

LIMITATION OF ACTION FOR ARBITRAL AWARD ENFORCEMENT IN NIGERIA

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Abstract

The enforcement of arbitral awards is crucial to the effectiveness of arbitration as a dispute resolution mechanism. In Nigeria, the Arbitration and Mediation Act 2023 has introduced significant changes to the limitation of action to enforce arbitral awards. This paper examines the new limitation regime and its implications for enforcing domestic and foreign arbitral awards in Nigeria. It provides an overview of the arbitration framework in Nigeria, discusses the legal nature of arbitral awards, and analyzes the procedural requirements for enforcement. It focuses on the limitation of action under the ACA 2004 and the innovations introduced by the Arbitration and Mediation Act 2023, which provides a 10-year limitation period. The paper also includes a comparative analysis of the enforcement of arbitral awards in England, Canada, the United States, and South Africa, highlighting lessons for Nigeria. It concludes with recommendations for effectively implementing the new limitation regime to promote the use of arbitration in Nigeria.

Keywords: Arbitration, Enforcement, Limitation of Action, Arbitral Award

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1.0 INTRODUCTION

Arbitration has become an effective and standard mode of dealing with commercial and international disputes.¹ Arbitration is one of the several ways through which the parties in a given dispute are accorded a chance to seek redress without necessarily accessing the conventional court structures, with the final determination being made by a neutral third party referred to as the arbitrator.² One of the crucial stages in the arbitration process is enforcement of the arbitral awards so that the parties can benefit from the decision made by the arbitrator and the whole arbitration process does not become futile.³

However, the limitation of action for the enforcement of arbitral awards has been controversial and has been addressed in diversity in different countries.⁴ The limitation period determines the period within which any party can sue to execute an award because if this period elapses, the award cannot be executed.⁵ The identification of the proper limitation period requires consideration of the need for finality and certainty of the arbitral

¹ Sundra Rajoo, *Law, Practice and Procedure of Arbitration* (2nd edn, LexisNexis 2017) 1.

² Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 71

³ Olakunle O Olatawura, 'The Nigerian Arbitration and Conciliation Act: A Challenge to Its Relevance as a Law Designed to Provide a Fair Resolution of Commercial Disputes' (2000) 15(4) *Arbitration International* 391, 400

⁴ Emmanuel Gaillard and John Savage (eds), *Fouchard Gaillard Goldman on International Commercial Arbitration* (Kluwer Law International 1999) 900.

⁵ Nigel Blackaby, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015) 11.20

as well as the need for a reasonable period in which the successful party can enforce the award.⁶

Nigeria has recently introduced new legislation governing the enforcement of arbitral awards through the passage of the Arbitration and Mediation Act 2023 (AMA 2023).⁷ The ACA 2023 has standardized the 10-Year Bar so that both domestic and foreign arbitral awards can no longer be enforced after ten years from the date of the award, while under the previous legal regime under the ACA 2004, there was a year limitation period for domestic awards and only 12 months for foreign awards.⁸ This has raised several issues concerning the enforcement of arbitral awards in Nigeria and its compliance with the standard procedures for arbitration practiced across the globe.⁹

2.0 THE DEFINITION AND LEGAL FRAMEWORK OF ARBITRATION IN NIGERIA

Arbitration is a way of getting out of the traditional court system where the parties involved in the controversy agree to allow a third person, known as the arbitrator, to decide.¹⁰ It is a process that involves the parties' consent derived from their agreement to arbitrate, which may be in the form of a clause in the contract or a separate agreement referred to as the submission

⁶ Mustapha Akanbi, 'Time Limitation for the Enforcement of Arbitral Awards in Nigeria: The Controversy Continues' (2017) 33(4) *Arbitration International* 467, 468

⁷ Arbitration and Mediation Act 2023

⁸ Arbitration and Conciliation Act 2004, ss 31 and 51

⁹ Paul Obo Idornigie, 'Limitation Period for the Enforcement of International Arbitral Awards in Nigeria' (2020) 36(4) *Arbitration International* 571, 572

¹⁰ Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 91

agreement.¹¹ The arbitrator, who is frequently selected by the parties or designated in the manner agreed upon by the parties, reviews the facts and arguments of the parties and makes a final and legally conclusive decision, which is called an arbitral award.¹²

In Nigeria, arbitration is regulated by the Arbitration and Conciliation Act (ACA) 2004, based on the UNCITRAL Model Law on international commercial arbitration.¹³ The ACA 2004 prescribes how and when arbitration agreements may be entered into, how and when arbitrators are appointed and their powers, how arbitral proceedings are to be conducted, and how and when arbitral awards may be entered and enforced.¹⁴ The above is made clear by the recently passed Arbitration and Mediation Act (AMA) 2023, which brought some changes to the arbitration process in Nigeria, especially on the prescription period applicable to the enforcement of domestic arbitral awards.¹⁵

