

RETHINKING THE ROLE OF COURTS AND JUDGES IN SUPPORTING ARBITRATION IN NIGERIA.

Isaiah Bozimo, FCI Arb.

INTRODUCTION

A Flawed System?

The present topic contains an unstated assumption that the role of Courts in arbitration is, or should be, different from their everyday role. The role of the Courts in the Nigerian Legal System is governmental. They exercise judicial powers under the 1999 Constitution to put an end to controversies finally and authoritatively. As such, the Courts have acquired a privileged status in Nigeria as the final dispute resolution process.

On the other hand, Arbitration is a consensual dispute resolution process. Because it is consensual, the parties to an agreement to resolve disputes by arbitration may need to resort to the Courts to enforce incidents of their agreement.

Ideally, the relationship between Courts and Arbitration should be symbiotic.

However, rethinking the role of Courts and Judges in supporting Arbitration in Nigeria suggests a flaw in the current system. Two interesting questions arise here:

1. Why do we need to rethink the role Courts and Judges?
2. What are the ideal qualities that practitioners expect of these Courts and Judges?

Why do we need a rethink? - Influence of Courts on the choice of arbitral seat.

With Court support and minimal intervention, Arbitration has the potential to flourish in Nigeria. If the balance is struck differently, however, parties will avoid choosing Nigeria as the seat for international arbitrations, and arbitration will also become less attractive to domestic parties.

Results from the 2015 Queen Mary International Arbitration Survey¹ reflect this sentiment. Respondents to the survey identified the two most valuable characteristics of Arbitration as:

- Enforceability of Awards (65%); and
- Avoiding specific legal systems/national courts (64%).

Respondents to the survey were also asked to specify their preferred seats. The five most preferred and widely used seats are London, Paris, Hong Kong, Singapore and Geneva. When asked the reasons why they prefer certain seats to others, the three paramount factors relate to the formal legal infrastructure of the seat – namely:

- neutrality and impartiality of the local legal system;
- national arbitration law; and
- track record of enforcing agreements to arbitrate and arbitral awards.

Empirical data, therefore, confirms a direct correlation between the formal legal infrastructure of a seat, and the selection of that seat for international arbitration.

The ideal Court for International Commercial Arbitration

The success of any particular jurisdiction as it concerns international commercial arbitration depends on the quality and qualities of its Courts. The Queen Mary data confirms that these Courts, as supervising seat Courts and as enforcing Courts, are a critical component in the successful operation of international commercial arbitration.

Chief Justice James Allsop of the Federal Court of Australia aptly identified that the desired qualities of such Courts can be taken from the description of the subject matter: (1) international; (2) commercial; and (3) arbitration.²

¹ Queen Mary University of London, '2015 International Arbitration Survey: Improvements and Innovations in International Arbitration' <<http://www.arbitration.qmul.ac.uk/docs/164761.pdf>> accessed 15 June 2016.

According to the Learned Judge:

First, the court must be **international** in focus and approach. This requires an attitude or state of mind of judges, of court administrators and officers, and of practitioners to welcome and encourage foreign commercial parties to the jurisdiction. This international focus of the judiciary should be reflected in an arbitration law (written and unwritten) that is internationally focused and “arbitration-friendly”.

Secondly, the Court must be **commercial** in its focus, skills and approach. This requires that the judges handling arbitral proceedings (whether support, supervision or enforcement) understand the commerce involved in the substantive dispute. How else, for instance, can a seat court or enforcing court assess the fairness, or not, as the case may be, of arbitrators dismissing a point latterly thought up by a party and of little legal worth that would delay the reference or the making of the award. The fairness of the approach of the arbitrators who think the point meritless should be considered by a judge who understands the point. It is critical that international commercial arbitration is supervised by judges who understand commerce.

Thirdly, the court must understand **arbitration**. This is not merely quantitative; it is not simply knowing about arbitration law and practice. But it is also qualitative; it involves understanding the perspective and approach that facilitates the smooth working of the arbitral system. This “cultural perspective” comes from experience, judicial education and professional collaboration with the arbitral community.

