KEYNOTE ADDRESS BY THE CHIEF JUSTICE OF SIERRA LEONE HON JUSTICE DESMOND BABATUNDE EDWARDS AT AFRICA ARBITRATION ACADEMY CONFERENCE ON THE THEME THE ROLE OF JUDICIARIES IN NURTURING AND MAINTAINING VIABLE ARBITRATION SYSTEMS IN AFRICA.

PROTOCOL

Mr. Chairman it gives me the greatest pleasure to be here at the School of Law, School of Oriental and African Studies (SOAS) UNIVERSITY OF LONDON, UK to join the Executive Director and members of the Africa Arbitration Academy in this year's conference which had already started since the 6th of June and to deliver the keynote address for this year's programme.

On behalf of myself and the Judiciary of Sierra Leone of which I head as Chief Justice, words would be short to describe how delightful and gratified we are that you thought it fit to grant me the opportunity to share my views on International Arbitration to such a prestigious body at such a prestigious occasion - The Africa Arbitration Academy Conference 2022.

The Africa Arbitration Academy was conceived in 2019 due to the rising demand for improved expertise and training of arbitration practitioners in Africa and to expose young practitioners to the current needs and developments in International Commercial and Investment treaty Arbitrations with a view to expanding your perspective on International Commercial Arbitration and equipping and/or enriching you with better professional skills and knowledge. This trend and objective continues hence this meeting of 2022. Whereas it has always been the practice of this great Institution since 2019 in conferences like this to invite keynote speakers of note who worship at the altar of Arbitration to deliver key note sessions of lasting remembrance that would practically give further insight and reshape you in your request to be renowned arbitrators; your invitation of me is nothing short of an elevation and clearly remarkable. As Chief Justice, I am no doubt a man of experience and clout but to have been classed in the

same cadre of professionals that worship at this altar is most certainly of monumental proportions. Thus at this significant time within our shared history, it is with immense pride and honour that I stand on this side of the podium to contribute to the deliberations and share my views on the theme **'THE ROLE OF JUDICIARIES IN NORTURING AND MAINTAINING VIABLE ARBITRATION SYSTEMS IN AFRICA.'**

I hope that by the end of the day you would have been able to gain from my expertise experience and insightful contributions.

Pause

The Topic 'THE ROLE OF JUDICIARIES IN NURTURING AND MAINTAINING VIABLE ARBITRATION SYSTEMS IN AFRICA.

INTRODUCTION

-The word NURTURE MEANS TO CARE FOR AND PROTECT SOMETHING WHILST IT IS GROWING &DEVELOPING

- THE WORD MAINTAINING MEANS TO CAUSE SOMETHING OR SOME SITUATION TO CONTINUE

- WE ARE TALKING ABOUT THE ROLE OF AN ORGAN OF GOVT THE JUDICIACIARY

- DO JUDICIARIES SUPPORT THE DISPUTE RESOLUTION SYSTEM CALLED ARBITRATION?
- WHAT IF THEY DO NOT SUPPORT ARBITRATION ?
- WHAT WOULD COME OF ARBITRATION ?
- CAN ARBITRATION LIVE OR EXIST WITHOUT THIS SUPPORT?

  These are questions we should try to answer as i go on

As stated, I am a Judge and have been one for the past 16years culminating with my attainment to the highest position as Chief Justice 4 years ago. At the same time, I am also a Masters holder from the University of LONDON with specialisation in International Dispute Resolution and a member of the prestigious Chartered Institute of Arbitrators. Naturally, I share both the hats of an Arbitrator and a Judge while I spend most of my time in the sacred duty of judging.

With these qualifications I might be one of the fittest persons to speak on the subject.