3.0 LEGAL FRAMEWORK FOR THE ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA

3.1 The Making of an Arbitral Award

An *arbitral award* is a determination the arbitral tribunal makes after the arbitration process ends. Thus, it remains the last stage of the arbitral

¹¹ Nigel Blackaby, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015) 2.01

¹² Emmanuel Gaillard and John Savage (eds), *Fouchard Gaillard Goldman on International Commercial Arbitration* (Kluwer Law International 1999) 1

¹³ UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006

¹⁴ Arbitration and Conciliation Act 2004

¹⁵ Arbitration and Mediation Act 2023

proceedings. It is the final decision in which the tribunal defines the rights and obligations of the parties by the materials and arguments submitted to the tribunal.¹⁶

Thus, the process of making an arbitral Award is in accordance with the procedural law rules governing arbitration together with the laws of the country in which the arbitration is seated.¹⁷ The ACA 2004 and the AMA 2023 contain provisions regarding the shape and content of arbitral awards and the procedure for making such awards in Nigeria.

Based on Section 26 of the ACA 2004, the arbitral award must be in writing and signed by the arbitrator or several arbitrators.¹⁸ This means that if there is more than one arbitrator, the signatures of the majority will suffice, and the reason why the other did not sign should be explained.¹⁹ An award must indicate the basis upon which the award was made unless the parties have otherwise agreed or the award in question is an agreed or consent award.²⁰ The AMA 2023 has incorporated specific changes to these requirements, such as the requirement that the award should specify the date and place of the arbitration and that the tribunal may make an interim, interlocutory, or partial award in addition to the final award.²¹

When making the award, the arbitral tribunal has to resolve the dispute by applying the rules of law selected by the parties as applying to the merits of

¹⁶ Arbitration and Mediation Act 2023, s 64(1)

¹⁷ Paul Obo Idornigie (n 47) 580

¹⁸ Arbitration and Mediation Act 2023, s 64(1)

¹⁹ *Murmansk State Steamship Line v Kano Oil Millers Ltd* [1974] 1 All NLR 893; *City Engineering Nigeria Ltd v Federal Housing Authority* [1997] 9 NWLR (Pt 520) 224

²⁰ Paul Obo Idornigie (n 47) 580

²¹ Arbitration and Mediation Act 2023, s 64(2).

the dispute.²² If the parties have not chosen the rules of law, then the tribunal shall apply the rules of law which, in its opinion, is suitable to the case and the contract and also has regard to the usages of the particular trade connected with the transaction.²³

The arbitral tribunal must also be satisfied that the award is enforceable per the governing laws. This may involve questioning such matters as the formation of the arbitration clause, the admissibility of the dispute for arbitration, and the public policy of the country where enforcement is sought.

4.0 LEGAL NATURE OF AN ARBITRAL AWARD

An arbitral award refers to the final and lawful determination of the controversy between the parties. It enjoys the same legal certainty and conclusiveness as a judicial decision and can be challenged or refused recognition and enforcement only on a limited number of legally restricted grounds.²⁴

Thus, the legal base of an arbitral award stems from the consent of the parties to resolve the dispute through arbitration and to accept the arbitral award. Other than this, this arbitration agreement receives its force from the laws and international conventions which uphold the legal enforceability of the arbitration agreements and awards.²⁵

In Nigeria, the ACA 2004 and the AMA 2023 have provisions regarding recognizing and enforcing arbitral awards. Section 31 of the ACA 2004,

²² Arbitration and Conciliation Act 2004, s 51(2).

²³ Arbitration and Mediation Act 2023, s 65(1).

²⁴ *ibid* s 65(3).

²⁵ Arbitration and Conciliation Act 2004, s 51(1).

therefore, holds that an arbitral award shall be considered binding and, when an application is made in writing to the court, shall be enforced.²⁶ The AMA 2023 has made some changes to the enforcement procedure to include a certified copy of the award, which is required to be submitted by the applying party besides the original arbitration agreement or a certified copy.²⁷

Due to the legal nature of an arbitral award, it also has the effect of *res judicata*; that is, the award closes the matters it has decided.²⁸ This implies that the parties may not raise again the same matter back in court or before another similar tribunal of arbitration.²⁹

However, the legal nature of an arbitral award has certain limitations, which are as follows: An award may be challenged or refused recognition and enforcement where, among other things, the arbitration agreement is invalid, the parties were denied due process, the tribunal acted beyond its authority, or the award is contrary to public policy. These grounds are often strictly interpreted by the pro-enforcement attitude of the contemporary legal regulation of arbitration and international conventions.³⁰

5.0 IMPEACHING THE AWARD

Vitiating an arbitral award means questioning the admissibility, validity, or enforcement of an award based on the legal provisions of the pertinent laws

²⁶ Arbitration and Conciliation Act 2004, s 31(1).

²⁷ Arbitration and Mediation Act 2023, s 64(3).

