# TOPIC:
# A GENERAL OVERVIEW OF THE NIGERIAN COURT'S ASSISTANCE IN ARBITRATION PROCEEDINGS UNDER THE ARBITRATION AND CONCILIATION ACT:

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Abstract:

*Arbitration proceeding is a party driven process where parties determine their arbitrator, his powers, the seat of arbitration, the governing law (ie lex abritri) and the procedure to be adopted for the arbitration proceedings. The nature of arbitration is exclusive, confidential and private with party autonomy as guaranteed by Section 34 of the Arbitration and Conciliation Act which provides that: A court shall not intervene in any matter governed by the Act except where the Act so provides. However there exist a strong link between the party exclusivity of arbitration proceedings and the role of the Nation's Court in assisting the arbitral process. This paper is therefore geared towards critically analyzing the said role of the Nation's court and the legal issues arising therefrom. This paper will also examine a myriad of judicial authorities that have made pronouncements on the said roles.*

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## 1.0 INTRODUCTION

Arbitration is a private dispute resolution mechanism which provides for the reference of a dispute between not less than two parties for determination in a judicial manner by a person or persons other than a court of competent jurisdiction.[2] Hence, when parties choose arbitration as a means of resolving their disputes, they are in a way excluding the Courts from acting as their arbiter. They effectively relegate the Courts to the back stage when an arbitral tribunal is seized of a matter. The assistance and intervention of the Courts are often required by the parties and the arbitral tribunal to remove difficult issues from the way of proceedings. It must be emphasized that in all cases, the purpose of the intervention

[2] See : *Nigerian National Petroleum Corporation v. Lutin Investment* (2006) 2 NWLR (Part 965)

is to support the arbitral process in areas where only Court can exercise coercive powers of enforcement or ensure fairness and justice.

On contrary as currently evident in practice we have seen that the Court that is ordinarily supposed to facilitate and guarantee a smooth running of the arbitration process has now become a useful tool in the hand of an aggrieved party to either truncate the arbitral proceedings or frustrate the fruit of the arbitration. One might wonder why most awards still get stuck in the lower Court up to the Supreme Court over issues raised by an aggrieved party. There are cases where an application to enforce and recognize an award is filled and a different application to set it aside is filed in another court of co-ordinate jurisdiction[3]

Flowing from the foregoing, the focus of this paper is therefore aimed at giving an overview of all the instances where the Court can intervene in the arbitral proceedings under the Arbitration and Conciliation Act without offending the provision of Section 34 ACA. It suffice to state that other than all the listed instances in the ACA, no court of law can intervene[4] in any arbitration proceedings on any ground not specifically mentioned in the Act as doing so will amount to a nullity[5]. The Courts no doubt plays a supervisory role over arbitration but only to the extent permitted by the Act. [6]

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[3] *Shell Trustees Nigerian Ltd v.Imani & Sons Ltd* (2006) 6 (pt. 662) 639 at 659

[4] Either by granting an interim relief pending arbitration or granting an order restraining the continuation of an arbitral proceeding. See : *Nigerian Agip Exploration Ltd. V. NNPC & Oando OML 125 and 134 Ltd.* Suit No CA/A/628/2011

[5] Ibid.

[6] Ibid

This paper is divided into four part viz; the introduction, the general overview of the court's assistance, recommendations and conclusion.

## 2.0 **Overview of National Court's Assistance of Arbitration process**

The National Court can assist the process of Arbitration in the following ways:

### **Constitution of the Tribunal:**

At the beginning of the proceedings, the assistance of the Court may be sought in setting up the arbitral tribunal where parties have failed to do so. Instances like this can be found in Section **7 Arbitration and Conciliation Act.** This provision illustrates instances where the two appointed arbitrators fail to agree on the third arbitrator within 30days of their appointments, the appointment shall be made by the Court on the application of any of the parties to the agreement. Same applies where parties fail to appoint a sole arbitrator, the Court will appoint the sole arbitrator on the application of any of the parties to the agreement.[7]

A good illustration of the power of the Court to appoint an arbitrator where parties fail to do so can be found in the *dictum* of *Per* Udoma, J.S.C. in ***Royal Exchange Assur. V Bentworth Fin. (Nig.) Ltd.*** ( 1976) 10 NSCC 648 at 657; where he states thus:

[7] See Section 7(2) (a)(ii) and (b) ACA. See also Arts 6-8 of the Arbitration Rules.