ARBITRATION VIS A VIS LITIGATION

Arbitration and Litigation have existed side by side as dispute resolution systems known in the world from time immemorial. While arbitration was accepted by the commercial world as the preferred system for dispute resolution involving international trade and commercial disputes, it was not until late 19th Century that Arbitration took some formality. Even as it took some recognisable form, there were significant court interventions on the process which served as frustration in the whole process. Thus, in one of its earliest forms the English Arbitration Act 1889, the court's power to order the statement of a special case was included as one of the ways in which supremacy of courts over arbitration was established and reiterated. Thus, in the case of **RE FISCHEL & Co AND MANN AND COOK (1919) 2KB 431** Salter J had this to say-

"When parties to a contract insert in it an arbitration clause, they elect a tribunal which has its obvious advantages and its equally obvious disadvantages. Its advantages consist in the rapidity of its procedure and its familiarity with the business to which the contract relates: and one of its chief disadvantages consists in its inability to decide the questions of law which are bound to arise before it with same precision with which they can be decided by the court of law"

Thus, in CZANIKOV V ROTH SCHMIDT & CO 1922 2KB 478 ATKIN LJ described that statutory power of the court to intervene as "a provision of paramount importance in the interest of the public"

It was in the late 19th and early 20th century that arbitration in more formal ways began with the passage of the 2 HAGUE conventions – The convention for the settlement of disputes 1899 and 1907, the latter of which set up the PCA – the Permanent Court of Arbitration and later the establishment of the ICC (the International Chamber of Commerce) in 1919 and with the instrumentality of ICC the setting up of the the ICC Court of International Arbitration in 1923 and the passage of the 2 GENEVA Conventions i.e. the 1923 Geneva Protocol On Arbitration Clauses and the 1927 Geneva Convention On The Execution Of Foreign Awards.

With the passage of the New York Convention 1958 and the UNCITRAL Model Law 1985 amended in 2006 and many more modern Arbitration Laws including the English Arbitration Act 1996 coming up, Arbitration practice has reached its zenith with countries all of the world just needing to plug in and move on. International Arbitration has now grown to the point where it remains to be the most important and widely used dispute resolution mechanism of choice for cross border disputes.

When I started as a lawyer some 32 years ago, it was Not So; and it was a well-known principle that you cannot oust the jurisdiction of the courts by some private stipulations in an agreement. This was well embedded in us under the doctrine of illegality as facts that could vitiate another wise valid contract. Any contract of that nature was simply regarded as illegal as objects injurious to the proper working of the justice system (**others of the same category included contracts stifling of prosecution and other contracts affecting the course of justice)**; and the principle stood the test of time.

In **DOLEMAN & SONS V OSETT CORPORATION 1912 3 KB 257 @ 274** the facts were that a contract had an arbitration clause to the effect that any dispute arising thereunder should be referred to arbitration; an action however commenced in disregard

to the arbitration Agreement. Also, an award ensued from the arbitration and was made subsequent to the commencement of the court action. It was held by the court "The award was no bar to the action"

Farwell LJ saying,

"The Kings Court do not compete with arbitrators or permit their own proceedings to be interfered with by them"

In **LEE V SHOWMEN'S GUILD OF GREAT BRITAIN (1952) 2QB 329 @342** PER Lord Denning

> If Parties should seek by private agreement to take the law out of the hands of the Court and into the hands of a private Tribunal without any recourse at all to the Courts in case of error of law then the agreement is to that extent contrary to public policy and void.

Note an agreement per se does not at Common Law oust the jurisdiction of the Courts unless it is agreed that a party shall be debarred for his right to ask for a special case to be slated for the opinion of the Court in which case it is invalid (*See the case of* ***CZANIKOV v. ROTH SCHMIDT & Co [1922]*** **2KB 478**

The issue of Arbitration competing with litigation was so serious that it was not a surprise that in some jurisdictions you would hear that legal practitioners who dabbled in alternative dispute resolution distinct from litigation should be charged with professional misconduct because it was taking business away from the courts and food from the mouths of lawyers. This was the case in former Australia where in 1993 a former chief justice remarked quoting Robert French's **"Arbitration – The Courts Perspective"** 1993 Australian Dispute Resolution Journal @729.

'In times not so far in the past (the ADR Practitioner) was seen in some circles as a dubious, below stairs figure requiring close curial supervision a quasi-judicial

equivalent of Uriah Heep. They operated what was regarded by legal elite as a second-rate system of backyard justice ‘’

How demeaning!