²⁸ A Redfern and others, *Law and Practice of International Commercial Arbitration* (4th edn, Sweet & Maxwell 2004) para 9-34.

²⁹ *ibid*

³⁰ Arbitration and Conciliation Act 2004, s 48; Arbitration and Mediation Act 2023, s 65.

or treaties.³¹ Regarding the grounds for setting aside an arbitral award in Nigeria, Section 30 of ACA 2004 and Section 51 of AMA 2023.

Under Section 30 of the ACA 2004, a party may apply to the court to set aside an arbitral award on any of the following grounds: These are grounds where (a) the award involves decisions on matters not contained in the submission to arbitration; (b) the arbitrator has conducted himself unfairly, or the proceedings have been unfair; (c) the award was obtained by fraudulent or wrongful means; or (d) the arbitrator acted beyond the scope of his authority.³²

The AMA 2023 has brought some changes regarding these grounds as it allows the award to be set aside if the award is against the public policy of Nigeria or if the dispute cannot be referred to arbitration by virtue of Nigerian law.³³

Impeachment of an award is done by the court's rules and arbitration laws. For an application to be made in Nigeria to set aside an award, the application must be made within three months from the date the applicant received the award or from the date a request for correction, interpretation, or additional award has been disposed.³⁴

Upon an application made by any party, the court may stay the proceedings for setting aside to enable the arbitral tribunal to continue with the arbitral

³¹ N Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) para 11.56.

³² ML Moses, *The Principles and Practice of International Commercial Arbitration* (3rd edn, CUP 2017) 205.

³³ Arbitration and Conciliation Act 2004, s 30(1).

³⁴ Arbitration and Mediation Act 2023, s 51(5)(d)-(e).

proceedings or take any other steps that may remove the basis for setting aside. This is referred to as the principle of remission, whereby the tribunal is not held to have set aside the award but is instead empowered to cure any defects.³⁵

It should also be appreciated that the reasons for setting aside an award are exhaustive, and the power cannot be exercised on other grounds.³⁶ It should also be noted that a court cannot refuse its enforcement on any other grounds, for example, based on citations of error of fact or law. This complies with the doctrine of finality of awards and the relatively minimal intervention of the courts in arbitration matters.³⁷

6.0 PROCEDURAL REQUIREMENT FOR THE ENFORCEMENT OF AN ARBITRAL AWARD

Section 51 of the ACA 2004 and Section 64 of the AMA 2023 provide step-by-step processes for enforcing an arbitral award in Nigeria. Under Section 51 of the ACA 2004, a party seeking to enforce an arbitral award must provide the following documents to the court: Original documents and copies required are (a) the original of the award or a copy that has been authenticated appropriately; (b) the original of the arbitration agreement, or a copy that has been authenticated appropriately; and (c) if the award or arbitration agreement is not made in English, a duly authenticated translation of the award or arbitration agreement into English.³⁸

³⁵ Arbitration and Conciliation Act 2004, s 29(1); Arbitration and Mediation Act 2023, s 52(4).

³⁶ Arbitration and Conciliation Act 2004, s 29(4); Arbitration and Mediation Act 2023, s 52(5).

³⁷ N Blackaby and others (n 6) para 11.36.

³⁸ ML Moses (n 7) 207.

The new requirements added by the AMA 2023 include the condition that the party seeking enforcement must also offer evidence that the award has not been implemented and that the time limit to file an application for the setting aside of the award has run out or an application has been disallowed.³⁹

Upon filing the above documents, the court shall communicate to the other party the application for enforcement of the award, where the other party may request within 15 days that the award be set aside based on grounds as stated under section 51(2) of the AMA 2023.⁴⁰ If no such application is made, or if the application is rejected, the court shall then proceed and enforce the award.

An award can be refused to be enforced only on the grounds provided under Section 52 of the ACA 2004 and Section 65 of the AMA 2023. These are similar to those advanced for setting aside an award, and they are as follows: incapacity of a party, invalidity of the arbitration agreement, inadequate procedure, exceeding of powers by the arbitral tribunal, non-arbitrability of the dispute, and violation of public policy.⁴¹

However, it is pertinent to note that the grounds for refusing enforcement must be given a strict and limited meaning and effect as envisaged by the modern arbitration laws and conventions carrying a pro-enforcement bias.⁴² The onus to prove these grounds lies with the party opposing enforcement,

³⁹ Arbitration and Conciliation Act 2004, s 51(1).

⁴⁰ Ibid. s 64(1)(d)-(e).

⁴¹ Ibid. s 64(2).