In summary, the ideal Court (and, by extension, the ideal Judge) is:

- **international** in outlook,
- **commercial** in skill and
- **arbitration** sympathetic.

² James Allsop, 'National Courts and Arbitration: Collaboration or Competition?' <[http://www.ciarb.org/docs/default-source/ciarbdocuments/london/the-hon-chief-justice-james-allsop-ao-\(australia\).pdf?sfvrsn=0](http://www.ciarb.org/docs/default-source/ciarbdocuments/london/the-hon-chief-justice-james-allsop-ao-(australia).pdf?sfvrsn=0)> accessed 15 June 2016.

The pertinent question at this juncture is: have the Nigerian Courts and Judges displayed these qualities in their determination of Arbitration related proceedings?

The Courts will usually become involved with arbitration at the time that either one party seeks to enforce the agreement to arbitrate a dispute while the other aims to litigate it, or one party challenges or seeks the recognition or enforcement of an arbitral award.

In answering the question posed above, therefore, I propose to review decisions that cut across the entire spectrum of the interface between Arbitration and the Courts.

UPHOLDING ARBITRATION AGREEMENTS & SUPPORTING THE ARBITRAL PROCESS:

A. Upholding Arbitration Agreements

Imoukhuede v. Mekwunye & 2 Ors.³

A dispute arose out of a tenancy agreement between the parties, which contained an arbitration clause to the effect that disputes were to be referred to a Sole Arbitrator to be appointed by the President of the “Chartered Institute of Arbitration (London) Nigerian Chapter”.

“M” issued a notice of arbitration and wrote to the Nigerian Branch of the Chartered Institute of Arbitrators (CI Arb.) requesting the appointment of a sole arbitrator. CI Arb. complied with the request. The arbitral proceedings continued, and a final award was made.

“I” challenged the award at the High Court of Lagos State on the ground, amongst others, that there was no valid arbitration agreement between the parties.

³ (2015) 1 CLRN 30

The contention was that ***"there is no body/organization known as THE CHARTERED INSTITUTE OF ARBITRATION (LONDON) NIGERIAN CHAPTER and as such, there cannot be a referral for arbitration to a non-existent body."***

The High Court dismissed the challenge. It found that the Parties' intention was to refer their disputes to arbitration and that the intended appointing authority was the Chairman of the Chartered Institute of Arbitrators, Nigeria Branch.

The Court of Appeal disagreed. It held:

"There is nothing from the processes before the lower court to support the conclusion reached by the lower court that the Chairman of the Chartered Institute of Arbitrators (United Kingdom) Nigeria Branch is the same person as the president of the chartered institute of arbitrators London - Nigeria Chapter when the words used, in the agreement are clear and 'do not in my view admit of any ambiguity. The duty of the courts inclusive of the lower court where the language of an agreement is clear and unambiguous is to make a pronouncement on the clear and unambiguous agreement and concur with same.

...

"If the parties in this appeal really intended that any other person other than the President of the Chartered Institute of Arbitrators London Nigeria Chapter should be the appointing authority as canvassed by learned counsel for the 1st respondent, surely same would have been explicitly stated in Exhibit B.

...

"It follows therefore that since there is in effect no body/organization known as the Chartered Institute of Arbitration (London) Nigerian chapter, the clause itself is unenforceable."

With due respect, their Lordships' decision does not demonstrate an understanding of the arbitral process – specifically, the interpretation of pathological arbitration clauses.

The decision is questionable because for a number of reasons. **First**, while Nigerian law enjoins the Courts not to rewrite a contract for the parties, where a term of a contract is open to more than one interpretation, it is appropriate to adopt the interpretation that is most consistent with business common sense.⁴

Secondly, the commercial intention of the parties was to submit any dispute arising out of the tenancy agreement to binding arbitration. A mistake in the name of an appointing authority does not derogate from that intention. The clause should have been interpreted to give congruent application to this intention. In any event, Nigerian Courts have applied the 'blue pencil' rule to invalidate only the offending portion of a contractual provision.⁵

Thirdly, Nigerian Courts recognise that arbitration clauses are to be respected and should be read, and thus construed, as liberally as possible. In **Fidelity Bank Plc. v. Jimmy Rose Co. Limited**⁶, the same Division of the Court of Appeal (through presided over by a different panel of Justices) held:

"The position of the law is that whether or not the arbitration agreement is a document signed by the parties as envisaged by Section 1(1)(a) of the Arbitration and Conciliation Act ... or discoverable from their correspondences as per Section 1(1)(b) thereof, the essential prerequisite is that it must be precise and unequivocal. The court will hold such an agreement to be unequivocal if the word used is neither permissive nor discretionary."