With similar voice Lord Campbell in delivering the Judgment in the case of **SCOTT V AVERY HL (1843-1860) ALL ER REPRINT @ PAGE 7** stated:--

‘I know that there has been a very great inclination in the courts for a good many years to throw obstacles in the way of arbitration. I wish to speak with great respect to my predecessors the judges; but I must just let your lordships into the secret of that tendency. There is no disguising the fact that as formerly the emoluments of the judges depended mainly or almost entirely upon fees and they had no fixed salary, there was great competition to get as much as possible of litigation into Westminster Hall, and a great scramble in Westminster Hall for the division of the spoil, and hence the disputes between the different courts about the effect of latitat, a capias and a quo minus – the *latitat* bringing business into the court of QUENS’S BENCH , the *capias* into the COMMON PLEAS and the *quo minus* into the EXCHEQUER. They had great jealousy of arbitrations whereby Westminster Hall was robbed of those cases which came neither into Queens Bench, nor the Common Pleas nor the Exchequer. Therefore, they said that the courts ought not be ousted of their jurisdiction and that it was contrary to policy of the Law”

HAVING NOTED THE FIGHT BETWEEN THE 2 SYSTEMS FOR SUPREMACY IT BEHOVES ME TO EXAMINE THEIR FEATURES.

What then is Arbitration?

According to **Halsbury’s laws of England 3rd Edition @ page 1 “**Arbitration is the reference of a dispute or difference between not less than 2 parties for determination

after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction."

In **Words and Phrases legally defined 3rd edition, BUTTERWORTHS 1988 at page 105** described Arbitration as "a dispute or difference between not less than 2 parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction'.

In David's **"Arbitration In International Trade"** at page 5 the learned author stated that "Arbitration is a device whereby the settlement of a question which is of interest for two or more persons is entrusted to one or more other persons – arbitrator or arbitrators who derive their powers ***from a private agreement,*** **not from the authorities of a state**, and who are to proceed and decide the case on the basis of such an agreement"

In Comparative International Commercial Arbitration By Lew, Mistelis and Kroll @ PAGE 1 International Arbitration is defined thus **"a specially established mechanism for the final and binding determination of disputes concerning a contractual or other relationship with an international element by independent arbitrators in accordance with procedures, structures and substantive legal or non-legal standards chosen directly or indirectly by the parties". It follows arbitration is a specially established mechanism for the final and binding determination of disputes concerning a contractual or other relationship by independent arbitrators in accordance with procedures, structures and substantive legal or non-legal standards chosen directly or indirectly by the parties"**

Such a definition brings out all the elements of arbitration or international arbitration which are

1. **It is an alternative dispute resolution system to the national court system**
2. **It is private not public mechanism for dispute resolution**
3. **Selected and controlled by the parties**

4. **Final and binding determination of dispute**

What then is litigation?

Litigation is the process of settling disputes through the public court system – resolving rights-based disputes through the court system. Essentially it is a public court process from start to finish. The courts are managed by the judiciary which is an organ of the state that administers justice according to the law and the constitution and up holds the rule of law. The procedure or juris diction applied in courts are in accordance the constitution and laws and procedures laid down by the State. In litigation the courts are involved from start to finish

For the innocent bystander when you think about Arbitration and all its fuss as an alternative dispute resolution system you may do well to think that it stands alone from start to finish like how litigation is ***but this is not so.***

Whereas this is possible it invariably never the case more on that

As a point of similarity both settle disputes in a judicial manner but whereas an arbitrator gets its source from the contract or party autonomy the Judges get there power from the law or constitution. In Investor- State Arbitration however, it is International Law or Lex Marcatoria that is in place.