⁴² Arbitration and Mediation Act 2023, s 64(3).

and the court has the function only of deciding whether those grounds have been made out.⁴³

7.0 ENFORCEMENT OF FOREIGN ARBITRAL AWARD

The legal regime governing the enforcement of foreign arbitral awards in Nigeria is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the ACA 2004.⁴⁴

Under section 54 of the ACA 2004, a foreign arbitral award shall be recognized as binding and enforced in a manner that ushers with the rules of the court and the provisions of the New York convention.⁴⁵ The party seeking enforcement must provide the following documents to the court: This shall consist of (a) the original award together with a certified copy of it; (b) the arbitration agreement together with a certified copy of it; and (c) if the award or the arbitration agreement is not in the English language, a certified translation of it into the English language.⁴⁶

The AMA 2023 has yet to amend any of these requirements significantly. However, it has added some further requirements, stating that the party seeking enforcement must also append documents showing that the award has not been complied with. The time bar for an application to set aside the award has passed, or an application has been denied.⁴⁷

⁴³ Arbitration and Conciliation Act 2004, s 52(2); Arbitration and Mediation Act 2023, s 65(1).

⁴⁴ N Blackaby and others (n 6) para 11.99.

⁴⁵ *ibid* para 11.103.

⁴⁶ IA Umezulike, 'Enforcement of Foreign Arbitral Awards in Nigeria' (2017) 84(2) *The International Journal of Arbitration, Mediation and Dispute Management* 174.

⁴⁷ Arbitration and Conciliation Act 2004, s 54(1).

The circumstances under which enforcement of a foreign arbitral award may be refused are provided for in Article V of the New York Convention and Section 52 of the ACA 2004.⁴⁸ These grounds are not dissimilar to the grounds for declining to enforce a domestic award: the capacity of a party; the nullity of the arbitration agreement; failure of due process; ultra vires action on the part of the tribunal; the non-arbitral character of the controversy; and violation of public policy.⁴⁹

However, the New York Convention only pertains to arbitral awards that have been made in the territory of a state that is different from the one in which the recognition and enforcement of the award is sought, and which has arisen out of disputes between or among persons – natural or legal – and things.⁵⁰ It does not apply to awards made in the same state in which enforcement is sought, which are covered by the domestic arbitration laws of that state.⁵¹

The enforcement of foreign arbitral awards is based on reciprocity, implying that a state shall not enforce an award made in another state that does not enforce awards made in the first state. However, Nigeria has not made a reciprocity reservation under the New York Convention; this means that Nigeria will enforce awards made in any other contracting state without regard to whether that state will enforce Nigerian awards or not.⁵²

⁴⁸ Arbitration and Conciliation Act 2004, s 51(1).

⁴⁹ Ibid. s 64(1)(d)-(e).

⁵⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) 330 UNTS 3, art V; Arbitration and Conciliation Act 2004, s 52.

⁵¹ G Kaufmann-Kohler and A Rigozzi, *International Arbitration: Law and Practice in Switzerland* (OUP 2015) para 8.180.

⁵² Convention on the Recognition and Enforcement of Foreign Arbitral Awards (n 25) art I.

8.0 RATIONALE BEHIND LIMITATION OF ACTION

The limitation of action for the enforcement of arbitral awards is calculated based on several policy considerations and practical reasons:

First, it was grounded on the conclusiveness and definitiveness of legal claims and duties. The limitation period helps operate as a time bar expires, after which a party will not be allowed to seek to enforce an award even if it remains a valid and enforceable award. This enables the parties involved to go on with their lives and business transactions without the prospect of a dead claim being revitalized.⁵³

Second, it is based on fair play and preventing unfairness.⁵⁴ The limitation period bars a party from waiting endlessly to enforce an award in a manner that can cause an injustice to the other party because it could be difficult for the defending party to come up with the proof or the witnesses.⁵⁵

Third, it is built on the efficiency and sound functioning of the administration of justice. The limitation period also pushes parties into prosecuting their claims with efficiency and alacrity, which also minimizes the chances of having a lot of dormant claims and clogging the legal system.⁵⁶

⁵³ N Blackaby and others (n 6) para 11.17.

⁵⁴ IA Umezulike (n 21) 175.

⁵⁵ SO Mbonu, 'Limitation of Action in Arbitration: Issues Arising and Lessons for Arbitrators and Arbitration Practitioners' (2015) 2(6) *Afe Babalola University: Journal of Sustainable Development Law and Policy* 193, 195.