(Emphasis added.)

Likewise, in **Frontier Oil Limited v. Mai Epo Manu Oil Nigeria Limited**, the High Court of Lagos State affirmed:

⁴ **Texaco Overseas (Nig.) Pet. Co. Unltd. v. Rangk Ltd.** (2009) All FWLR (Pt. 494) 1520.

⁵ **Idika v. Uzoukwu** (2008) 9 NWLR (Pt. 1091) 34.

⁶ (2012) 6 CLRN 82.

"Courts of law have inherent jurisdiction to decide disputes between parties, but where the parties by their own agreement opt for arbitration the courts will always respect such agreements and decline jurisdiction. See - Obi Obembe v. Wemabod Estates Ltd (1977) 5 SC 131.

...

"For courts to accept and recognise an agreement as an arbitration agreement it must be precise and mandatory... The Agreement will be held to be mandatory and unequivocal if it contains the mandatory word "shall" and not the permissive and discretionary "may". (Emphasis added.)

I commend the rationale of the respective Courts in ***Fidelity Bank*** and ***Frontier Oil***. The primary focus of the Court should be to determine whether the parties have a real intention to submit their dispute to arbitration. That intention crystallises where the reference to arbitration is mandatory.

To paraphrase the UK House of Lords (as it was then known) in ***Premium Nafta Products Limited and others v. Fili Shipping Company Limited and others ("Fiona Trust")***, where the parties make provision for an arbitration clause, the interpretation of the said clause should begin with the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of their contractual relationship to be decided by an arbitral tribunal.

B. Allowing Third-Parties to intervene in Arbitral Proceedings

Statoil Nigeria Limited v. Federal Inland Revenue Service⁷

A dispute arose between Statoil and the Nigerian National Petroleum Corporation (NNPC) as to the interpretation and performance of the Petroleum Sharing Contract (PSC) between the parties. This resulted in arbitration proceedings being instituted by Statoil.

⁷ (2014) LPELR-23144(CA)

The Federal Inland Revenue Service (FIRS) subsequently commenced proceedings against all the parties to the arbitral proceedings seeking to determine whether the Arbitral Tribunal has jurisdiction to determine the subject matter of the arbitration. FIRS' position was that the dispute was based on issues of tax and the interpretation of the Petroleum Profit Tax Act and was not arbitrable as it impacted upon its statutory obligations under the Federal Inland Revenue Act.

Without deciding whether the dispute before the arbitration tribunal was arbitrable, the Court of Appeal held that although FIRS was not a party to the arbitration agreement it could intervene in the arbitration proceedings. It held:

“ if a party to an arbitral agreement can challenge the jurisdiction of the Arbitral Tribunal, or that the arbitral agreement was ab initio, null and void, what about a person or authority such as the 1st respondent who was not a party to the agreement but complains or that if an award is eventually made one way or the other is of the view that the proceedings or subsequent award by an arbitral tribunal constitute an infringement of some provisions of the Constitution or the laws of the land or impede her constitutional and statutory functions or powers, would the person be debarred from seeking declaratory remedies or by originating summons ? I do not think so. Where there is proved a wrong, there has to be a remedy.”

The Court also held that the third party was not required to wait for an award and then seek to set it aside, it could bring independent proceedings to challenge the arbitration proceedings. It held:

“I am of the humble opinion that it will be in the best interest of the 1st respondent not to wait or stand by for the Arbitration Tribunal to complete the proceedings and make an award. 1st respondent has the locus standi to act timeously to arrest the situation by a declaratory action or originating summons in a Court of law. Where the claim succeeds, the Court may make a declaration that the arbitral agreement was void ab initio or that the Arbitral

Tribunal lacked the jurisdiction to have entertained the dispute on grounds of constitutional or statutory illegality, etc.”