The perceived advantages and disadvantages of arbitration compared to court litigation are as follows covers areas like:

- **Neutrality.**
- **Flexibility.**
- **Informality.**
- **Privacy.**
- **The appointment of an arbitrator, Finality and Easy enforcement**

You know all about these
The disadvantages cover mainly 3 areas

- **Lack of coercive force vis a vis its orders**
- **Conflicts of interest.** Arbitrators must be impartial and independent of the parties on appointment and remain so until the final award has been

rendered. However, arbitrators are often appointed from the ranks of practising lawyers and conflicts of interest can arise in practice. Challenges based on alleged conflicts of interest can lead to the delay and disruption of arbitration proceedings.

- **Arbitration never stands alone**

Be that as it may for arbitration to survive depends on a proper arbitration infrastructure or regulatory web which comprises the following

Agreement of the parties **(the arbitration clause**) subject to mandatory rules

A chosen Arbitration Rule -: For Adhoc Arbitration this includes the UNCITRAL RULES; For Domestic Arbitration The Rules as found in the Schedule to the Act and for Institution Arbitration Rules as set out by the Arbitral Institutions like LCIA RULES ; ICC RULES ; LAGOS ARBITRAL CENTRE RULES; Nairobi Arbitral Centre Rules Kigali Arbitral Centre Rules etc. The Arbitrators shall decide the dispute in accordance with the Rules chosen by the Parties or chosen by the Institution under which they succumb/operate.

An underlying National Arbitration Law Like the UNCITRAL Model Law; the Nigerian Arbitration and Conciliation Act, Sierra Leone Arbitration Act, OHADA UNIFORM ACT and many more

Applicable law on substance of the Dispute: Arbitration is a law where several laws interplay including the law on the substance of the dispute

International Arbitration Practice covers Law on Recognition Challenge and Enforcement of awards and Mandatory rules of practice covering arbitrability and due process which go a long way to negative any agreement for arbitration.

As the Regulatory web stands it does not on the face of it involve Judges but the true picture is that when it comes to strict interpretation of the provisions it would

ultimately invariably involve judges. The Arbitration Acts mention Courts but Courts are run by the Judiciary and Judges. The way Judges interpret all those provisional texts has a long way in making the Arbitral process a success or not.

POWER OF THE COURTS IN RELATION TO ARBITRATION PROCEEDINGS

It is a fact in Arbitration that the seat (rather the venue) of the Arbitration decides the procedural law of the Arbitration proceedings. Thus if the seat of the Arbitration is in Sierra Leone, Ghana, Kenya or Nigeria it is the National Arbitration Act in the specific country that would apply. This is why it is expected that all these countries should have national arbitration laws that would constitute these countries arbitration friendly seats

Sierra Leone from where I come from has been one of the countries that have lagged behind in the field of arbitration with a law that had existed since 1927 moulded on the old English Arbitration Act 1889 and but for our intervention would still be continuing with same. The good news is that there is the proposed new **Sierra Leone Arbitration Act 2022.** The **good news** is that as I speak, there is for Sierra Leone - the **Sierra Leone Arbitration Bill, 2022** which before the end of next month would have become the '**New Arbitration Law for Sierra Leone**.' **It promises to be one of the best in Africa.**

Apart from the normal best practice provisions which covers things like stay of proceedings in line with Act 11(iii) of the New York Convention1958, limited court intervention, interim measures, separability/severability, powers in relation to constitution of the tribunal, Kompetence - Kompetence; determination of questions of law by Experts, determination of recoverable costs, extension of time, coercive powers re-witnesses etc. and most importantly recognition, challenge, setting aside and enforcement of Awards, it covers things like:

- Third Party funding with restrictions on champerty; Sierra Leone would be the 4th Country after Singapore, Hong Kong and NIGERIA to include such a provision
- Emergency Arbitrator proceedings
- Expedited hearings- The New Concept of "Arbitration Proceedings Rules" dealing with when, how and time limit for applications
- Establishes the Sierra Leone Arbitration Centre where the composition would include renowned Arbitrators around the Continent
- Court Intervention is limited
- Incorporates/ domesticates the New York Convention to which Sierra Leone is a member.
- Enforcement of Peremptory Orders
- Investor - State ICSID Enforcement Provisions.
- Adopts the virtual hearings protocols of the Africa Arbitration Academy