> *"The Appropriate remedy therefore, for a breach of a submission is not damages but its enforcement. Hence, the Arbitration Act (Cap 13). so that where a party refuses within a given time after due notice to have an arbitrator appointed, the court has full power and jurisdiction to appoint an arbitrator on an application properly made by the party who has served such notice"*

To further buttress the role of the Court, it is interesting to note that the Court of Appeal in England *Re Eyre and the Corporation of Leicester*[8] stated that the Court had no discretion at all and could not refuse to appoint an arbitrator in a proper application made to it. In the same manner, the Arbitration and Conciliation Act does not give the Court the discretion to refuse such application for appointment of an arbitrator when same is made by a party. It is noteworthy that the decision of the court to appoint an arbitrator upon an application by a party shall not be subjected to appeal in any form.[9]

.**Injunctions and interim measures:**

The provision of Section **13 of the ACA** empowers the Tribunal at the request of a party, to order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

The very pertinent question to ask at this juncture is whether the Tribunal has power to make interim or interlocutory orders against persons who are not parties to the arbitration? The provision of Section 13 of the ACA does not extend the powers of the Tribunal to take interim measure of protection to nonparties to the

[8] (1892) 1 Q. B. 136

[9] See Section 7(4) Arbitration and Conciliation Act

Arbitration; the Act only contemplates the parties to the Arbitration. Hence, where the property to be protected is in the hands, custody or control of a 3rd party, Section 13 of the ACA will definitely not be applicable since the Tribunal lacks the requisite powers to make an order against such a third party[10]. This position was aptly captured in the case of ***Lagos State v P.H.C.N & 2ors***[11] where in view of the privatization of the of the 1st respondent and fearing the dissipation and striping of the 1st respondent's assets, the Applicant filed an originating application seeking to restrain the 1st respondent from dissipating, withdrawing or dealing with monies standing to the credit in the account operated by the 1st respondent with the 2nd and 3rd respondents. It also it also filed an order *ex parte* for the same relief which was granted. The 1st respondent applied to set aside the orders on ground that by **s.13 of the ACA,** it is the Arbitral Tribunal that has powers to grant interim measures of protection pending arbitration and the High Court Lack powers to do so.

The trial Court rejected the argument on the ground that the persons to be affected by the orders are persons over who the tribunal cannot exercise jurisdiction, for which reason the request was properly made to the High court. The words of *Okuwobi J* held as follows:

> *It is definitely wrong for the Court to make an order of interlocutory injunction against persons who were not parties to the action in which it was made and who were not given a hearing. See Uzondu vs Uzondu (1997) 9 NWLR (Pt 521) page 466-479 F*
> *I therefore find no merit in the complaint that the application should have been presented before the*

[10] See Oluwaseyilayo Ojo's Case summaries on *Interim and Conservatory Measures in Maritime Arbitration*; presented at the 6th Practical Maritime Dispute Resolution Seminar 2014

[11] (2012) 7 CLRN @ page 134

> *Arbitral Tribunal. There is no doubt that Section 13 of the Arbitration and Conciliation Act confers on the arbitral tribunal to order interim measures of protection. In this case the non-parties who were to be ordered by the Court to carry out some specified orders is the reason why arbitral panel is not the proper forum for the reliefs sought in this suit.*

It must also be noted that even where the injunction is against a party to the arbitration, the enforcement of the order often require the intervention of the Court. In situations like this, a party can approach the Court for such interim measures against the party or third party as the case may be and such step will not be a waiver of the agreement to arbitrate.[12] It is then apparent from the provision of Section 26(3) of the Arbitration rules that the court plays a crucial role in the granting[13] and enforcing such interim orders or award as granted by the Tribunal.

