

From Limak to Champion: The Nigerian Court of Appeal Delivers a Fresh Brew on the Effect of NOTAP Registration in Arbitration Enforcement

OALP Arbitration Newsletter

The Nigerian Court of Appeal has handed down a decision that bears significantly on public-policy defences to the enforcement of arbitral awards, particularly on the enforcement of awards where the underlying dispute arose from an agreement which is registrable, but has not been registered, under the NOTAP Act,¹ as well as on scenarios where an award is alleged to have been obtained in violation of an anti-arbitration injunction.

In *Champion Breweries Plc v. Brauerei Beck GMBH & Co. KG*,² the Court of Appeal concluded that failure to register a registrable agreement under the NOTAP Act did not make an arbitral award arising from the agreement unenforceable. The Court also precluded a party from resisting enforcement on public policy ground because the party had condoned the act alleged to be contrary to public policy.

BACKGROUND

Brauerei Beck GMBH & Co. KG ("Beck's") licensed Champion Breweries Plc ("Champion") to produce and sell its trademark brand, Beck's beer, in Nigeria. It was common ground that the contract was registrable under the NOTAP Act, which governs agreements involving the transfer of intellectual property from foreign to Nigerian entities, and it was Champion's contractual responsibility to see that the contract was registered.

But Champion did not register the contract and defaulted on its royalty payments. Beck's terminated the agreement and initiated arbitration in Geneva, where it obtained a favourable

award. When Beck's sought recognition and enforcement of the award in Nigeria, Champion resisted on the grounds that the underlying agreement was illegal for having not been registered with NOTAP and the enforcement of the resulting award would be contrary to public policy. Champion also argued that Beck's had maintained the arbitration and obtained the award in defiance of anti-arbitration injunctions issued by the Ikeja division of the trial Court and urged the Court to refuse enforcement on that account. The Court enforced the award and Champion appealed.

THE DECISION OF THE COURT OF APPEAL

The Court of Appeal affirmed the recognition and enforcement of the award. In the Court's view, whatever adverse effects there may be to a failure to register the licensing agreement under the NOTAP Act, that failure did not make the agreement illegal or the resulting arbitral award unenforceable. The Court also considered that it would be inequitable to relieve Champion of its obligations under the licensing agreement when, according to the Court, Champion had profited under that agreement.

Furthermore, although Beck's had obtained the arbitral award by defying an order of the trial Court, Champion condoned that defiance when it discontinued contempt proceedings that it had initiated against Beck's and was thereby precluded from resisting enforcement of the award on account of Beck's defiance.

1. National Office for Technology Acquisition and Promotion Act, Cap N62, LFN, 2004.
 2. *Champion Breweries Plc v. Brauerei Beck GMBH & Co. KG* [2025] LPELR-81422(CA)
 3. 2021] LPELR-58182 (CA).
 4. *Olaniwun Ajayi LP acts for the respondents in the appeal.*

COMMENTARY

The decision deepens the controversy on a matter which has spurred public debate since the Court of Appeal's 2021 decision in a previous case, *Limak Yatirim v. Sahelian Energy*³ ("Limak"). In Limak, as in this case, the dispute concerned an agreement which was registrable under the NOTAP Act, but which had not been registered. On that occasion, however, the Court of Appeal affirmed the trial Court's decision to refuse enforcement, holding that to enforce the award would be to circumvent penalties stipulated in the NOTAP Act and defeat the public policy interest represented by the registration requirement.

The decision in Champion is remarkable for two reasons.

First, it departs from Limak by rejecting the view that registration under the NOTAP Act is a mandatory requirement that engages public policy considerations. It is worth noting, however, that the Court did not at all consider its previous decision in Limak, raising doubt about whether this was a studied deviation from its initial position.

Second, the Champion decision suggests that a party may forfeit a public policy-based defence to enforcement of an arbitral award by condoning the act that is alleged to be at odds with public policy. The Court considered that it was against public policy to procure an arbitral award despite anti-arbitration orders— the Court's treatment of the question involved strong invocations of the public welfare. Nevertheless, it concluded that Champion was barred from resisting enforcement on that ground because Champion had withdrawn contempt proceedings that it initiated against Beck's for violating the injunctive orders.

The Court of Appeal is an intermediate Court, and it is likely that the questions addressed in the Champion decision will ultimately fall to the Supreme Court for final settlement. Indeed, an appeal against the Limak decision is currently pending before the Supreme Court.⁴

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