With similar tenor it was not until last year that Sierra Leone acceded to the New York convention making us the 166th country out of the 167 countries so far to have acceded to this convention. Such developments may not have been possible without the co-operation of people like yourself and team and I am exceedingly appreciative

Under most modern arbitration laws there are provisions which give power to courts while the Arbitration proceedings may be going on privately on an adhoc basis or through some tribunal constituted by an arbitral institution **to intervene assist or support the arbitration proceedings,**

These powers are multi-faceted and do occur

a) PRE-ARBITRATION before the arbitrational tribunal is set up and begins to function
b) DURING THE COURSE OF THE ARBITRATION PROCEEDINGS; AND

c) AFTER THE ARBITRATION PROCEEDINGS

UNDER A

These powers include

1. Application for Stay of proceedings- see Article 8(1)UML1985 as amended by 2006; section 9 SLAA 2022; ART 2(3) NEW YORK CONVENTION 1958
2. Application for interim measures- SEE Article 17 UML1985 as amended 2006; section 55 SLAA 2022 ; SECTION 44 EAA 1996
3. Application for EMERGENCY ARBITRATOR PROCEEDINGS – SEE SECTION 28 SLAA 2022
4. Application for a declaration whether the arbitration clause is valid

Under B

1. Application to extend time
2. Application to constitute the tribunal
3. Application with reference to the tribunals jurisdiction
4. Application re determination of recoverable costs
5. Application to exercise the coercive powers
6. Application re-determination of questions of law
7. Application for interim measures

You do have restricting powers like an anti-suit injunctions

Under C POWERS AFTER PROCEEDINGS

1. Application to challenge and set aside the award
2. Application to recognise and enforce the award

Most modern Arbitration **Laws Limit the Courts Intervention To Certain Areas Only**. For instance in Nigeria section 34 of the arbitration and Conciliation Act 1990;

all the 10 African countries that initially adopted the UNCITRAL Model Law 1985 VIZ EGYPT, KENYA, MADAGASGA. MAURITIUS, NIGERIA, RWANDA, TUNISIA, UGANDA, ZAMBIA AND ZIMBABUE.

For them you have a provision in Article 5 UML 1985 as amendedwhich states.-**'In matters governed by this law, no court shall intervene except where so provided by this law'**

Also, ***THE NEW YORK CONVENTION LIMITS THE COURTS INTERVENTION***

In the case of the NY CONVENTION even though it does not expressly provide that national courts shall not entertain interlocutory procedural applications regarding arbitrations in their dormain because Article 2(3) of New York Convention provides that national courts must refer the parties to Arbitration after ascertaining the existence of a valid arbitration contract with no further role stated, courts must have no role except at the end again after the Award – There is what is called an implied principle of Judicial Non-interference

It has been argued and I verily believe is the correct position, which courts should follow as a mantra, that where it is not stated that a court should intervene assist or support, there is an **implied principle of Judicial Non-Interference.**

The principle of Judicial non -interference – What is it ? The Principle of Judicial Non Interference is to the effect that since parties agree to arbitrate international disputes with the objective of obtaining fair and neutral procedures which are flexible efficient and capable of being tailored to the needs of their particular dispute without reference to the formalities and technicalities of procedural rules applicable to national courts, ***once matters are referred to arbitration, it is the arbitral tribunal that should generally deal with issues of procedures in the arbitration up to the Award***.

The essence of this principle is that

Note

1. if courts were allowed to interfere with arbitrators orders, it would invariable be diametrically opposed to the Arbitrator orders thereby defeating the concept of party autonomy

A Paris cour d'appeal in the case of **CHAMBER ARBITRALE DE PARIS V REPUBLIQUE DE GUINEA, PARIS COUR D'APPEAL (CA) (REGIONAL COURT OF APPEAL) PARIS NOV 18,1987,1988 REV ARB657** supported the above principle of judicial non-interference in emphatic terms when it held

"The exercise of the prerogatives attached to the Arbitrators authority which is legitimate and autonomous in its own right must be guaranteed in a totally independent manner as befits any judge without any interference with the organisation which set up the arbitral tribunal and thus exhaust its powers and without any intervention by the courts"