Flowing from the above, some legal issues have arisen as to the extent of the assistance of the Court where the issue of jurisdiction is raised on whether a party can approach a court for an order of interim protection when the court does not have jurisdiction in the first place. The Courts, when confronted with this type of Application will demand that a proper suit be filed upon which the injunctive relief can be anchored.

On the other hand, filing such substantive suit for the purpose of anchoring the injunctive relief will ignite or provoke the issue of jurisdiction of the court to

[12] See Article 26(3) of the Arbitration Rules which provides as follows: *A request for interim measures addressed by any party to court shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of the agreement.*

[13] i.e Where the said property sought to be protected is in the custody of a third party

entertain such suit. This burning issue is well captured in ***Econet wireless Ltd V Econet wireless Nigeria Ltd & 21 Ors***[14] in this case the Plaintiff was a shareholder in the 1st defendant. A dispute arose between the shareholders in respect of parties' obligation under the terms of the shareholders agreement between them. In line with the arbitration clause, the plaintiff wrote a letter to the Chief Judge of the Federal high Court as the appointing authority. While waiting for the appointment to be made, the Plaintiff filed a suit seeking interim relief pending arbitration relying on Section 13 of the FHC act and Article 26 of the Arbitration Rules. The Respondents filed a preliminary objection to the application on the basis that the Court lacked jurisdiction to grant interim reliefs in aid of arbitration under the Arbitration and Conciliation Act.

Agreeing with the respondents, the Court held that an injunction is an ancillary relief and not a principal relief. This being so, the court held that the jurisdiction of the court can only be properly invoked where there is a principal relief and that in the instant case there is no substantive action upon which the injunctive relief sought where anchored. Hence, the plaintiff application was therefore refused for lack of competence.

**The Lagos State Arbitration Law 2009**[15] however empowers the Court to make interim orders to preserve the right of parties pending arbitration; Section 6(3) provides as follows thus:

[14] Judgement of Ukeje CJ, delivered in Suit No: FHC/L/823/2003

[15] Section 6(3)

> Where a Court makes an order of stay of proceedings under subsection (1) of this Section, the Court may for the purpose of preserving the right of parties make such interim or supplementary orders as may be necessary.

Going by the above provision, it is therefore the view this author that where parties to the arbitration agreement agrees that the governing law of the arbitration should be the Lagos state arbitration Law, the Court can conveniently grant interim measure of protection pending the determination of the arbitration without the attendant controversy of jurisdiction of the Court to grant same.

**Assistance in evidence gathering and securing attendance of a witness:**

A witness of a party may voluntarily attend and testify at an arbitral proceeding. Sometimes, however, a witness may not wish to attend voluntarily and then it becomes necessary to compel his attendance. In cases like this, the arbitrator has no power to compel attendance of such witness or use coercive powers. Hence, the law gives such power to the Court to assist or support the Arbitral process. **Section 23 ACA** is to the effect that:

> *The Court or the judge may order that writ of subpoena ad testificandum or of subpoena ducestecum shall issue to compel*

*the attendance before any arbitral tribunal of a witness wherever he may be within Nigeria.*

Also where a potential witness is in prison, Section **23(2) ACA** provides that the Court or a judge may also order that a *writ of habeas Corpus ad testificandum* be issued to bring up the prisoner for examination before the arbitral Tribunal.

**Stay of Proceedings:**

The National Court can assist the arbitration process by construing the arbitration agreement of parties and giving effect to it. Hence, where one of the parties to an arbitration agreement commences an action in Court in respect of the same subject matter, the Court is obliged to make an order of stay of proceedings and refer the parties back to arbitration[16].

The Courts have had cause to interpret the provisions of 4 & 5 of the ACA to determine when a stay of proceedings should be granted[17]. The trend of cases[18] at

[16] See Section 4 and 5 of the Arbitration and Conciliation Act.