⁵⁶ *ibid*

Fourth, they take their root from the principle of harmonization and unification of arbitration laws and procedures.⁵⁷ The period within which domestic or foreign awards must be enforced is typical of modern legislation and international conventions such as the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention. The extension of a similar limitation period by different jurisdictions similarly fosters the effective and harmonized enforcement of arbitral awards across jurisdictions.⁵⁸

9.0 LIMITATION OF ACTION FOR THE ENFORCEMENT OF ARBITRAL AWARD, UNDER THE ACA 2004

It was possible to draw significant controversy and ambiguity around the limitation period for enforcing arbitral awards under the ACA 2004. As discussed earlier, the ACA 2004 needed to outline a precise period within which the awards can be enforced. However, it pointed to the “rules of court” regarding the enforcement procedure. This raised a controversy about whether the time bar period applicable to the enforcement of arbitral awards was by the general time bar rules provided under the Limitation Law of any state or whether there was no time bar at all.⁵⁹

The Limitation Law of most states in Nigeria stipulates six years as the period of limitation on enforcement of a judgment, which will comprise an arbitral award that the court has domesticated. However, some of the courts had limited mind to the proposition that the Limitation Law did not cover

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ UNCITRAL Model Law on International Commercial Arbitration 1985, art 36; Convention on the Recognition and Enforcement of Foreign Arbitral Awards (n 25) art V.

the enforcement of arbitral awards since the latter were not judgments of the court as such but the product of an outsider privately organized system of dispute-solving.⁶⁰

This uncertainty was made worse because, under the ACA 2004, the limitation period for enforcement of foreign arbitral awards was provided for. The enforcement of a foreign arbitral award has to be done under section 51 of the ACA 2004 within twelve months from the date the award is made unless the court permits a delay in the enforcement of sufficient cause being shown. This created a rather paradoxical situation, with foreign awards having a shorter period of limitation than domestic ones, even though the enforcement of the former under the New York Convention was generally less problematic.⁶¹

Several cases that touched on problems related to the limitation period for enforcing arbitral awards under the ACA 2004 include *Murmansk State Steamship Line v Kano Oil Millers Ltd* and *City Engineering Nigeria Ltd v Federal Housing Authority*.⁶² In such cases, the courts were in two: Whether the Limitation Law applied to the enforcement of the arbitral awards and if this period begins from the date of the award or the date of the order made by the court affirming the award as being enforceable.⁶³

The failure of the legal experts, courts and other stakeholders in the Nigerian legal system to adhere to the prescribed limitation period under

⁶⁰ *ibid*

⁶¹ SO Mbonu (n 98) 196.

⁶² SO Mbonu, 'Limitation Period for the Enforcement of Arbitral Awards in Nigeria: The Controversy and the Need for Reform' (2016) 2(1) Baze University Law Journal 1, 4-5.

⁶³ Limitation Law of Lagos State, s 8(1)(d).

the ACA 2004 was regarded as a major flaw in the Nigerian arbitration regime and a discouragement to the use of arbitration in the resolution of disputes in Nigeria.⁶⁴ This also resulted in demands being made for changes as well as clarification of the law in relation to this, indicating that the legal system is evolving and addressing the concerns of the stakeholders.⁶⁵

10.0 INNOVATION UNDER THE ARBITRATION AND MEDIATION ACT 2023

The Arbitration and Mediation Act 2023 (AMA 2023) has introduced some significant innovations to the limitation of action for enforcing arbitral awards in Nigeria.

First, the AMA 2023 has provided a specific limitation period for enforcing domestic and foreign arbitral awards. Under Section 64 of the AMA 2023, an arbitral award must be enforced within ten years from the date of the award unless the court extends the time for enforcement on sufficient cause being shown.⁶⁶ This provision applies to both domestic and foreign arbitral awards, and it replaces the previous uncertainty and inconsistency under the ACA 2004.⁶⁷

Second, the AMA 2023 has clarified that the limitation period for the enforcement of an arbitral award starts to run from the date of the award, not from the date of the court's recognition of the award as binding. This is in line with the approach taken by the Supreme Court in *Murmansk State*

⁶⁴ SO Mbonu (n 98) 5.

⁶⁵ Arbitration and Conciliation Act 2004, s 51(3).

⁶⁶ *ibid* 259-260.

⁶⁷ *ibid* 260-261.

*Steamship Line v Kano Oil Millers Ltd*⁶⁸ and the Court of Appeal in *City Engineering Nigeria Ltd v Federal Housing Authority*.⁶⁹

Third, the AMA 2023 has provided a uniform limitation period for enforcing domestic and foreign arbitral awards. This eliminates the previous anomaly under the ACA 2004, where foreign awards had a shorter limitation period than domestic awards, even though they were generally more accessible to enforce under the New York Convention.⁷⁰

Fourth, the AMA 2023 has provided a more flexible and party-friendly approach to extending the time for enforcement. Under Section 64(2) of the AMA 2023, the court may extend the time for enforcement of an award if it considers that sufficient cause has been shown.⁷¹ This replaces the previous requirement under Section 51 of the ACA 2004, which only allowed the court to extend the time for enforcement of a foreign award if the award was made in a country that was not a party to the New York Convention.⁷²

Finally, the AMA 2023 has provided a more streamlined and efficient procedure for enforcing arbitral awards. Under Section 65 of the AMA 2023, a party seeking to enforce an award may apply to the court by originating a motion supported by an affidavit exhibiting the award and the arbitration agreement. The court may then direct that the award be enforced in the same manner as a judgment or order of the court unless the

⁶⁸ *Murmansk State Steamship Line v Kano Oil Millers Ltd* [1974] All NLR 893 (SC).