In African Countries in the case of **Statoil (Nig.) Ltd & Anor v Nigerian National Petroleum Corporaton & 3 Ors (2013) 7 CLRN 74 82; [2013] 14 NWLR (Pt 373) 1 (CA) it was held that** Section 34 of the Arbitration and Conciliation Act 1990 is to be interpreted strictly as prohibiting the intervention of the courts in arbitral proceedings. **Secondly,** that the superiority of the court's jurisdiction over that of the Arbitral tribunal was not tenable and that thirdly An *ex parte* injunction to restrict the continuation of arbitral proceedings was not permitted by the Arbitration and Conciliation Act.

In that case

The Court of Appeal of the Lagos Judicial Division issued a decision on 12 July 2013 which evinced a more pro-arbitration approach. In October 2012, the Nigerian National Petroleum Corporation (**NNPC**) had successfully obtained an ex parte injunction from the lower courts in Lagos restraining arbitration proceedings in relation to NNPC's tax dispute with Chevron and Statoil on the basis that tax matters are non-arbitrable. Chevron and Statoil appealed the injunction.

The Court gave a strict interpretation of Section 34 of Nigeria's Arbitration and Conciliation Act which provided that "*A court shall not intervene in any matter*

governed by this Act except where so provided in this Act." The Court held that the word "shall" was mandatory and that the Act did not provide any exception to the prohibition on intervention that would permit the court to issue an ex parte interim injunction.

As Gary Born observed in an article the principle of judicial non-interference in international arbitration U Pa J Int'l L VOL 30:4 page1030:

"In the United States, the statutory text of the Federal Arbitration Act (FAA) does not expressly provide for judicial non-interference in Arbitral proceedings. Nonetheless lower US courts have repeatedly held that judicial intervention in pending arbitral proceedings (both international and domestic) is improper to correct procedural errors or evidential rulings"

In the case of **STANTON V PAINE WEBBER JACKSON & CURTIS, INC 685 F.SUPP. 1241, 1242 (SD Fla. 1988),** a US trial court held

> ***"Nothing in the Federal Arbitration Act (FAA) Contemplates interference by the court in an ongoing arbitration proceedings"***
>
> In another case **HARLEYVILLE MUT CAS Co V ADAIR** 218 A.2d 791,794 (Pa.1966) it was held "to permit judicial review of Arbitrators Rulings would be unthinkable."

Also ***Stay of proceedings and referral to arbitration limits courts intervention*** but not to the point where the court cannot intervene just because there is a stay of proceedings in place see the case of **Owena Bank Ltd v Vita Construction Ltd and Niger Consultants (2006) 5 CLRN 85 (CA) 89** where it was held that A court should not subvert the submission to arbitration but does not do so in exercising jurisdiction to hear motions. **Hon. Justice Sanusi JCA** had this to say:

> '…Even where the court grants stay order the court still retains (some) powers to entertain any application by any of the parties even

during the pendency of the arbitration proceedings. For instance, the same power of making orders as it , has for the purpose of and in relation to an action or matter in High Court regarding any of the matters such as security of cost, interim injunction or appointment of receiver etc. See Halsbury Laws of England 4th Ed. Vol. 2 page 309 para 595. It is therefore, an understatement to say that court's jurisdiction is ousted in entertaining any proceedings simply because there is an existing stay of proceedings order or because the arbitration exercise has not be concluded"

FINAL COMMENTS

It may seem to me the situation has been one in which Arbitration is opposed to Court systems and Court systems to Arbitration.

But my view is different.

1. **Courts** should be looked at from the point of view where it is a Player in both Litigation and Arbitration. It is not specific to any one (1) System of Dispute Resolution

2. **Courts** vis-a-vis **Arbitration is a Symbiotic Relationship**

   (i) The Courts need Arbitration because it reduces the number of cases that come for litigation – Reduces its workload by employing the services of Arbitrators.

