

Federal High Court Reaffirms The Unenforceability of Foreign Arbitral Awards Relating to Maritime Claims

OALP Arbitration Case Alert

INTRODUCTION

The Federal High Court (the Court) has reiterated that foreign arbitral awards arising from maritime claims in relation to contracts with a “Nigerian connection”¹ are unenforceable in Nigeria. According to the Court, the awards are unenforceable because the underlying arbitration clause is null and void by virtue of Section 20 of the Admiralty Jurisdiction Act of 1991 (AJA). The Court also predicated its decision on the primacy of local dispute resolution in admiralty matters and the prevailing appellate authorities limiting the operation of foreign jurisdiction and arbitration clauses in such disputes.

The case in view is **PS Offshore Nigeria Ltd v. Miden Systems Nigeria Ltd & Anor**,² where the award creditor, PS Offshore Nigeria Ltd, had sought to enforce an arbitral award issued by a sole arbitrator under the auspices of the Singapore Chamber of Maritime Arbitration. The central issue was whether the foreign arbitral award arising from a charterparty dispute could be recognised and enforced in Nigeria, notwithstanding the provisions of Section 20 of the AJA. The Court held that Section 20 of the AJA, which declares any agreement that ousts the jurisdiction of the Court null and void, operates to limit the enforceability of foreign arbitral awards in respect of maritime transactions connected to Nigeria.

BACKGROUND

The award creditor sought an order of the Court recognising and granting leave to enforce the award against the award debtor (Miden Systems Nigeria Limited & Chasewood Limited). The award debtors opposed the application on the ground that the arbitral award is against public policy and purports to oust the jurisdiction of the Court in view of Section 251(g) of the Constitution of the Federal Republic of Nigeria (1999 as amended) and Sections 19 and 20 of the AJA.

DECISION OF THE COURT

The Court dismissed the suit, holding that the award cannot be enforced because Section 20 of the AJA renders the underlying arbitration clause a nullity. The agreement being a nullity, the foreign arbitral award built on the agreement is unenforceable.

In reaching this conclusion, the Court principally relied on the decisions of the Court of Appeal in the cases of **Fugro Subsea LLC v. Petrolog Limited**,³ **TOF Energy Co. Ltd. & Ors. v. Wordpay LLC & Anor.**,⁴ and **Topher Zhang Investment Ltd. & Anor. v. Masters Energy Oil & Gas Ltd.**⁵ The Court relied on the cases to hold that Section 20 of the AJA frowns at agreements that oust the jurisdiction of the Court on admiralty matters connected to Nigeria, and the provision therefore renders the arbitration agreement in issue a nullity.

1. *Contracts with a Nigerian connection include contracts which are performed or breached in Nigeria, where any of the parties to the contract resides or has resided in Nigeria, where payment is made or is to be made in Nigeria, where the res is within Nigerian territorial jurisdiction, or where there exist other substantial economic or governmental interests linking the dispute to Nigeria.*

2. *Suit No: FHC/L/CS/079/2019, unreported.*

3. *[2021] LPELR-53133(CA), 67 – 74, paras E – E.*

4. *[2022] LPELR – 57462 (CA), 38 – 43, paras. D – E.*

5. *[2023] LPELR – 60279 (CA), 27 – 30, paras B – A.*

The Court also took the view that Section 20 of the AJA seeks to abrogate the prevalence of foreign jurisdiction clauses in Nigerian admiralty matters and encourage local arbitration of maritime claims that have a connecting factor with Nigeria.

COMMENTARY ON THE CASE

This decision is significant for, at least, four (4) reasons.

First, the decision serves as a cautionary signal to parties contracting in the maritime sector—at least, pending any contrary decision from the appellate courts, especially the Supreme Court. It emphasises the need for careful structuring of arbitration clauses in maritime contracts involving Nigerian connections, as foreign arbitration clauses may expose award creditors to significant enforcement risks within Nigeria.