[17] See Faruq. Abbas' paper on : Stay of Proceedings pending Arbitration: A critique of the Decision of the Court of Appeal in UBA v Trident Consulting Ltd. presented at the CIArb Annual Conference 2013 p.2

[18] There are cases which have held that an Applicant for an order of stay of proceedings must adduce documentary evidence showing the steps which he has taken in respect of the commencement of an arbitration before he would be entitled to an order for stay of proceedings: see Uba V Trident (2013) 4 CLRN 119 and Mv Parnomos Bay V Olam (Nig) Ltd. (2004) 5 NWLR (Pt. 865) 1

the Court of Appeal has revealed a number of inconsistencies[19] on the proper application of Section 5 ACA.

***Section 5*** *of the Act provides as thus:*

> *5. (1) If any party to an arbitration agreement commences any action in any court with respect to any matter which is the subject of an arbitration agreement any party to the arbitration agreement may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.*
>
> *(2) A court to which an application is made under subsection (1) of this section may, if it is satisfied-*
>
> *(a) that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration agreement; and*
>
> *(b) that the applicant was at the time when the action was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, make an order staying the proceedings.*

It is very import to note here that before the assistance of the court can be sought under this heading to grant stay of proceedings by enforcing the arbitration agreement and referring the matter to arbitration, certain conditions ought to be met one of which is that no step shall have been taken by him after appearance[20]

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[19] The decision of the Court of Appeal in UBA v. Trident (2013) 4 CLRN 119 and MV Panormos Bay v. Olam (Nig) Plc (2004) 5 NWLR (Pt. 865) 1 is at variance with the decision of the Court of Appeal in LSWC v. Sakamori Const. (Nig.) Ltd. (2011) 12 NWLR (Pt. 1262) 569,

[20] Fabian Ajogwu SAN – Commercial Arbitration in Nigeria: Law and Practice . (2nd ed. 2013) pg 81. Fn. 175 per Tylor, CJ in Mehr v Nig.Inv & Ind.Co. Ltd (1966) N.C.L.R 351 at 358

The Court of Appeal *Per* Tobi J.C.A in ***Kurubo v. Zach Motison (Nig) Ltd.*** *(1992)5 N.W.L.R (pt.239) 103 at 118-119* has this has this to say on what constitutes "taking steps" in the proceedings means:

> In "*Kano State Urban Development Board* (supra) the Supreme Court held that an application for an order for pleadings to be filed constitutes a step in the proceedings within the provision of section 5 of the Arbitration Law. In the instant case, where the appellants were involved at each and every stage of the proceedings, they cannot be held to raise the issue of non-compliance with the arbitration clause. By their involvement in the conduct of the case they have denied themselves of the rights to be heard by an Arbitrator and I so hold".[21]

A step in proceedings has also been defined as an action which impliedly affirms the correctness of the proceedings and the defendant's willingness to be bound by the court's decision[22] Also, where for instance a party makes any application whatsoever to the Court, even though it is merely an application for extension of time, takes a step in the proceedings.[23]

The above decisions aptly suggest that where a party is said to have taken any step which affirms that the action is properly instituted albeit in defiance of the arbitration agreement, such party is said to have waived his rights to have is matter determined or referred to arbitration.

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[21] See also Per Obaseki J.S.C in *K.S.U.D.B v.Fanz Const. Ltd. (1990) 4 N.W.L.R (Pt.142)1 at 50, Obembe v. Wemabod Estates (1977) 5 S.C 115; Vestings v.Nigerian Railway Corporation (1964) Lagos High Court Reports 135* ; In these cases, the court held that an application for pleadings constitute a step within the provisions of Section 5 of the Arbitration Law.

[22] Eagle Star Insurance Co Ltd V Yuval Insurance Co Ltd (1978) 1 Lloyds Rep 357.CA

[23] *Obembe v. Wemabod Estates (Supra) fn.12*

Furthermore, where a party claims that proceedings should be stayed because there is an arbitration agreement in force, the court is under a duty to construe the terms of the contract to decide whether there is a valid arbitration clause. Hence where the arbitration agreement is in itself void, inoperative or incapable of being performed the court will not be obliged to stay proceedings. **Article II.3 of the New York Convention 1958** captures this position by providing thus:

> *"The Court of a contracting state when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall at the request of one of the parties refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed[24]"*

Therefore, while the Courts are readily willing and available to assist the arbitration process by exercising their powers to grant stay of proceedings under Section 5 of the Act by referring a matter which has an arbitration agreement to arbitration, it will refuse to exercise such powers where a party seeking the enforcement of the arbitration agreement has taken a step to affirm the correctness of the suit or where the arbitration agreement in question is void or incapable of being enforced.