   (ii) Arbitration cannot be concluded effectively without Courts' intervention, assistance and support. This comes in many ways which have previously been highlighted

RECOMMENDATIONS

1. Law Reporting
2. Training

TRAINING – Why TRAINING?

Judges are trained to handle issues regarding **Litigation and Not Arbitration.** Consequently**,** when they handle litigation issues, it is rights based on merits and demerits of a case. Judges may be over-possessed or seized with the merits and demerits so as to come to a final conclusion as the winning side/ party. **In ARBITRATION, IT IS DIFFERENT**

The rights/or merits issue is being handled by **Independent Arbitrators** appointed and selected by the parties themselves. It has nothing to deal / do with Judges or Courts

Party Autonomy is supreme – The parties have agreed to be bound by the decision of the Arbitrators which is Final and Binding.

NOTE: It may have its shortcomings because the Arbitrator is not a Lawyer or it may not even have any shortcomings because the arbitrators are specialist in some area. But a Judge for any reason or even with a valid reason may not agree with it. But, Yes the Big BUT is, **It is none of the Judge's Business to enquire into it** because of Party Autonomy and the Agreement to be bound – to make the arbitrators decision Final and Binding vis a vis the substance of the dispute.

Thus **WITH ARBITRATION**, the Judges'role is limited. Their role is specific as to determining the validity of the process and the validity of the Award**.**

Thus in the case of

Ras Pal Gazi Construction Co Ltd v Federal Capital Development Authority **(2001) 10 NWLR (Pt 722) 559 (SC) 571** it was held

- The court has no jurisdiction to make an arbitral award the judgment of the court
- The only jurisdiction conferred on the court was to give leave to enforce an award as a judgment unless there was real ground for doubting the validity of the award.
- An arbitral award was at par with a judgment of the court.

- Section 34 of the Arbitration and Conciliation Act was to be interpreted strictly as prohibiting the intervention of the courts in arbitral proceedings.

In the course of the judgment this was what was said by the learned Justices

'…What this means is this, if an award was not challenged then it became and was a final and binding determination of the matters between the parties. The simple question to be resolved is whether a court can make the award a judgment of the court. I am in agreement with the Court of Appeal that the court has no such jurisdiction. The reason is obvious as I shall show shortly. Once an award has been made, and not challenged in court, it should be entered as a judgmentand given effect accordingly. The losing party cannot be heard to say he wants to argue some point or other. Just as he would not be allowed to do so in the case of a judgment not appealed from, he should not and would not do so in the case of an award that he has not challenged.If an issue is for decision and has been decided, that is final. The parties cannot be allowed thereafter to re-open it. The reason is that just as the parties would not be allowed to do so in the case of a judgment not appealed from, the point so decided is *res judicta* – see *Middlemiss v. Hartlepool Corpn.* (1973) 1 All ER 172. The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is real ground for doubting the validity of the award. In other words, if upon an application to enforce the award, the Judge finds that the validity of the award is doubtful, he can refuse leave. See Sections 29, 30 and 31 of the Arbitration and Conciliation Act. The court has no other business with regard to the award except where it is expressly provided in the Act. Section 34 of the Act buttresses this point. It provides-

"A court shall not intervene in any matter governed by this Act except where so provided in the Act"

I must say nowhere in the Act is the High Court given the power to convert an arbitration award into its own judgment. See *Commerce Assurance Limited v. Alhaji Buraimoh Alli (supra).*

Note

To challenge an award or oppose the recognition of an award it is things that have no dealing with the merits that you consider see Article 34 and 36 of the UNCITRAL MODEL LAW 1985 AS AMENDED ; SEE ALSO Sections 63 and65 and 66 SLA BILL 2022

Conclusion

My Conclusion is that Judges and the Courts are too important for Arbitration to succeed. While there is no doubt a symbiotic relationship that that exists between the courts and arbitration so long as courts will always be required to intervene assist and support the process of arbitration without which arbitration cannot stand alone, Judges all over Africa should be properly trained in arbitration so as to be able to perform this role well and not frustrate a meaning full dispute resolution system.

I thank you