds are fairly narrowly drawn, in practice, there is little distinction between challenge on these grounds and grounds of appeal. Every alleged defect in an award is alleged to constitute a “misconduct” entitling the aggrieved party to set aside the award. The provisions governing challenge of arbitral awards have become allurements to losing parties in arbitrations

¹³ *Supra*, at 145.

and generally they have found the allurements difficult to resist. The result is that the power to challenge is greatly abused, thereby eroding the very principle upon which arbitral proceedings are based. As a result of the abuse of the power to challenge arbitral awards, in cases where an award is challenged, arbitration can seem like a first step in a long drawn out litigation. Often an award is challenged from the High Court to the Supreme Court, thereby substantially defeating the benefits of arbitration. Studies have shown that it takes an average of over 9 years from the date of institution of proceedings challenging arbitral awards at the High Court to the date of its ultimate disposal at the Supreme Court¹⁴.

Most maritime awards arise from international disputes where one or both parties are foreigners and may have no asset in the seat of the arbitration. In such cases, enforcement would have to be in countries other than the seat of the maritime arbitration. In the enforcement of maritime arbitral awards, the most significant piece of legislation is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 which has played a major role in developing and ensuring the success of maritime arbitration. At the last count, more than 150 countries are signatories to the Convention which has been implemented in many countries by appropriate local legislation. The Convention ensures the speedy enforcement of awards in signatory states thereby giving wider access to a party's assets. By limiting the grounds upon which an award may be challenged or invalidated to formal invalidity or incapacity, violation of due process rights, award beyond contractual scope of arbitral agreement, non arbitrability of the dispute and public policy of the forum where enforcement is sought, the Convention and the UNCITRAL Model Law which has very similar enforcement provisions, err on the side of enforcement of awards. Through the Convention and the UNCITRAL Model Law a substantial amount of global harmony has been achieved in the enforcement of maritime arbitral awards.

In Nigeria, awards in respect of international commercial arbitrations are generally recognized and enforced pursuant to sections 51, 52 and 54 of, and schedule 2 to, the ACA. Basically section 52 provides that an award in respect of an international commercial arbitration shall be

¹⁴See Ogundare JSC in **A.Sanovia Ltd v Sonubi** (supra) at 539 where he noted that “ it has always been thought that proceedings by way of arbitration is a quicker way of resolution of disputes between contracting parties, when compared with the tardy proceedings of a law court. This case appears to cast some doubt on the truism of this belief”.

enforced upon a written application attaching the original or a certified copy of the award and the agreement to arbitrate and if the award is made in a language other than English, a certified copy of the English translation. Sections 48, 52 and Article V of the New York Convention set out a laundry list of the grounds upon which an award in international commercial arbitration can be challenged. They include: incapacity, formal invalidity, improper notices, award on disputes not within the terms of the arbitral agreement or beyond contractual scope of arbitral agreement, defective composition of the arbitral tribunal or arbitral process as set out by agreement or under the Act as well as awards which are non-binding, suspended or set aside. Others include non-arbitrability of the subject matter and grounds of public policy.

SOME CONTINUING PUZZLES

I would like to conclude this discussion by considering briefly three pervasive puzzles of enforcing maritime awards in Nigeria. These are (a) whether an award must first be registered before it can be enforced in Nigeria? (b) what is the limitation period applicable to enforcement of arbitral awards; and (c) the interaction between maritime arbitrations and section 20 of the Admiralty Jurisdiction Act 1991.

MUST AN AWARD BE REGISTERED TO BE ENFORCEABLE?

The leading Nigerian textbooks on arbitration contend that an award has to be registered first before it can be enforced. Whilst Akpata¹⁵ thinks such registration appears to be an “imperative” (if superfluous) to the recognition and enforcement of a foreign award, Orojo and Ajomo contend that a domestic award needs to be registered before it can be enforced¹⁶.

Part of the confusion appears to arise from the Reciprocal Enforcement of Judgment Act 1922 and the Foreign Judgments (Reciprocal Enforcement) Act 1961, both of which define foreign judgment in section 2 as including an arbitral award and section 4 of both of which require a foreign judgment to be registered at the High Court before it can be enforced. To make matters

¹⁵ Ephraim Akpata, *The Nigerian Arbitration Law in Focus* (1997), 139.

¹⁶ *Ibid*, p 266.

worse, whereas the 1922 Act requires registration within 12 months, the 1961 Act requires registration within 6 years of the rendering of the award. I discuss limitations below. In contrast, the only provision of the ACA which mentions registration of awards is section 47(6) which says that where the law of the country where a foreign arbitral award is made requires the tribunal to file or register an award, such filing or registration must be made within the stipulated time. This evidently does not require registration of awards in Nigeria. Whilst the position remains somewhat confused, it would seem that in principle no registration is required. First, the ACA which is a statute that is concerned specifically with arbitration does not require registration. Any more general provision in the enforcement of foreign judgments cannot override the specific provision in the ACA.¹⁷ Second, the ACA is a later statute. Finally, in the case of awards enforceable pursuant to the New York Convention, there is nothing in the Convention which gives Nigeria the option to require registration of an award as a precondition to recognition or enforcement of an award.

