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COMMERCIAL DISPUTE RESOLUTION IN NIGERIA AND SELECTED JURISDICTION; ISSUES AND PROSPECTS

Cali C. Ojimba
Faculty of Law,
Chukwuemeka Odumegwu Ojukwu University,
Igbariam Campus, Anambra State

ABSTRACT

No mailer how much care is taken in the drafting of contracts, disputes will still arise as is shown by the volume of litigation generated by the commodity trades, shipping industry and the rest of the commercial transactions. In a world influenced by globalization and breakdown of national boundaries, conflict has become inevitable and court system with its complicated procedure of adjudication is inundated with many unending cases. Arbitration and other Alternative Dispute Resolution such as negotiation, reconciliation and conciliation has more prospects in resolving high unending commercial disputes. The need for Alternative Dispute Resolution (ADR) is informed by the fact that in the interest of justice and the efficient use of economic resources that machinery be provided for speedy resolution of dispute where two parties submit themselves for arbitration. It should be emphasized that the arbitral process is not a challenge to or competition with the judicial powers vested in the courts. The aim of this work is to examine the modern trends in commercial dispute resolution in Nigeria and other jurisdiction with the view to understand the prospects and constraints. If adopted doctrinal method of study and relived on qualitative mechanism to give vibrancy to the intellectual extrapolation through pensive and continuous research into books, journals, articles and relevant decided cases. It was found that there are many emerging issues in commercial dispute resolution in Nigeria and globalization has made it possible for every nation to copy each other where they can. It is recommended that Nigeria and other countries should continue to apply the international best standard in the practice of commercial dispute resolution.

Keywords: Commercial, Dispute, Resolution, Nigeria, Jurisdictions**.**

Introduction

Over the years, it has been a general consensus among scholars that the use of arbitration with its well established features promotes confidence level in the business environment[1]; it equally enhances trust while also making a real and acceptable compromise. Unlike the advanced countries of the world, Nigeria is still to match policy intent with commercial realities in terms of integration of arbitration in high sense and utilization of arbitral tools.

[1] A M Sani,' Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol. 8, 2015.

The important of arbitration is in the renewed efforts to enhance delivery justice, arbitration lower administrative COMS and the urgent need to optimize the capabilities of the judicial arm of government.

On the other hand, litigation is utilized for resolving diverse range of disputes and the evidence of such broad based acceptance are present in both Nigeria and other distant jurisdiction. Regular courts are the most common means of resolving disputes but *in Nigeria and some other developing* countries, it is time consuming, and such delays provide ample opportunity for pervasion of justice delivery. Also, when commercial disputes are subject to protracted litigation, the cost benefits over the short to medium term are usually in the negative for the affected business concerns Thus, the entire legal profession - lawyers, judges, law Professors, have become so mesmerized with the stimulation of the courtroom that we tend to forget that we ought to be healers of conflict. For some disputes; trials will be the only means, but for many claims, trial by adversarial contest must in time go the way of the ancient trial by battle our system is too costly, too painful, too destructive and too inefficient for really civilized people.[2]

Thus, in such circumstances, the commercial interests would have suffered appreciable business and other pecuniary losses. The court in Nigeria is already congested and there are prevalent case adjournments in commercial litigation. The best way to describe the feature of commercial litigation in Nigeria is that of delays especially in busy places like Lagos, Onitsha, Kano and River States. It is trite that, litigants cannot reasonably predict the tenure of legal disputes once same has been filed. Thus, to circumvent such a negative outcome, identifiable parties, relying on an arbitration clause in a valid agreement, may decide to file a contractual dispute with an arbitration tribunal.

The use of arbitration and other Alternative Dispute Resolution (ADR) in commercial dispute resolution have many advantages which include: expeditious hearing of commercial disputes; relatively economical mechanism for disposal of commercial disputes: a relatively informal resolution tool to mitigate disputes; reduction of caseload in court; reduction of public expenditures; provision of a more accessible platform for settlement of local commercial disputes; enhances local an4 international confidence in Nigeria's justice delivery system; and will increase trust levels in Nigeria's commercial spaces.[3]

Alternative Dispute Resolution (ADR) such as negotiation, conciliation and arbitration proper have many other significant benefits that are not obtainable in the litigation process. Alternative Dispute Resolution (ADR) processes may, for example, lead to a meeting between parties where an apology is offered[4]. They can also