It is however interesting to note that a party who has been barred from staying proceedings for taking steps in it could still sue for damages for breach of the arbitration clause. This position was succinctly espoused by *Per* Williams J. in **Ighoroye V Maude Sokoto** (1966) N.C.L.R 301 at 305 thus:

> *"The effect of S.5 of our law therefore is that once, as in this case, a defendant has filed a defense he cannot have the*

[24] Emphasis added

*proceedings stayed to proceed to arbitration, but that does not interfere with his right to proceed independently against the plaintiff for damages for breach of cl.11 of the agreement."*

**Revocation of Arbitration Agreement:**

Generally arbitration agreement shall be irrevocable except by agreement of parties or by leave of Court[25]. Once parties enter into arbitration agreement, one of them cannot unilaterally revoke it. Not even the death of a party cannot revoke or invalidate the arbitration agreement. In the event of death of one of the parties, the agreement shall be enforceable against the personal representatives of the deceased[26]. However, a party who wishes to revoke it must apply to Court on ground of supervening impossibility[27] or supervening illegality.[28]

The provision of Section 2 of the Act empowers the Court upon being confronted by a party with an application to revoke the arbitration agreement where it is apparent on the face of the arbitration agreement that performance of same is impossible or impracticable. Reasons for impracticability of an arbitration clause can range from confusion on Applicable laws, vagueness of the arbitration

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[25] Section 2 of the Arbitration and Conciliation Act

[26] See Fabian Ajogwu SAN – Commercial Arbitration in Nigeria: Law and Practice. (2nd ed. 2013) pg 26 para.2

[27] This occurs when something happens which makes the performance of the arbitration agreement impossible or which destroys the foundation of the contract to arbitrate : See Mustil & Boyd, op.cit.p.508

[28] This refers to a situation where the arbitration agreement or the main contract is unenforceable or does not have the force of law due to the incapacity of a party or non-compliance with a condition precedent. See Fabian Ajogwu SAN – Commercial Arbitration in Nigeria: Law and Practice. (2nd ed. 2013) pg 37-38

agreement, to lack of clarity of intention to resolve the dispute by arbitration. On these grounds, a court is empowered under Section 2 of the Act to revoke the arbitration agreement.

**Setting Aside of an award:**

Arbitral awards are by itself final and binding. However, there are certain situations when it can be set aside[29]. The most important point here is that the arbitral Tribunal do not have the power to set aside its own award; it is only by an order of the Court that an award can be set aside on the application of an aggrieved party.[30]

**Enforcement of Award**

An award, though like a judgment in that they are both adjudicatory, cannot be executed like a judgment of a Court; in other words an award *simplicita* does not have the force of a judgment of Court. Every arbitral award duly made is to be recognized as binding and is expected to be complied with. This in effect means that where an unsuccessful party immediately carries out the terms of an arbitral

[29] Misconduct : See Taylor Woodrow (Nig) Ltd V S.E GMBH (1993) 4 NWLR 127; Failure to be impartial or honest; See Sellar V Highland Railway (1912) 56 Sc. L.R 216 (H.L) ; Failure to make award in proper form. See Mangullis Ltd v. Dafnis Thomaids Ltd (1958) 1 WLR 398; Error of law on the face of the award . See Taylor Woodrow (Nig) Ltd V S.E GMBH (Supra) ; Failure to award interest and ; proceeding with illegal contract.