LIMITATION AND ARBITRAL AWARDS¹⁸

There are several aspects of limitation that may be potentially relevant. In the first place, there is a limitation period of three months from the date of the Award to challenge an award, which applies to both section 29 and section 30 of the Act. The three month period is expressly stated in section 29(1) of the Act but not in section 30. However, pursuant to the decision of the Supreme Court of Nigeria in **Araka v Ejeagwu (2000) 15 NWLR (Part 692) 684** the same three month limitation period applies to section 30.

Secondly, in the case of foreign awards, there is uncertainty whether assuming registration is required prior to recognition or enforcement, there is a time limit within which the registration should be effected. Whilst the 1922 Act requires registration within 12 months of the award, section 4 of the 1961 Act, if it applies, allows registration to be effected within 6 years.

¹⁷ See generally Adebayo Adaralegbe, **Limitation Periods for Enforcement of Arbitral Awards** (2006) *Arbitration International*, 613 at 614-617; **MV Panormos v Olam Nig Plc** (2004) 10 CLRN 77 at 83.

¹⁸ See generally Adebayo Adaralegbe, **Limitation Periods for Enforcement of Arbitral Awards** (2006) *Arbitration International*, 613

However, in a number of cases¹⁹, it has been held that section 4 has not yet come into force and therefore awards not registered within 12 months are unenforceable in Nigeria.

Finally on limitation, in most States of the Federation and indeed in most commonwealth countries the limitation period for simple contract claims is 6 years from the date the cause of action accrued. In the case of an arbitration the question is whether it is 6 years from the date of the claim which resulted in the award or 6 years from the publication of the award? In **City Engineering (Nig) Ltd Federal Housing Authority**²⁰, the Supreme Court held that where an award is sought to be enforced by the summary procedure, the 6 years is from the date of the claim which gave rise to the award, whereas where the award is being enforced by an action for damages for breach of the implied promise to perform the award, the limitation period is 6 years from the date of the refusal to perform the award. Although the Supreme Court accepted that an arbitral award gives rise to a new cause of action, it nonetheless insisted that the 6 year time limit applies from the date of the accrual of the cause of action which gave rise to the breach. It seems fairly obvious that in the case of limitations similar to section 8(1)(d) of the Lagos State Limitation Law 1966 which was construed in the **City Engineering** case, the Supreme Court is likely to follow its own decision. The solution is legislation.

We therefore have the unfortunate position that most awards contained in agreements not under seal cannot be enforced after 6 years from the date the claim arbitrated accrued rather than 6 years from the date of the award. This decision severely limits the enforceability of arbitral awards in Nigeria. One solution may be to issue proceedings and stay the proceedings before proceeding to arbitration. Another would have been the **Scott v Avery** clause which says that arbitration is a condition precedent to the commencement of an action. Its effect of elongating the limitation period has been abolished in England and also in Lagos by section 63 of the Limitation Law 1966.

¹⁹ **Macaulay v Raiffeisen Zentral Bank of Austria** (2003) 18 NWLR (Pt 852) 282; **Marine & General Assurance Co v Overseas Union Insurance** (2006) 1 CLRN 84; **Teleglobe America Inc v 21st Century Technologies Ltd** (2008) 9 CLRN 32; **Crosvenor Casinos Ltd v Ghassan Halaout** (2009) 2 CLRN 62.

²⁰ (1997) 9 NWLR (Pt 520) 224.

In England, the 6 years runs from the date of publication of an award. In the case of foreign awards one solution may be to characterize limitation as an issue of substance governed by the proper law of the award.

SECTION 20 OF THE ADMIRALTY JURISDICTION ACT 1991

Proper judicial interpretation is essential to ensure that the growth and sustainability of maritime arbitration is sustained in Nigeria. Sections 2 and 4 of the ACA give parties the right to arbitrate and section 5 gives them a right to apply to stay proceedings issued in breach of agreement to arbitrate. Section 20 of the Admiralty Jurisdiction Act of 1991 (“AJA”) however nullifies any agreement by any person or party to any cause, matter or action which seeks to oust the jurisdiction of the Federal High Court if it relates to any admiralty matter falling under the Act (including matters falling under any convention to which Nigeria is a party) and therefore operates. In the case of **MV Panormos Bay & Ors v Olam Nigeria Plc**²¹, the Court of Appeal stated that Section 20 AJA had altered the position in admiralty matters thereby modifying the ACA and limiting enforceable arbitration agreements to those having Nigeria as their forum. The arbitration clause in the Bill of lading was rendered null and void as it was deemed to oust the jurisdiction of Nigerian courts to exercise their admiralty jurisdiction over the case.

Maritime arbitration is no doubt international in nature and they must therefore be recognized and given proper effect to in our courts. The general tendency is for our courts to “guard jealously” their jurisdiction and to refuse to accede to requests for stay of Nigerian proceedings in favour of foreign proceedings merely because foreign law is chosen as the proper law of the leasing agreement.²² It is clear that dispute resolution and maritime arbitration throw up important questions for national policy development for countries engaged in maritime affairs. Though there are no universal answers, one theme that should be kept close by is the international character of the general maritime law and the chauvinistic municipal policy, which is not based on considerations reasonably reflected in international norms and expectations.

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²¹ (2004) 10 CLRN 77

²²See **LAC v AAN Ltd** (2006) 2 NWLR (Pt 963) 49.

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