In light of this decision, it appears that a non-party to an arbitration agreement can challenge an award in circumstances where the issue of jurisdiction is raised and where the powers conferred by the Constitution or by statute are contravened or need to be interpreted.

This decision highlights the tension between the need for judicial restraint under Section 34 of the Arbitration and Conciliation Act (ACA) and the inclination of Courts to enforce their Constitutional role as the ultimate arbiters of disputes. This is an important point; to which I will return below.

C. Interim Measures of Protection

Econet Wireless Limited v. Econet Wireless Nigeria Limited⁸

A dispute arose between the parties concerning the operation of a Shareholders Agreement. Before the constitution of the Arbitral Tribunal, the Econet Wireless Limited (Econet) sought injunctive reliefs against Econet Wireless Nigeria Limited (Econet Nigeria) before the Lagos Division of the Federal High Court.

The Court found that it had jurisdiction to entertain the Application because the substantive dispute impacted on the operation of the Companies and Allied Matters Act. Having said that, the Court found that an injunction is a remedy and not a cause of action. Since there was no substantive action before the Court from which injunctive reliefs could flow, the Court adjudged the application to be incompetent.

Some commentators attempt to justify the Court’s decision by an analysis of Section 34 ACA. The contention is that, under Section 34, Courts are precluded from intervening in arbitral matters except in circumstances provided under the Arbitration Act. To this end, the ACA does not contain

⁸ Suit No: FHC/L/CS/832/2003

a provision that allows a party could apply to Court for an interim order of protection prior to the constitution of the arbitral tribunal.

With respect, this contention is based on the erroneous proposition that the entire scope of Court intervention is to be found in the ACA and nowhere else. I disagree with this. Rather, Section 34 envisages two distinct systems of Court intervention. **In matters governed by the Act**, the ACA takes effect, and no other relief may be sought or granted except for those set out in the Act.

However, in matters **not governed by the Act**, the Courts may continue to offer all such remedies in all such circumstances as are available under existing law.

To ascertain which of the two systems is applicable in a given case, it must be determined whether that case is a 'matter governed by' the ACA. To "govern" a matter implies the existence in the ACA of a defined power to regulate and control a specified matter.

Happily, the Courts have departed from the rationale displayed in the ***Econet*** decision.

Lagos State Government v. Power Holding Company of Nigeria⁹

A dispute arose between the Lagos State Government and Power Holding Company of Nigeria (PHCN) in respect of a Barge Power Purchase Agreement and Contribution Agreement. The said dispute was referred to arbitration.

Lagos State Government sought interim measures of protection against PHCN and third parties that were not signatories to the Arbitration Agreement.

The High Court of Lagos State found that it had jurisdiction to grant the interim measures sought, even while arbitral proceedings were pending between some of the parties to the Application. Also, the Court found that the provisions of the Arbitration Act did not apply to Arbitral Tribunals alone. The jurisdiction of the High Court could also be engaged in appropriate circumstances.

⁹ (2012) 7 CLRN 134.

D. Supporting the Arbitral Process

Statoil Nigeria Limited v. Nigerian National Petroleum Corporation¹⁰

This case concerns the dispute between Statoil and NNPC as to the interpretation and performance of the Petroleum Sharing Contract (PSC) between the parties. NNPC challenged the arbitral tribunal's jurisdiction on the ground that the subject-matter of the dispute (which it alleged to be taxation) was not arbitrable under Nigerian law.

Before the hearing of the jurisdictional challenge, NNPC applied to the arbitral tribunal for a stay of proceedings on the ground that the proceedings would be affected by the decision of the Federal High Court in Suit No: FHC/ABJ/CS/774/11- *FIRS v. Nigerian National Petroleum Corporation & 4 Ors.* which related provisions of a production sharing contract involving tax issues.

The arbitral tribunal refused the application. NNPC proceeded to file an *ex parte* application at the Federal High Court (FHC) for an order of interim injunction restraining the arbitral tribunal from continuing the arbitration proceedings. The FHC granted the interim order of injunction.