[30] See Section 29 and 30 ACA See also Section 48 on awards made in international arbitration.

award, the question of recognition or enforcement of the award does not arise. It is when it is not complied with that the question of enforcement through the machinery of the Court by the winning party arises. The Role of the Court in this regard was comprehensively expressed by Per Tobi JSC in ***Okechukwu V Etukokwu*** (1998) 8 N.W.L.R (Pt. 526) 513 at 529-530 where he stated thus:

> *" In law, an arbitral award per se lacks enforcement or enforceability. It does not carry any element of sanction until a Court of law, by its judicial powers breath enforcement of sanction on it. At the completion of the arbitration, the award is a toothless dog which cannot bite until a Court of law gives teeth to it. In Ofomata and another v. Anoka and Another (1974)4 E.C.S.L.R 251, Agbakoba J. said at page 253 -: "But unlike a Judgment which has force until set aside, the decision of an arbitration lacks intrinsic or inherent force until pronounced upon by a competent judicial authority" -*

The statutory flavor to the above pronouncement can been seen under Sections 31(1) of the ACA which provides that –

> *"An arbitral award shall be recognised as binding and subject to this section and section 32 of this Act shall upon application in writing to the court be enforced by the court"*
>
> *Section 51(1) provides that –*
> *"An arbitral award shall irrespective of the country in which it is made ,be recognized as binding and subject to this section and section 32 of this Act, shall, upon application in writing to the court be enforced by the court"*[31]

**Remission of Award**

[31] See Section 31 and 51 of the ACA

**Section 29(3)** of The Arbitration and Conciliation Act is very apt on the issue of remission of an award to the arbitrators. This occurs where a Court is faced with an application for setting aside of an award under **subsection (1)** of the above section, the Court may at the request of one of the parties, suspend proceedings in order to allow the arbitral Tribunal an opportunity to resume the arbitral proceedings or take such other action to eliminate the ground for setting aside of the award. This position has been comprehensively captured in the dictum of Per Coker JSC in ***In Re: Quo Vadis Hotels & Restaurants Ltd.*** (1974) 1 All N.L.R 854 at 855 where he says thus:

> *"After listening to the arguments from both parties in this matter, we have come to the conclusion that the failure of the arbitrator to conclude the present proceedings in accordance with the terms of his reference was caused by the refusal of the present applicants to produce the books and other documents upon which they found their claims before the arbitrator……..In the circumstances, we set aside the orders of the arbitrator and thereby affirm the order of the reference to the effect that neither of the parties is bound by the orders made in this matter by the arbitrator. We also make the following orders (1) This matter be remitted back to the same arbitrator for hearing and determination de novo and as if the first hearing had not taken place (2)*[32]*…… (3) that the said arbitration shall be followed in due cause by the reference of the matter to the referee as originally agreed and that all steps proper and necessary in order to effectuate the provisions of the terms of settlement agreed shall be taken accordingly."*

The above decision fully demonstrates the role of the Court when faced with an application for setting aside an award. The court under this heading can either set aside the award or remits back the award to the arbitrator(s) by giving him the opportunity to remedy what would ordinarily have resulted in the setting aside of

[32] Emphasis added

the award or take such other action to eliminate the grounds for setting aside of the award[33]

**Refusal to Enforce an Award:**

Here an aggrieved party to the arbitration agreement may request the Court to refuse recognition or enforcement of the award. [34]

The Arbitration and Conciliation Act[35] provides for the recognition and enforcement of awards. It states that an arbitral award shall be recognized as binding and shall "upon application in writing to the Court be enforced by the Court" If therefore , a party wishes effectively to refuse recognition and enforcement of the award, he must take the positive step of applying to Court as provided under Sections **32** and **52** of the Act[36]

**3.0 Recommendations:**

[33] See Taylor Woodrow (Nig) Ltd V S.E GMBH (1993) 4 NWLR at 155

[34] See Section 32 ACA see also Section.52 (1) with regards to awards in international arbitration.

[35] Section 31

[36] See J. Olakunle Orojo and M. Ayodele Ajomo – Law and Practice of Arbitration and Conciliation in Nigeria (1st ed. 1999) pg.291

In as much as the attitude of the Court in assisting arbitral proceedings has been somewhat positive, we cannot gainsay the fact that a countless number of arbitral awards are still locked down in the Court's docket awaiting enforcement or being challenged on the grounds of misconduct or error on the face of the award. It is against this backdrop that this author makes the following recommendations:

A. Arbitral awards should not be subject to review upon an application for setting aside by an aggrieved party but be final and subject to appeal only. This will send a strong message to those who believe that arbitration is the first step to litigation to have a change of mind by the judicial support for arbitration.