⁶⁹ *City Engineering Nigeria Ltd v Federal Housing Authority* [1997] 9 NWLR (Pt 520) 224 (CA).

⁷⁰ Arbitration and Mediation Act 2023, s 64(1)(c).

⁷¹ SO Mbonu (n 98) 11.

⁷² Arbitration and Mediation Act 2023, s 64(1)(c).

respondent shows cause why the award should not be enforced. This replaces the previous requirement under Section 51 of the ACA 2004, which required a party seeking to enforce an award to provide a duly authenticated original award or a duly certified copy thereof, as well as a duly certified translation if the award was not made in English.

11.0 COMPARATIVE ANALYSIS FOR THE ENFORCEMENT OF ARBITRAL AWARDS, NIGERIA AND OTHER JURISDICTIONS

11.1 England

England has a well-established and pro-enforcement regime for domestic and foreign arbitral awards. The enforcement of arbitral awards in England is governed by the Arbitration Act 1996, which is based on the UNCITRAL Model Law on International Commercial Arbitration.⁷³

Under Section 66 of the Arbitration Act 1996, a party may apply to the court for leave to enforce an arbitral award in the same manner as a judgment or order of the court.⁷⁴ The court may only refuse leave to enforce an award if the party against whom it is invoked proves one of the grounds for refusal of recognition or enforcement under Section 103 of the Act, which mirrors Article V of the New York Convention.⁷⁵

The limitation period for the enforcement of arbitral awards in England is six years from the date on which the cause of action accrued, which is typically the date of the award.⁷⁶ This limitation period applies to both domestic and foreign awards, and it can only be extended by the court in

⁷³ Arbitration Act 1996 (England and Wales).

⁷⁴ *ibid* s 66(1).

⁷⁵ *ibid* s 103.

⁷⁶ Limitation Act 1980 (England and Wales), s 7.

limited circumstances, such as where the defendant has concealed facts relevant to the plaintiff's cause of action.⁷⁷

The English courts have generally taken a pro-enforcement approach to arbitral awards, both in terms of the substantive grounds for refusal of enforcement and the procedural requirements for enforcement.⁷⁸ For example, in *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan*,⁷⁹ the Supreme Court held that the English courts should apply a prima facie standard when determining the existence and validity of an arbitration agreement for enforcement, rather than a full merits review.⁸⁰

The English courts have also shown a willingness to enforce awards even in the face of challenges based on public policy or illegality. For example, in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd*,⁸¹ the Court of Appeal held that an award based on a contract that was allegedly procured by bribery could still be enforced, as the public policy of upholding international arbitral awards outweighed the public policy against enforcing illegal contracts.⁸²

⁷⁷ *ibid* ss 32-33.

⁷⁸ Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 3983

⁷⁹ *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2010] UKSC 46

⁸⁰ *ibid* [26]-[27].

⁸¹ *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [1999] 3 WLR 811.

⁸² *ibid* 827-828.

11.2 Canada

Canada has a federal system of government, with arbitration law falling under both federal and provincial jurisdiction.⁸³ The enforcement of arbitral awards in Canada is governed by the relevant provincial arbitration legislation, as well as the federal *Commercial Arbitration Act*, which applies to international commercial arbitration.⁸⁴

Under Article 35 of the *Commercial Arbitration Code*, which is a schedule to the *Commercial Arbitration Act* and is based on the UNCITRAL Model Law, an arbitral award shall be recognized as binding and enforced upon application to the competent court, subject to the grounds for refusal of recognition or enforcement under Article 36.⁸⁵ These grounds mirror those in Article V of the New York Convention.⁸⁶

The limitation period for enforcing arbitral awards in Canada varies depending on the applicable provincial legislation. For example, in Ontario, the limitation period is two years from the date on which the award became enforceable, which is typically the date of the award.⁸⁷ In British Columbia, the limitation period is ten years from the date on which the right to enforce the award arose.⁸⁸

The Canadian courts have generally taken a pro-enforcement approach to arbitral awards, particularly in the context of international commercial

⁸³ J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (3rd edn, JurisNet LLC 2017) 1.

⁸⁴ *ibid* 2

⁸⁵ *Commercial Arbitration Act*, RSC 1985, c 17 (2nd Supp), sch, art 35.

⁸⁶ *ibid* art 36.