In a unanimous decision, the Court of Appeal held that a Court cannot issue an injunction to restrain arbitral proceedings. The Court held:

"In this instant case, the issuance of ex parte interim injunction does not fall under the exceptions to Section 34 of the Arbitration Act. It is very clear from the intendment of the legislature that the court cannot intervene in arbitral proceedings outside those specifically provided.

"Where there is no provision for intervention, this should not be done. The learned trial judge of the lower court acted outside the jurisdiction conferred on him by granting the ex parte interim order." (Emphasis added.)

¹⁰ (2013) 7 CLRN 72

The Court of Appeal affirmed the *Statoil* decision in *Nigerian Agip Exploration Limited v. Nigerian National Petroleum Corporation*¹¹. As with *Statoil*, the underlying dispute arose from the operation of a Production Sharing Contract between the parties. NNPC challenged a Partial Award under which the tribunal assumed jurisdiction over the substantive dispute; and sought an interlocutory injunction restraining the tribunal from continuing with the Arbitration. The Federal High Court granted the interlocutory injunction.

The Court of Appeal reaffirmed that the Courts did not have jurisdiction to issue anti-arbitration injunctions. Relying on Section 34 of the ACA, the Court held:

"On the import of Section 34 of A.C.A., J.O. Orojo and M.A. Ajomo the learned authors of LAWS AND PRACTICE OF ARBITRATION and CONCILIATION IN NIGERIA at p. 269 on the input of S.34 of A.C.A., stated thus –

"The Decree provides for the intervention of the court in certain aspects of the arbitral process ... Where, however, the Decree does not provide for the intervention of the court, this should not be done..."

The *Statoil* and *NAE* decisions have been celebrated as reinforcing the position that domestic courts should not intervene where parties have consented to arbitral proceedings, except to the extent that such intervention is expressly permitted by the ACA.

While I might agree with the outcome of the decisions, I nevertheless question the Court's interpretation of Section 34 of the Arbitration and Conciliation Act. My reasons have been articulated above. Having said that, the 'correct' application of Section 34 ACA can yield uncertain outcomes.

¹¹ (2014) 6 CLRN 150

Shell Petroleum Development Company of Nigeria v. Crestar Integrated Natural Resources Limited¹²

In ***SPDC v. Crestar***, the applicant (Crestar) sought an interlocutory injunction from the Court of Appeal to restrain (amongst others) SPDC from continuing with an ICC Arbitration between the parties, seated in London. SPDC relied on the ***Statoil*** and ***NAE*** decisions in inviting the Court to dismiss the application.

The Court of Appeal considered necessary to clarify:

"... Section 34 of the Arbitration Act is only applicable to matters 'governed by the Act' so that if it is found in any proceeding, that the particular facts and circumstances do not come within the purview of the Act, the provisions of Section 34 cannot apply with full force."

The Court found that the ACA only applied to 'domestic' arbitral proceedings seated in Nigeria. For that reason, it considered a Court's jurisdiction to restrain foreign arbitral proceedings is not a matter that is governed by the Act.

Relying on Section 15 of the Court of Appeal Act, the Court found that it had jurisdiction to grant the injunction, and further found that it was appropriate to grant the said injunction in the circumstances.

In my humble opinion, the Court's interpretation of Section 34 was correct. However, I have some concerns as to the application of Section 34 and the effect of the Court's decision.

First, it would appear that the Court of Appeal has inadvertently declared the ACA to be inapplicable to international arbitration, even if seated in Nigeria.

¹² Appeal No. CA/L/331M/2015

Secondly, it also seems that the decision has created two regimes. As it concerns domestic arbitration, the Courts do not have jurisdiction to issue anti-arbitration injunctions. However, in international arbitration, the jurisdiction remains intact.

Thirdly, the Court of Appeal interfered with the Tribunal's power to determine its jurisdiction. The injunction was sought on the premise that the arbitration agreement was null and void. The tribunal did not have the opportunity to decide this question.