[2] Chief Justice W E. Burger, U.S. Supreme Court of Justice, 1969 -1986 Cited by Justice Lawal Gummi in 'Draft ADR and the Multi-door Court House initiative. The Nigerian Experience" in Oyeyipo, et als, *Judiciary and Democracy in Nigeria Essays in Honour of Hon. Justice S.M.A. Beigore CJ.N.* Enugu, Snaap, 2007, P.79

[3] Section 2 Arbitration and Conciliation Act 1990

[4] In the sense that ADR may involve a meeting between those in dispute and an apology from a wrongdoer it

facilitate an aggrieved party to participate in the creation of new arrangements or procedures to prevent a recurrence of the incident in dispute. This underlines a key element of ADR - that it has the potential to enhance the empowerment of those involved in its processes[5]. A memorial to victims of a perceived wrong can also emerge from a mediated agreement.

Access to justice, in its widest sense of the effective resolution of disputes whether through court-based litigation or alternative dispute resolution processes, is an essential aspect of ensuring the realization of the fundamental rights recognized and given protection by the Constitution of Nigeria**.** - ADRs offer a solution to the problem of access to justice faced by citizens in many countries due to three factors: the volume of disputes brought before courts is increasing, the proceedings are becoming more lengthy and the costs incurred by such proceedings are increasing Arbitration and other Alternative Dispute Resolution (ADR) are essential in resolving commercial disputes because parties in dispute may need to preserve their personal relationship and arbitration offers that opportunity. Hence, While it is difficult to set out general categories of cases which are appropriate for resolution through mediation or conciliation, it can be suggested that features of appropriate cases include: where the parties wish to restore or maintain their relationship with the other party (parents, business partners, siblings); claims where the monetary and non-monetary costs of litigation are disproportionately high in comparison to the issues in dispute;[6] claims where one or both parties are seeking remedies which are not available through the traditional court system — (such remedies may include: an apology, an explanation; flexibility in relation to financial repayments; changes in administrative procedures); and where the parties wish to resolve the dispute in a confidential and private manner. Be that as it may, this work examines commercial dispute resolution in Nigeria; issues and prospects.

The Concept of Arbitration

Arbitration has been defined by section 57 (1) of the Arbitration and Conciliation Act[7] as a commercial arbitration whether or not administered by permanent arbitral institutions.

involves a passing resemblance to restorative justice, but that is where the similarity ends. The Commission emphasises that ADR is associated solely with civil disputes and has no connection with restorative justice, -which is connected with criminal *law.* The Commission's Third Programme of Law Reform 2008-2014, Project 15, concerns restorative justice

[5] LRC CP 50-2008 at 3.140-3,153

[6] Egan v Motor Services (Bath) Ltd [2007] EWCA Civ 1002. In this case the English Court of Appeal gave a very strong endorsement to the use of mediation at an early stage in a case, particularly where litigation costs were more likely to be disproportionate to the amount in dispute. In Egan, the amount in dispute was only £6,000 but the parties between them had spent in the region of £100,000 on the litigation, including the appeal. Ward U stated that he regarded the parties as — completely cuckoo to have engaged in such expensive litigation with so little at stake

[7] Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004

Orojo[8] while trying to emphasize that litigation is not the means for dispute resolution stated that going to law does not necessarily mean litigating a case in court as there is another way of enforcing a claim, that is arbitration.

Arbitration is the submission of a dispute between two or more parties for decision by a third party of their choice. Ronald Bernstein[9] defined arbitration as an agreement of the parties that a dispute between them be settled by a tribunal of their choice. The courts equally have tried to judicially define arbitration. Romilly M.R in *Collins v Collins*[10] defined arbitration as a reference to the decision of one or more persons either with or without umpire, of a particular matter in difference between the parties. For Fulton Maxwell, J, Arbitration is equally a private process whereby a private disinterested person called an arbitrator, chosen by the parties to a dispute, acting in a judicial fashion, but without regards to legal technicalities, applying either existing law or norms agreed by the parties and acting in accordance with equity, good conscience and the perceived merit of the dispute makes an award lo resolve the dispute.[11]

