

Sanctity Over Subterfuge: Supreme Court Affirms Arbitral Awards Against Illegality Claim

OALP Arbitration Newsletter

INTRODUCTION

The Supreme Court of Nigeria has again delivered a judgment that reinforces Nigeria's pro-arbitration stance by dismissing an illegality challenge to the enforcement of an award, strongly condemning the award-debtor and its counsel and imposing a relatively high cost on the award-debtor.

In *Pan Ocean Oil Corp. (Nig.) Ltd. v. KCAD-D. GMBH & Anor*, the question was whether a party, having fully participated in arbitral proceedings without raising a jurisdictional objection, could later challenge enforcement by alleging the illegality of the underlying contract. The apex Court held that a party who takes part in arbitration without objecting to jurisdiction within the statutorily stipulated time, is precluded from raising the objection, including an illegality objection afterwards.

BACKGROUND

Pan Ocean Oil Corporation (Nig.) Ltd. (**Pan Ocean**) entered into a land drilling rig agreement with KCA Deutag Drilling GMBH (**KCAD Drilling**), a German company, and its Nigerian affiliate, KCAD (Nigeria) Ltd (**KCAD Nig Ltd**). Under the agreement, KCAD Nig Ltd was to perform drilling operations in Nigeria, while KCAD Drilling provided the rig, equipment, and technical expertise. The contractors issued invoices for services rendered, but Pan Ocean defaulted on payment.

KCAD Drilling and KCAD (Nigeria) Ltd. referred the dispute to arbitration under the International Chamber of Commerce (ICC) Rules. During the arbitration, the parties executed a settlement agreement, and this was issued as a final award. Pan Ocean made partial payments, and further sums were

recovered through garnishee proceedings, but a significant portion of the award remained outstanding. KCAD Drilling and KCAD (Nigeria) Ltd applied to the Lagos State High Court to recognise and enforce the award as a judgment. Pan Ocean did not oppose the application. But it later sought to set aside the enforcement order, arguing that the underlying drilling agreement was illegal because in performing the drilling contract, KCAD Drilling carried on business without prior incorporation in Nigeria, contrary to Section 54 of the Companies and Allied Matters Act 2004 (now Section 78 of the Companies and Allied Matters Act 2020). The trial Court dismissed the application, and the Court of Appeal affirmed the decision. Dissatisfied, Pan Ocean appealed to the Supreme Court.

THE DECISION OF THE SUPREME COURT

The Supreme Court unanimously dismissed the appeal. The Court held that by virtue of Section 19(3)(a) of the Arbitration Law of Lagos State, 2009, any plea challenging the jurisdiction of an arbitral tribunal must be raised no later than the submission of the points of dispute. Having fully participated in the arbitral proceedings without objecting to the jurisdiction on the grounds of illegality within the prescribed window, and having couched the illegality challenge as a jurisdictional objection, Pan Ocean was precluded from subsequently raising the issue before the trial court or on appeal and has waived the right to raise the objection. The Court clarified that this is an exception to the general principle of Nigerian law that jurisdictional objection can be raised at any time, even for the first time on appeal.



The Court also held that, in the absence of any cogent evidence of illegality, Pan Ocean which had benefitted from the drilling contract must not be allowed to turn around to void the contract for alleged illegality. The Court further held that KCAD Drilling did not carry on business in Nigeria. Being aware of the CAMA stipulation, it was KCAD (Nigeria) Ltd that indeed executed the contract.

The Court then chastised Pan Ocean and its lawyers for deliberately frustrating KCAD Drilling and KCAD (Nigeria) Ltd in benefitting from the drilling contract and the resulting award on the phantom ground of illegality, notwithstanding that Pan Ocean had benefitted from the contract. In view of these unconscionable acts of Pan Ocean, the Court awarded the sum of N10,000, 000. 00 (Ten Million Naira) in favour of KCAD Drilling and KCAD (Nigeria) Ltd – a relatively high and punitive sum going by the trends at the Court.

COMMENTARY

This decision is significant for several reasons.

First, the decision highlights the principle that objections to jurisdiction in arbitral proceedings must generally be raised at the appropriate stage, and in this case, not later than the submission of the points of dispute. A party that participates fully without objection may not invoke those issues as a shield against enforcement.

Second, the Pan Ocean’s effort to belatedly resile from a freely entered drilling contract and settlement agreement which subsequently crystallized into a consent award, struck at the heart of contractual sanctity. By refusing to entertain Pan Ocean’s illegality argument, the Court has further confirmed that Nigerian law honours sanctity of contract and would not easily depart from it unless there are cogent policy and timeous reasons to do so.

Third, by condemning the award debtor and its lawyers in strong terms and imposing a relatively huge cost because of the condemned acts, the Supreme Court has sent a strong signal that a half-hearted and procedurally defective challenge to an arbitral award remains prohibited.

Fourth, the decision underscores why a challenge to enforcement must be carefully framed. According to the Court, Pan Ocean framed its challenge as a jurisdictional objection, and based on the applicable statute, a jurisdictional challenge ought to have been brought before the tribunal and before submission of the points of dispute. Perhaps, the Court could have reached a different conclusion had Pan Ocean brought the challenge as a public policy objection to the award enforcement.

Fifth, notwithstanding that Pan Ocean framed the objection as a jurisdictional one, the Court’s treatment of the illegality objection as a jurisdictional point raises a concern. Illegality is more of a public policy ground which goes to the root of the affected legal system. Being a public policy objection, the Court could have, sua sponte, properly examined the merit of the challenge without deeming itself or Pan Ocean restricted by the timeline prescribed for jurisdiction.

1. *Pan Ocean Oil Corp. [Nig.] Ltd. v. KCAD-D. GMBH & Anor* [2025] 14 NWLR 413
 2. *Companies and Allied Matters Act, Cap 20, Laws of the Federation of Nigeria 2004; The Section precludes a foreign company which is not registered in Nigeria from carrying on business in Nigeria. Any act the company carries out in Nigeria during the contravention of this provision is declared null and void, and the company is liable to be prosecuted.*
 3. *Arbitration Law of Lagos State, Law No.17, 2009, s. 19 (3)(a)-: In any arbitral proceedings, a plea that the Arbitral Tribunal- (a) does not have jurisdiction may be raised not later than the time of submission of the points of dispute and a party is not precluded from raising such plea by reason that the party' has appointed or participated in the appointment of an arbitrator.*

FOR MORE INFORMATION, PLEASE CONTACT :



Muyiwa Balogun
Partner
mbalogun@olaniwunajayi.net



Oluwafikayomi Ogunrinde
Managing Associate
oogunrinde@olaniwunajayi.net



Mitchell Aghatise
Senior Associate
maghatise@olaniwunajayi.net



Amazing Ikpala
Senior Associate
aikpala@olaniwunajayi.net



Isaac Ibikunle
Senior Associate
iibikunle@olaniwunajayi.net