ENFORCING/SETTING ASIDE ARBITRAL AWARDS

***Guinness Nigeria Plc. v. NIBOL Properties Ltd.*¹³**

Guinness issued proceedings to set aside a Final Award made pursuant to arbitral proceedings between the parties. NIBOL commenced separate proceedings to enforce the said Award. Both applications were consolidated.

The High Court of Lagos State made a number of 'arbitration friendly' pronouncements and succinctly summarised the position under Nigerian Law. It held:

"I am in total agreement ... that there is a live Judicial Policy of ascribing priority to the upholding of Arbitral Awards, by the regular Courts ... and that there is a narrow compass that attracts the Courts to override this Policy by setting aside an Award. This argument is valid and pivotal for a Court to keep in mind in these type of matters for reasons espoused in the Case Law ..."

The Court proceeded to make reference to the following decisions of the Court of Appeal:

***Aye-Fenus Ent. Ltd. v. Saipem Nig. Ltd.*¹⁴**, where the Court found:

¹³ (2015) 5 CLRN 65

¹⁴ (2009) 2 NWLR (Pt. 1126) 483.

"Parties to a transaction choose their Arbitrator for better or for worse to be the Judge both as to the decisions of Law and decisions of fact in dispute between them. Thus none of them can when the Award is prima facie good on the face of it, object to its decision wither upon the Law of the Facts simply because the Award is not in his favour."

*Arbico Nigeria Limited v. Nigeria Machine Tools Limited*¹⁵, on the point that:

"The Court in spite of its wide power has to bear in mind that he Parties have provided in their Agreement to have their dispute or difference referred to Arbitration as against the regular Courts ... and it has to show reluctance to interfere with the Arbitrator's jurisdiction as the Sole Judge of the Law and Facts unless it is compelled to do so..."

*Baker Marine Nigeria Limited. v. Chevron Nigeria Limited*¹⁶, which confirmed:

"The lower Court was not sitting as an Appellate Court over the Award of the Arbitrators. The lower Court was not therefore empowered to determine whether or not the findings of the Arbitrators and their conclusions were wrong in Law. What the lower Court had to do it to look at the Award and determine whether the state of the Law as understood by them and as stated on the face of the Award the Arbitrators complied with the Law as they, themselves, rightly or wrongly perceived it. The approach here is subjective. The Court places itself in the position of the Arbitrator, not above them, and then determines on that hypothesis whether the Arbitrators followed the Law as they understood and expressed it."

Based on the foregoing decisions, the High Court of Lagos State concluded (in the *Guinness* decision):

¹⁵ (2002) 15 NWLR (Pt. 789) 1.

¹⁶ (2000) 12 NWLR (Pt. 681) 391.

"... I am satisfied that the evidential burden on GUINNESS must necessarily be a strident one ... I agree and hold that it is a high hurdle, indeed, to be scaled, for GUINNESS to get the regular Court to ignore the contractual, consensual and Arbitral Forum elected by the Parties; elongate the more summary and timely Arbitral experience; and interfere with, subvert and substitute the Arbitrator's Jurisdiction as the Sole Judge of Law or Fact."

Though the evidential burden for applicants seeking to set aside an arbitral award is high, any benefits derived are eroded by the slow pace of the administration of justice before the Nigerian Courts.

IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation¹⁷

IPCO v. NNPC is an English decision, but it contains very interesting information concerning the lack of efficiency of the Nigerian judicial process in setting aside/enforcing arbitral awards.

At para 158 of the Judgement, the English Court of Appeal observed:

"The analysis set out above derives from (i) a consideration of the applications now in issue; (ii) the timescales for determination at first instance contemplated by Tomlinson J; (iii) and what has happened in fact. It is supported by the expert evidence before Field J. The Hon Justice S.M.A. Belgore, former Chief Justice of Nigeria, instructed on behalf of IPCO, agreed with the evidence of the late Justice Eso that it was "conceivable that there will be no fixed determination of the issue of whether the arbitral award will be set aside for twenty or thirty years or longer". I take him to be meaning another 20 or 30 years from the date of his report in 2013 rather than from that of Justice Eso in 2007 i.e., at the very lowest, an additional 6 years. Consistently with that he said that there had been no change in the delay in the administration of justice in Nigeria since Justice Eso made his first witness statement and that in fact the circumstances were "far worse" as the courts were experiencing more congestion."