⁸⁷ *Limitations Act*, SO 2002, c 24, sch B, s 4

⁸⁸ *Limitation Act*, RSBC 1996, c 266, s 7.

arbitration.⁸⁹ For example, in *Corporacion transnacional de Inversiones S.A. de C.V. v STET International S.p.A.*, the Ontario Court of Appeal held that the grounds for refusing enforcement of an international arbitral award should be construed narrowly and applied only in clear cases.⁹⁰

The Canadian courts have also shown a willingness to enforce awards even in the face of challenges based on public policy or illegality. For example, in *Belokon v Kyrgyz Republic*, the Ontario Superior Court of Justice held that an award that was allegedly obtained by fraud could still be enforced, as the public policy in favor of the finality of arbitral awards outweighed the public policy against enforcing awards obtained by fraud.⁹¹

11.3 United States of America

The United States has a federal system of government, with arbitration law falling under both federal and state jurisdiction.⁹² The enforcement of arbitral awards in the United States is governed by the Federal Arbitration Act (FAA), which implements the New York Convention, as well as state arbitration laws.⁹³

Under Section 9 of the FAA, any party to an arbitration may apply to the court for an order confirming the award, and the court must grant such an order unless the award is vacated, modified, or corrected under Sections 10 or 11 of the Act. The grounds for vacating or refusing to enforce an award under the FAA are similar to those in Article V of the New York

⁸⁹ J Brian Casey (n 11) 467

⁹⁰ *Corporacion transnacional de Inversiones S.A. de C.V. v STET International S.p.A* (2000), 49 OR (3d) 414 (CA) [39].

⁹¹ *Belokon v Kyrgyz Republic* 2015 ONSC 5918 [23].

⁹² Gary Born (n 6) 1535.

⁹³ Federal Arbitration Act, 9 USC ss 1-16

Convention, although there are some differences in wording and interpretation.

The limitation period for the enforcement of arbitral awards in the United States is three years from the date of the award, as provided in Section 207 of the FAA.⁹⁴ This limitation period applies to both domestic and foreign awards, and it is not subject to extension by the court.

The U.S. courts have generally taken a pro-enforcement approach to arbitral awards, particularly in the context of international commercial arbitration. For example, in *B.G. Group plc v Republic of Argentina*, the Supreme Court held that the arbitrator's interpretation of a treaty provision on pre-arbitration litigation requirements was entitled to deference by the court, even if the court would have interpreted the provision differently.

However, the U.S. courts have also shown a willingness to refuse enforcement of awards in certain circumstances, mainly where there are concerns about due process or public policy. For example, in *Changzhou AMEC Eastern Tools and Equipment Co., Ltd. v Eastern Tools & Equipment, Inc.*, the California Court of Appeal refused to enforce a Chinese arbitral award on the basis that the defendant had been denied a fair hearing and an opportunity to present its case.⁹⁵

⁹⁴ Federal Arbitration Act, 9 USC s 207

⁹⁵ *Changzhou AMEC Eastern Tools and Equipment Co., Ltd. v Eastern Tools & Equipment, Inc.*, No. B272243, 2017 WL 2874632 (Cal. Ct. App. July 6, 2017) *5

11.4 South Africa

South Africa has a dualist legal system, with arbitration law governed by both common law and statute.⁹⁶ The enforcement of arbitral awards in South Africa is governed by the International Arbitration Act, 2017, which implements the UNCITRAL Model Law on International Commercial Arbitration as well as the Recognition and Enforcement of Foreign Arbitral Awards Act, 1977, which implements the New York Convention.⁹⁷

Under Section 16 of the International Arbitration Act, an arbitral award, irrespective of the country in which it was made, shall be recognized as binding and enforced upon application to the High Court, subject to the grounds for refusal of recognition or enforcement under Section 18 of the Act, which mirrors Article V of the New York Convention.⁹⁸

The limitation period for the enforcement of arbitral awards in South Africa is three years from the date on which the award became binding on the parties, as provided in Section 13 of the Prescription Act, 1969.⁹⁹ This limitation period applies to both domestic and foreign awards, and it can only be interrupted by the service of legal process on the defendant.

The South African courts have generally taken a pro-enforcement approach to arbitral awards, particularly in the context of international commercial arbitration. For example, in *Lufuno Mphaphuli & Associates (Pty) Ltd v*

⁹⁶ David Butler, 'The State of International Commercial Arbitration in Southern Africa: Tangible Yet Tantalizing Progress' (2004) 21(2) *Journal of International Arbitration* 169, 170

⁹⁷ International Arbitration Act 15 of 2017 (South Africa); Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (South Africa).

⁹⁸ International Arbitration Act 15 of 2017 (South Africa), ss 16, 18

⁹⁹ Prescription Act 68 of 1969 (South Africa), s 13

Andrews and Another, the Constitutional Court held that the courts should not interfere with arbitral awards unless there are compelling reasons to do so, such as where the award is contrary to public policy or the arbitrator has misconducted the proceedings.¹⁰⁰

However, the South African courts have also shown a willingness to refuse enforcement of awards in certain circumstances, mainly where there are concerns about the fairness of the arbitral process.¹⁰¹ For example, in *Namasthethu Electrical (Pty) Ltd v City of Cape Town*, the Western Cape High Court refused to enforce an arbitral award on the basis that the arbitrator had failed to give the defendant a fair hearing and had exceeded his powers.¹⁰²

11.5 Lessons for Nigeria

The comparative analysis of the enforcement of arbitral awards in England, Canada, the United States, and South Africa reveals some critical lessons for Nigeria as it seeks to reform its arbitration law and practice.