Halsbury's Law of England defines arbitration as the reference of a dispute or differences or difference between not less than two panics for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[12] This definition was affirmed by the Supreme Court in *NNPC* v *Lutin Investment Ltd*[13]. Also an arbitration clause in any agreement constitutes a valid agreement to submit to arbitration and is binding on both parties to the agreement[14]. In the main, the legal basis for an arbitration agreement is contract, that is, the agreement to arbitrate which is crystallized in the submission of points stated for the decision of the arbitrator. The agreement to submit a dispute to arbitration is founded on the legal doctrine of *Pacta sunt servanda, bonafide* meaning that agreement shall be performed in good faith.[14]

Arbitration and Civil Procedure Rules in Nigeria

In Nigeria, it is a fundamental rule and tradition of the legal profession for lawyers to primarily exhaust all avenues for peaceful settlement of disputes concerning their client and other disputants before rushing to the courts. In compliance with this, the Lagos State Government established the Citizen's Mediation Centre under the auspices of the Directorate for Citizen's Rights a department in the Lagos State Ministry of Justice.

[8] J O Orojo, 'Arbitration as a Means of Dispute Resolution" Workshop Paper of Centre of African Law and Development Studies, 15m September 1995.
[9] R. Beinstein, Supra
[10] 28 UCH 186.
[11] F.J Maxwell. Commercial Alternative Dispute Resolution, The Law Book Co. Ltd, 1989, 55.
[12] Husbury's Law of England, 3ra Ed. 38
[13] (2006) NSCQR 77 at 112
[14] G C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria'*. Snaap Press Ltd, 2014

Arbitration practice has been established by Order 3 Rule 11 and Order 25 Rules 1-8 of the High Court of Lagos State Civil Procedure Rules, 2012, Order 19 Rules 1-14 of the High Court of the Federal Capital Territory, Abuja Civil Procedures Rules, 2004; Order 254tule, l. (2) (c) and Rule 3 (k) High Court of Rivers State Civil Procedure Rules, 2010 and Order 19 High Court of Kano State Civil Procedure Rules, 1988 (Edict).[15] These jurisdictions amended their rules of court to accommodate alternative disputes resolutions mechanisms for accelerated hearing of commercial disputes and for amicable settlement of disputes in their jurisdictions[16]. Many Arbitration bodies and institutions now exist to settle international commercial disputes such as; the International Chambers of Commerce, Regional Centre for International Commercial Arbitration. However, owing to a myriad of factors; there is still a relatively low uptake on the adoption of arbitration, coupled with-other alternative dispute resolution options. The Lagos Slate High Court Civil Procedure Rules, 2012 provide for accelerated hearing of commercial disputes by compelling lawyers to front-load their pleadings and by requiring the judges to utilize case management system and for replacement of written arguments for oral addresses in certain instances. To further speed up the trial of commercial disputes, Lagos State government has set up a commercial division in its high court for the trial of commercial disputes. Specifically, Order 25 provides in certain respects to entrench the arbitral process by stating amongst others that; certain matters should be resolved at interlocutory stage without going through full trial; gives parties opportunity to choose the most appropriate process of resolving their disputes fairly and speedily. It provides the parties a ready alternate to settle their disputes within the established arbitral structures and processes. This procedure is broadly captured under the 'Case Management' platform. Also, it should he noted that requisite sanctions may be applied if parties fail to participate in the process as directed b\ the Arbitral Judge.[17]

In the same vein, Order 25 Rule I (2) (c) and Rule 3 (k) High Court of Rivers State Civil Procedure Rules, 2010 seeks to accelerate and promote the amicable settlement of commercial disputes. This option is expressly captured under the Pre-trial conference procedure, amongst other avenues by which the parties can resolve a dispute. However, commercial exigencies will usually compel the parties to adopt alternative dispute resolution rather than litigation. It is noteworthy, that the pathways for the parties to successfully - resolve their dispute through ADR are not as explicit in comparison to the applicable

[15] A M Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015.

[16] A M Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints'. Journal of Marketing and Consumer Research, vol 8, 2015

[17] Adekoya, F. 2007 Dispute Resolution 2006/2007.http://www.aelex.com/ media/archive/FAQsDJspute%20Resolution%20in% 20Ntgw1a.pdf (visited November 19, 2016)

High Court Rules in Lagos Slate jurisdiction[18].