¹⁷ [2015] EWCA Civ 1144

The Court of Appeal ordered that IPCO should be able, in principle, to enforce the Award, notwithstanding the existence of challenges to it in Nigeria, given the very significant delay in resolving those challenges before the Nigerian courts.

CONCLUDING REMARKS

Have the Nigerian Courts been international in outlook, commercial in skill and sympathetic to arbitration? The answer is evocative of old Western Film, "**The Good, the Bad and the Ugly**".

The Good

Generally speaking, arbitration awards are not easily set aside in Nigeria. The decision of the High Court of Lagos State in ***Guinness Nigeria Plc. v. NIBOL Properties Ltd*** confirms that there is a high evidentiary threshold to be met, and few and far between are those cases where the challenges have been found successful.

Likewise, the contemporary view is that Nigerian Courts have the power to grant interim relief pending arbitration (***Lagos State Government v. Power Holding Company of Nigeria***).

While the Nigerian Courts have broad Constitutional powers to decide disputes between parties, they recognise that where the parties by their agreement opt for arbitration, the Courts will always respect such agreements and decline jurisdiction (***Frontier Oil Limited v. Mai Epo Manu Oil Nigeria Limited; Fidelity Bank Plc. v. Jimmy Rose Co. Limited***).

The principle of limited Court intervention is robust in Nigeria. The Court of Appeal decisions in ***Statoil v. NNPC*** and ***NAE v. NNPC*** support the position that a Court cannot issue an injunction to restrain arbitral proceedings.

The Bad

There is a lack of consistency in the Court decisions. While the Court lacks the jurisdiction to restrain arbitral proceedings in domestic arbitration, it appears that this prohibition does not extend to international arbitration (***SPDC v. Crestar***).

The wheels of justice turn “fantastically” slow in the Nigerian Courts (***IPCO v. NNPC***). This negates the beneficial effect of decisions that are considered to be arbitration friendly.

Some decisions demonstrate a lack of understanding of the qualitative perspective and approach that facilitates the smooth working of the arbitral system (***Imoukhuede v. Mekwunye; Econet Wireless Limited v. Econet Wireless Nigeria Limited***).

The Ugly

A disturbing trend is emerging, which appears to suggest that cases with a political element are more likely to negatively impact the arbitral process – I have in mind the first instance decisions the first instance decisions of the Federal High Court in ***NNPC v. Statoil*** and ***NNPC v. NAE***, where anti-arbitration injunctions were issued by the respective Courts.

Nevertheless, this trend is curbed by the Court of Appeal decisions in ***Statoil v. NNPC*** and ***NAE v. NNPC***.

How can the system be reoriented to be more 'arbitration friendly'?

The disparity in judicial decisions flowing from arbitral proceedings is inimical to the growth of Arbitration in Nigeria and Africa. A number measures can be taken to enhance judicial efficiency in this regard.

We can ensure efficiency in Court decisions by:

- Introducing guidelines for the interpretation of provisions of the Arbitration and Conciliation Act, the UNCITRAL Model Law and the New York Convention.
- Continuous training of Judges and legal practitioners in the field of commercial arbitration.
- Introducing an online repository of domestic and foreign decisions arising from arbitration applications.
- Introducing an 'Arbitration Support Judge' in each State, in whom jurisdiction will be vested to support domestic and arbitration proceedings.

Given the criticism in *IPCO v NNPC*, is it also time to consider:

- Introducing time limits for the determination of arbitration applications. The Lagos State Arbitration Law and the Draft Federal Arbitration and Conciliation Bill contain Case Management Provisions to achieve this aim.
- Conferring exclusive jurisdiction to the Court of Appeal for all arbitration applications? This removes one layer of 'bureaucracy' in the form of the High Courts. Besides, there is a trend in Nigeria that arbitration-related decisions become more coherent as they travel up the judicial hierarchy.

Implementing these measures will go some way to ensuring that Nigerian Courts and Judges are international in outlook, commercial in skill and arbitration sympathetic.