Secondly, it appears that the Court was not only moved by the fact that the relevant arbitration clause purportedly ousted the jurisdiction of the Court, thereby conflicting with Section 20 of AJA. Another factor also played a role: the arbitration agreement led to the foreign arbitration of maritime claims connected to Nigeria, whereas Section 20 AJA seeks, according to the Court, to encourage the opposite—the local arbitration of such claims. However, it is not very clear from the judgment the Court's basis for inferring this conclusion from Section 20 of AJA.

Thirdly, the decision tests the limit of the Court's deference to appellate court's decision, as the Court, in this case, could have distinguished this case from the facts of the cited appellate decisions. For starters, the appellate decisions seem to have proceeded on the ground that arbitration clauses oust the jurisdiction of the courts. The Supreme Court has corrected this notion, holding that arbitration clauses do not oust the jurisdiction of the courts.⁶ Also, it appears that in reaching the decisions, the Court of Appeal did not consider some provisions of the AJA which support the enforceability of foreign arbitral awards bordering on maritime claim and provision of security for foreign maritime arbitration. These provisions are Sections 2(3)(t) and (1) & (4)(a) - (c) of the AJA. The Court did not also consider the effect of these provisions vis-a-vis Section 20 of the AJA.

According to Section 2(3) (t) of the AJA, the enforcement of an arbitral award relating to a maritime claim is a general maritime claim that is enforceable before the Court. For context, the section provides that a general maritime claim, as in the instant case, includes "a claim for the enforcement of or a claim arising out of an arbitral award (including a foreign

award within the meaning of the Arbitration and Conciliation Act) made in respect of a proprietary maritime claim or a claim referred to in any of the preceding paragraphs".

Also, Section 10(1)(a) and (b) of the AJA recognises that the Court may grant stay and other orders in aid of a pending arbitration, whether domestic or foreign arbitration, thereby negating the notion that Section 20 of the AJA seeks to discourage foreign arbitration of Nigeria related maritime claims. For emphasis, Section 10(1)(a) - (b) provides: "without prejudice to any other power of the Court, where it appears to the Court in which a proceeding commenced under this Act is pending that the proceeding should be stayed or dismissed on the ground that the claim concerned should be determined by arbitration (whether in Nigeria or elsewhere) or by a court of a foreign country ... the Court may order that the proceeding be stayed on condition that the arrest and detention of the ship or property shall stay or satisfactory security for their release be given as security for the satisfaction of any award or judgement that maybe made in the arbitration or in a proceeding in the court of the foreign country."

This recognition is also bolstered by Section 10(4)(a)(c) of the AJA which provides that: "*Where a ship or other property is under arrest ... [and] an award or judgment ... has been made in favour of a party ... and the [foreign] award or judgment is enforceable in Nigeria, then in addition to any other proceeding that may be taken by the party to enforce the award or judgment, the party may apply to the Court in the stayed proceeding for an appropriate order in relation to the ship or property to give effect to the award or judgment.*"

Fourthly, the Court did not consider the decision of the same Court of Appeal, **Onward Enterprise Ltd. v. MV Matrix**⁷, which seems to stand in tension with Fugro and other related cases. In this case, while Section 20 of AJA was not in issue, the appellate court affirmed the competence of Nigerian courts to stay proceedings in admiralty matters and order parties to explore arbitration as mutually agreed in a foreign country. More importantly, it is noteworthy that the Court did not advert to the decision of the Supreme Court that an arbitration clause does not, in itself, oust the jurisdiction of the court.

In conclusion, the jury is still out and it would be interesting to see how the Supreme Court or even the lower courts would subsequently approach the question, having regards to the gaps that have been identified in the existing decisions.

6. *Mainstreet Bank Capital Ltd. v. Nig. RE [2018] 14 NWLR (Pt. 1640) 423 at 444-445, paras. F-C., U.B.A. Plc v. Trident Consulting Ltd. [2023] 14 NWLR (Pt. 1903) 95 at 143, paras. C-E; 148. paras. E-H.*

7. *[2010] 2 NWLR (Pt. 1179) 530 at 555-556, paras. G-D.*

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