First, Nigeria should adopt a pro-enforcement approach to domestic and foreign arbitral awards in line with international best practices and the spirit of the New York Convention. This means that Nigerian courts should interpret the grounds for refusal of enforcement narrowly and apply them only in clear cases rather than engage in a full merits review of the award.

¹⁰⁰ *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* 2009 (4) BCLR 390 (CC) [19]

¹⁰¹ *Namasthethu Electrical (Pty) Ltd v City of Cape Town*

¹⁰² 2011 (2) SA 266 (WCC) [25].

Second, Nigeria should provide a precise and uniform limitation period for enforcing arbitral awards, both domestic and foreign. The current position under the ACA 2004, where there is no specific period for domestic awards and a 12-month limitation period for foreign awards, creates uncertainty and inconsistency. The AMA 2023 has sought to address this issue by providing a 10-year limitation period for domestic and foreign awards, which is a step in the right direction.

Third, Nigeria should ensure its arbitration law and practice are consistent with international standards and norms, particularly those embodied in the UNCITRAL Model Law and the New York Convention. This means Nigeria should refrain from adopting idiosyncratic or parochial provisions that may hinder the recognition and enforcement of Nigerian awards in other jurisdictions.

Finally, Nigeria should provide a streamlined and efficient process for enforcing arbitral awards, with minimal court intervention and maximum party autonomy. This means that the Nigerian courts should defer to the arbitral tribunal's findings of fact and law and only refuse enforcement on the limited grounds provided in the AMA 2023 and the New York Convention.

12.0 CONCLUSION

This paper has examined the limitation of action for enforcing arbitral awards in Nigeria, focusing on the innovations introduced by the Arbitration and Mediation Act 2023 (AMA 2023). The paper has also provided a comparative analysis of the enforcement of arbitral awards in England, Canada, the United States, and South Africa, highlighting the key features and challenges of each jurisdiction's arbitration regime.

The main findings of the paper can be summarized as follows:

1. The limitation of action for the enforcement of arbitral awards is a crucial aspect of the arbitration regime, as it seeks to balance the need for finality and certainty with the need to provide a reasonable opportunity for the successful party to enforce the award.
2. The previous regime under the Arbitration and Conciliation Act 2004 (ACA 2004) had some shortcomings and inconsistencies, particularly regarding the limitation period for enforcing domestic awards and the disparity between the limitation periods for domestic and foreign awards.
3. The AMA 2023 has introduced some significant innovations to address these shortcomings, including a specific and uniform limitation period of 10 years for both domestic and foreign awards, a more flexible approach to extending the time for enforcement, and a more streamlined procedure for enforcement.
4. The comparative analysis reveals that other jurisdictions have generally adopted a pro-enforcement approach to arbitral awards, in line with international best practices and the spirit of the New York Convention. They have also provided precise and uniform enforcement limitation periods and sought to ensure consistency with international standards and norms.
5. However, the comparative analysis also reveals some challenges and tensions in balancing the need for finality and efficiency with the need for fairness and due process, as well as issues such as the scope of public policy exceptions, the role of the courts in reviewing awards, and the impact of state immunity on enforcement against foreign states.

6. Nigeria can learn from these experiences and challenges as it seeks to develop a modern and effective arbitration regime. The AMA 2023 represents a significant step forward in this regard, but its success will depend on effective implementation and interpretation by the courts and arbitral institutions and a sustained commitment by all stakeholders to promote arbitration as a viable and attractive dispute resolution mechanism.

13.0 RECOMMENDATIONS

Based on the findings of this paper, the following recommendations are made for the effective implementation of the limitation of action for the enforcement of arbitral awards in Nigeria:

1. The Nigerian courts should adopt a pro-enforcement approach to domestic and foreign arbitral awards in line with international best practices and the spirit of the New York Convention. This means narrowly interpreting the grounds for refusal of enforcement and applying them only in clear cases rather than engaging in a full merits review of the award.
2. The Nigerian courts should provide clear and consistent guidance on applying the 10-year limitation period introduced by the AMA 2023, particularly concerning the commencement and interruption of the limitation period, as well as the grounds for extension of time for enforcement.
3. Nigerian arbitral institutions should provide training and support to arbitrators, lawyers, and parties on the effective use of AMA 2023 and its innovations, particularly with regard to the streamlined procedure for enforcement and the use of electronic documents and communications.

4. The Nigerian government should continue to engage with other jurisdictions and international organizations to ensure that Nigeria's arbitration law and practice remain consistent with international standards and norms, particularly those embodied in the UNCITRAL Model Law and the New York Convention.