Order !9 Rules M4 of the High Court of the Federal Capital Territory, Abuja Civil Procedures Rules, 2004 expressly provides for referral of disputes to an arbitrator for settlement subject to the agreement of the parties or the court in situation when parties cannot agree or when the arbitrator nominated declines to act. It also provides in specific respects to secure a final award about the matter for resolution. This award may be varied or set aside as the Court may deem fit depending on the facts and circumstances of each case.[19]

Arbitration in Nigeria

The various communities in Nigeria have their own informal ways of resolving dispute even before colonization, as was the case in other African communities. Customary law o£ the different communities was the law that regulated the life and transactions of the people of Nigeria. In *Okpuricwit v Okpokam*, Hon. Justice Oguntade held that; In the pre-colonial times and before the advent of the regular courts, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose.[20] The practice has over the years become strongly embedded in the system that they survive today as custom. This mode of dispute resolution by elders, Chiefs and King is common in Nigeria and generally in Africa[21], where chiefs sit to resolve disputes amicably. The orientation of the people of Africa at large, in term of law is towards the reconciliation of dispute vide arbitration, mediation and conciliation. A typical example of this in Nigeria is the ancient Benin Empire where the family head or village head served as mediator and arbitrator[22].

In the Yoruba settings, the Oba, Chiefs and the elders play this role, while in the North, the Emir or the District, village or ward heads were saddled with the responsibility. Arbitration is a mechanism there fore for the resolution of disputes which take place, usually in private pursuant to an agreement between two or more parties, under which the parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed, other considerations after a fair hearing, such decisions being enforceable at law[23]. Thus arbitration is adjudicatory. In

[18] A M Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015

[19] A M Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015

[20] [1998] 4 NWLR (Pt 90) P. 554 at 572

[21] Daannaa H S The Acephalous Society and the Indirect Rule System in Africa[1] Journal of Legal Pluralism 34. 1994 p61

[22] Ephraim, A , The Nigeria Arbitration Law in Focus Lagos. West African Publishers Ltd.,, 1997. p. 1

[23] Tackaberry. J and Marriott, A. 'Bernstein's Handbook of Arbitration and Dispute Resolution Practice 4th Ed., London Sweet & Maxwell. 2003 P.13 as cited by Afolayan and Okorie in Modern Civil Procedure Law, Lagos Dee-Sage Nigeria Ltd. 2007, P.567 Kano State Urban Development Board-v-Fanz Construction Ltd. [1990] 4 NWLR Pt 142 P.I

Nigeria, it is regulated by the Arbitration and Conciliation Act[24]. Arbitration is anchored on fundamental principles like that of party autonomy[25], arbitrarily[26], separability, judicial nonintervention, and Kompetenz Kompetenz (scope of jurisdiction, a power, referred to in German). An arbitral award is not appealable but can be set aside under certain conditions, if not set aside.

It can be enforced like a court judgment. An arbitral award is res judicata. The arbitral process is not a challenge to or in competition with the judicial powers vested in the courts. To be enforceable, the agreement to arbitrate must be in writing and signed.[27] The agreement-is irrevocable except by agreement of the parties or by leave of court[28]. Arbitration can be of two types, namely, arbitral clause in a contract which refers future disputes to arbitration or a submission agreement that refers existing disputes to arbitration. Arbitration can also be adhoc or institutional - administered by an arbitral institution like the International Chamber of Commerce (ICC) or London Court of International Arbitration (LCIA). If there is an arbitration agreement and one of the parties commences action in court, the other party can apply under sections 4 and 5 of the Act for a stay of proceedings.[29] It should he noted that the party wishing to stay proceedings must apply for stay before delivering any pleadings or taking any other steps in the proceedings.[30]

Arbitration in South Africa

In South Africa, the Arbitration Act provides rules for the settlement of disputes by arbitration tribunals in terms of written arbitration agreements and for the enforcement of the awards of such arbitration tribunals. Notwithstanding what is set out in the Act, parties can design by agreement the way that the ADR process will be governed including the time period for u hen discovery will be made and including of course, and this is one of the great advantages of ADR.