B. The provision of Section 34 of the ACA should be given its full effect and interpretation to restrict the Court from granting orders halting or restraining the continuation of an arbitration proceeding. Section 34 ACA restricts the involvement of the Court from intervening in any matter governed by the Act unless to the extent permitted by the Act. Recently, the Court of Appeal in the case of ***Nigerian Agip Exploration Ltd. V. NNPC & Oando OML 125 and 134 Ltd.***[37] Where the court of Appeal held that in the light of the clear provision of Section 34 of the Arbitration and Conciliation Act 2004 the Federal High Court had no jurisdiction to grant an *ex parte* interim or interlocutory injunction as the case may be to restrain arbitral

[37] Suit No CA/A/628/2011

proceedings from taking place or continuing to finality[38] This decision is a welcome development and portends well for the development of arbitration.

C. Outright dismissal of a substantive suit filed in defiance of an arbitration agreement rather than the Court assuming jurisdiction and granting stay of proceedings pending arbitration.

D. Refusal of leave to appeal by the Court of Appeal or Supreme on decision emanating from enforcement or setting aside of an arbitral award. It is view of this author that the whole essence of arbitration as effective and time friendly mode of alternative dispute resolution will be lost if our courts continually grant leave to appeal. It is very easy for an aggrieved party to take advantage of our environment to frustrate the fruit of arbitration of proceedings.

E. The Court when faced with an application for setting aside and award under any of the reasons contained in Sections 29,30 and 48 of the ACA should first of all consider the option provided under 29(3) of the Act for remission of such award back to the Tribunal in order to allow the arbitral Tribunal an opportunity to resume the arbitral proceedings or take such other action to eliminate the ground for setting aside of the award.

F. A review of the case of UBA v Trident Consulting Ltd[39] where the Court Appeal held that "*Before a stay may be granted pending arbitration, the*

[38] Per Joseph Tine Tur JCA

*party applying for a stay must demonstrate unequivocally by documentary evidence and/or other visible means that he is willing to arbitrate. He does it satisfactorily by (1) notifying the other party in writing of his intention of referring the matter to arbitration and (2) by proposing in writing an arbitrator or arbitrators for the arbitration"* Section 5 of the Act does not provide that a party applying for stay must adduce documentary evidence of the steps he has taken to show intention to arbitrate. Stretching the provision of Section 5 ACA beyond its literal or ordinary meaning will only send a negative signal that the appellate Court makes it onerous for an applicant to enforce arbitration agreement.

In this regard, we can compare the above case with the case ***of AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant*** JSC [2013] UKSC 35 where the UK Supreme Court recently held that it has the power to uphold an arbitration clause by ordering a stay of proceedings, even when arbitration proceedings are not in progress or contemplated[40]

**4.0 Conclusion:**

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[39] Supra.

[40] See Kolawole Mayomi's paper on : Development of arbitration as a Primary dispute resolution mechanism: Beyond Judicial Goodwill, To Judicial Promotion ; Presented at The Chartered Institute of Arbitration Annual Conference - Friday 29 November 2013

The role of the Court as seen above is without doubt necessary for an effective running of arbitration proceedings. Powers of the Courts may also be negatively utilized to impede the effectiveness of arbitral proceedings but the assistance of the Court in this regard outweighs any militating factor of the Court's intervention in the arbitral proceedings. Some of the judicial authorities treated above also justifies the reluctance of the Courts to entertain steps taken by parties to impede or truncate arbitration. The Court is further enjoined to take into cognizance the recommendations made above in showing more of judicial approval for the development of arbitration in Nigeria. The concomitant effect on the economy and commerce is overwhelming. Our economy is further enhanced when disputes arising out of commercial transaction are dealt with expeditiously without the attendant delay that has bedeviled the national court system.