The person or persons who will hear the matter: This process is done by both the parties and by a process of elimination with both parties starting with a list of several choices from the ranks of Senior Counsel from the advocates' Bar or Senior Practitioners from the ranks of attorneys. If the parties choose to have the matter subject to appeal, appeals on the decisions by these adjudicators are heard by a panel of the same.[31]

[24] Cap19LFN 1990 Cap A 18 LFN, 2004
[25] Idornigie, P O The Principle of Party Autonomy in Arbitral Proceedings: A Myth or Reality? Cited by Afolayan and Okone in Modern Civil Procedure op. cit
[26] Idornigie P 0 "The Principle of Arbitrability Revisited' Journal of International Arbitration Vol.21, Issue 3, 2004
[27] Section 1 of the Act op. cit
[28] Section 2 Ibid
[29] Afofayan and Okone in Modern Civil Procedure Law, Lagos Dee-Sage Nigeria Ltd. 2007, P.567
[30] Arbitration Act No 45 of 1965
[31] AM Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015

Generally the choice of adjudicator is governed by the experience in the particular matter at hand. I his advantage is what drives most parties to want their matter to be heard-by way of ADR because of the relative disadvantage of having the matter heard by a judge with no experience of the issue at hand. There are, however, disadvantages to this system and these disadvantages are mainly to do with the fact that, the practitioners appearing before the adjudicators are often friends and close colleagues and the separation created by the Bench does not exist".[32]

The Alternative Dispute Resolution Association of South Africa and more recently the Arbitration Federation of South Africa have made significant attempts to institutionalise private commercial arbitration and, to a much lesser extent, mediation. Notwithstanding, the rules of court, delays created by parties and the length of court roll are experienced and in approximately 18 years ago, two judges of the Witwatersrand Local Division set out to create a special commercial court to hear matters that were deemed, by a set of criteria, to be commercial matters.[33] The procedure was set out in a manual. Once the parties had met the criteria and the matter was declared a commercial matter, specific judges, experienced in commercial law were assigned to hold a pretrial in order to narrow the issues and where possible to hear the case.[34]

Commercial court was not highly successful and was used less by parties than was originally intended. By tar the method most used is ADR. This was not necessarily a result of the failure of the specialized commercial court, but more as a result of the fact that, contracting parties have almost automatically routinely inserted an alternative dispute resolution clause in contracts. These clauses bar a party from taking the matter to the High Court, unless they have first had the matter adjudicated by alternate dispute resolution.[35]

Arbitration in Canada

Canada is a federal slate like Nigeria, whose constitutional peculiarities give the appearance of complexity to the legislation governing commercial arbitration[36]. Although legislation has been enacted federal), and by each of Canada's ten provinces and three territories, the complexity is apparent. As a matter of practice, the laws of the various

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[33] A M Sani/Modern Trends m Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research vol 8, 2015

[34] A M Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015 Lee Gillespie-White www tipi org/conferences/lp-cuurts/paper-Gillespie-White pdf

[35] Lee Giliespie-White, www ilpi org/conferences/lp-courts/paper-Gillespie-White pdf

[36] A. M. Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015

jurisdictions are remarkably similar. Differences that do exist are not sufficiently material to encourage forum shopping.

With the exception of Quebec, each of Canada's provinces and territories has two arbitration statutes: one for domestic arbitrations and another for international arbitrations[37]. Although Quebec is governed by civil law and the rest of Canada by common law, the differences between the two with respect to arbitration are differences of form, not substance. The applicable federal statute, the Commercial Arbitration' Act[38], governs both domestic and international Commercial arbitrations, but is limited to disputes involving federal government, federal crown corporations and certain enumerated federal agencies. All other arbitrations are governed by provincial or territorial law. Court decisions are important sources of law governing arbitrations, especially in so far as the decisions interpret the legislation. And, although Quebec is a civil law jurisdiction, court decisions tend to play a large role in Quebec than they do in other civil law jurisdictions. Since implementation of the model Law, Canadian courts have demonstrated a clear shift in policy in favour of arbitration over court proceedings. The Ontario Court of Appeal has stated that any ambiguities in the interpretation of arbitral legislation or agreements should be resolved in favour of arbitration.

Arbitration Practice in the United States

In the United States, the Federal Arbitration Act (FAA) is a statute that provides for judicial facilitation of private dispute resolution through arbitration. It applies in both state courts and federal court it applies where the transaction contemplated by the parties "involves" interstate commerce and is predicated on an exercise of the "commerce clause" powers given to Congress in the U.S. Constitution.[39]

The Federal Arbitration Act[40], enacted in 1925, provides for contractually - based compulsory and binding arbitration, resulting in an "arbitration award" entered by an arbitrator or arbitration panel as opposed to a "judgment" entered by a court of law. In an arbitration, the parties give up the right to an appeal on substantive grounds to a court. The 1-cderal Arbitration Act requires that, where the parties have agreed to arbitrate, they must do so in lieu of going to court, provided that, the proceeding is fundamentally fair-that is. equivalent in fairness to the public courts. Once an award is entered by an arbitrator or arbitration panel, it must be "confirmed" in a Court of law. Once confirmed, the award is then reduced to an

[37] A, M. Sani/ Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints' Journal of Marketing and Consumer Research, vol 8, 2015 RS.C. 1985 C.C-34(5).

[38] R.S.C 1985 C.C – 34(6)

[39] Automatic Systems Inc v Bracknell Corp (1994) 18, O.R. (3d) 257, and Canadian National Railway Coy v Lovat Tunnel Equipment Inc , (1999) 174 D.L.R. (4th) 385

[40] Found at 9 U.S.C Section 1 et seq.www.law.cornell.edu/uscode

enforceable judgment, which may be enforced by the winning court, like any other judgment. Under the Federal Arbitration Act, awards must confirm within one year; while any objection to an award must be challenged by the losing party within three months. An arbitration agreement may be entered "prospectively"- is in advance of any actual dispute; or may be entered into by disputing parties once a dispute has arisen.[41]

The Supreme Court, in *Hall* v *Matte!*, ruled that, even if the parties agree in[1] the arbitration agreement to allow expanded judicial review of the decision, the grounds for review specified in the Federal Arbitration Act may not be expanded. Section 2 of the FAA declares that, arbitration provisions will be subject to invalidation only for the same grounds applicable to contractual provisions generally. Consequently, any state law that disfavours the enforcement of arbitration agreements will be preempted by the Federal Arbitration Act. State laws that govern the procedures of arbitration, but do not affect its enforcement are outside the Act's preemptive scope"[42]. In *Preston* v *Ferre*[43], the Court held that, the Act requires arbitration first, even when state law provides for administrative dispute resolution.

Conclusion

All over the world, and particularly in the civilized jurisdictions, arbitration has been richly rooted as a quick, confidential and cost effective mechanism for dispute resolutions, especially where such disputes are commercial in character. Of all Alternative dispute techniques**,** arbitration seems to be most widely used[44]. The parties may agree to refer a dispute to arbitration alter the dispute has arisen, but often the contract itself will provide for any disputes which arise out of it to be referred to arbitration. In particular, the standard forms of contract for commodity trading, shipping, construction and engineering contracts, generally provide tor disputes to be referred to arbitration, but individual contracts prepared for particular parties or transactions may also include arbitration clauses.

A contract which requires disputes to be referred to arbitration will often provide f6r reference to one of the bodies, because it is not uncommon for a contract to provide simply for adhoc arbitration by a single arbitrator or a panel of arbitrators to be appointed by the parties as and when a dispute arises. The arbitrator's decision thus acquires its binding force from the parties agreement. In the past, the Courts tended to be suspicious of arbitration, tearing that the agreements might be used to oust the jurisdiction of the court. However, in recent years the courts have

[41] No 06-989 of **March 25th, 2008**
[42] Doctor's Assoc Inc v Casarotto, **517 U.S 681** (1996), and Buckeye **check cashing Inc v Cardegna, 546 U.S.** 440 (2006)
[43] 128 Supreme Court 978 (2008)
[44] Kelvin N Nwosu. "ADR as a tool for attraction and protection of. business investment in Nigeria," a Paper presented at the NBA, Annual General Conference, Jos, 2005

treated arbitration with much less suspicion than hitherto, recognizing that: "Courts and arbitrators are in the same business, namely the administration of justice. The only difference is that the courts are in the public and the arbitrators in the private sector of the industry"[45].

It is therefore increasingly recognized, that where parties have freely agreed to refer disputes to binding and final arbitration, their agreement should be respected and they should be held to it. In consumer contracts, different considerations apply to it where consent to arbitration may nm be freely given and arbitration clauses in consumer contracts are therefore subject to strict controls.

[45] Bremer Vulkan Schiffbau and Maschinenfebrik v South India Shipping Company Ltd. [1981J A.C 909 at 921. -Per Donaldson