NEW HORIZONS ON ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA AND OTHER SELECTED JURISDICTIONS

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Abstract

Arbitration is widely regarded as an efficient alternative to litigation. Its effectiveness ultimately depends on the willingness of national courts to give effect to arbitral decisions. Despite the existence of international instruments such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the adoption of modern arbitration statutes, enforcement practices remain uneven across jurisdictions. In Nigeria, procedural delays, frequent objections by award debtors, and inconsistent judicial interpretation of public policy continue to undermine arbitral finality and efficiency. This paper examined the practice and procedure for the enforcement of arbitral awards, the legal frameworks governing enforcement, assessed judicial attitudes towards arbitral awards, identified procedural challenges affecting enforcement in Nigeria, and drew

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comparative lessons for Nigeria from selected jurisdictions to strengthen its enforcement regime. The study adopts a doctrinal and comparative research methodology. The paper finds that Nigeria's enforcement framework under the Arbitration and Mediation Act 2023 substantially aligns with international arbitration standards, particularly through the adoption of limited and clearly defined grounds for refusing recognition and enforcement. The study recommends stricter judicial adherence to the refusal grounds under the Arbitration and Mediation Act 2023, improved judicial training in arbitration law and the.

Keywords: Arbitral Awards; Enforcement Procedure; Arbitration and Mediation Act 2023; Comparative arbitration law, New York Convention

1.0 INTRODUCTION

Arbitration is a binding, adjudicative process where parties submit disputes to a neutral third-party arbitrator(s) for a final, enforceable decision (award), akin to private litigation but with greater flexibility and limited court intervention.[1] Arbitration remains a vital method of resolving commercial disputes, particularly in transactions involving parties from different jurisdictions. It is often preferred to litigation because it allows parties to choose their decision-makers, agree on flexible procedures, and avoid the delays commonly associated with court processes. However, the usefulness of arbitration does not end with the conduct of arbitral proceedings. Its real value lies in the ability of the

[1] (n13), Part I; of the Arbitration and Conciliation Act, Cap A18 LFN 2004 (repealed).

successful party to enforce the arbitral award, especially where the losing party refuses to comply voluntarily.[2] Without effective enforcement mechanisms, arbitration would amount to little more than an academic exercise.

The enforcement of arbitral awards is therefore a critical aspect of arbitration law. An arbitral award whether domestic or foreign has no practical effect unless it is recognized and enforced by a competent court.[3] This has led to the development of both international and domestic legal frameworks aimed at ensuring that arbitral awards are treated with a high level of respect by national courts. The most significant of these instruments is the convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) which obliges contracting states to recognize and enforce foreign arbitral awards subject to limited exceptions.[4]

Nigeria like many other jurisdictions has adopted arbitration as part of its dispute resolution system and is a party to the New York Convention. The recent enactment of the Arbitration and Mediation Act 2023 represents a major reform of Nigeria's arbitration regime, replacing the Arbitration and Conciliation Act and aligning Nigerian Arbitration Law more closely with international standards.[5] Despite this legislative development, the enforcement of arbitral awards in Nigeria has continued to face practical

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2 Redfern A and Hunter M, *Law and Practice of International Commercial Arbitration* (6th edn, Oxford University Press 2015) 1

3 Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 3311.

4 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) 1958

5 Arbitration and Mediation Act 2023 (Nigeria)

challenges including delays in court proceedings, frequent applications to set aside awards and inconsistent judicial interpretation of key concepts such as public policy.[6]

Other jurisdictions such as the United Kingdom and Canada are generally regarded as arbitration-friendly jurisdictions due to their relatively clear enforcement procedures and strong judicial support for the finality of arbitral awards.[7] South Africa and Uganda on the other-hand, provide useful comparative examples from within the African context as both jurisdictions have adopted modern arbitration legislation but still face practical and institutional challenges in enforcement. Examining these jurisdictions along with Nigeria allows for a balanced comparative analysis of both developed and developing arbitration systems.

This paper examines the comparative perspective of the practice and procedure for the enforcement of arbitral awards in Nigeria and selected jurisdictions, namely the United Kingdom, Canada, South Africa and Uganda. Using a doctrinal and comparative approach, the paper analyses the relevant legal frameworks, procedural requirements and judicial attitudes governing enforcement. It seeks to identify gaps in Nigeria's enforcement regime and draw lessons from other jurisdictions that may contribute to improving the effectiveness of arbitral awards enforcement in Nigeria.

The enforcement of arbitral awards represents the most critical stage of the arbitration process because an award has no practical value unless it

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[6] *Statoil (Nig) Ltd v Nigeria national Petroleum Corporation* (2023) 14 NWLR (Pt. 1373) 1

[7] *Westacre Investments Inc. v Jugoimport-SPDR Holding Co. Ltd* (2000) QB 288 (CA)

can be effectively recognized and enforced by a competent court. Although Nigeria has modernized its arbitration regime through the Arbitration and Mediation Act 2023 and remains a signatory to the New York Convention, enforcement in practice continues to face procedural and institutional challenges.

Despite the statutory adoption of limited grounds for refusing enforcement, enforcement proceedings in Nigeria are often prolonged by technical objections, jurisdictional challenges and interlocutory applications that extend beyond the narrow refusal grounds prescribed under section 58 of the Act. These procedural delays undermine arbitral finality and reduce the efficiency and advantages that arbitration is intended to provide.

Furthermore, inconsistencies in judicial interpretation particularly in relation to public policy and procedural fairness create uncertainty at the trial court level. While appellate courts increasingly demonstrate a pro-enforcement stance, the absence of uniform application across courts weakens predictability in enforcement outcomes.

This uneven enforcement practice raises concerns about investor confidence and Nigeria's competitiveness as an arbitration friendly jurisdiction especially when compared with jurisdictions such as the United Kingdom and Canada where enforcement proceedings are generally more streamlined and predictable. Accordingly, the core problem addressed in this study is whether Nigeria's enforcement practice, despite its modern legislative framework sufficiently guarantees arbitral finality, procedural efficiency, and judicial consistency in line with international arbitration standards.

3.0 LITERATURE REVIEW

Contemporary arbitration literature consistently treats enforcement of arbitral awards as a distinct procedural phase that marks the transition from private dispute resolution to public judicial control. Scholars emphasize that, regardless of the autonomy of arbitral proceedings, enforcement necessarily occurs within the procedural framework of national courts. Redfern and Hunter conceptualize enforcement as the point at which arbitral finality is tested through domestic procedural mechanisms, particularly applications for recognition and enforcement before competent courts.[8] This position is largely doctrinal but highlights the centrality of court procedures in determining the effectiveness of arbitration

Born develops this argument further by situating enforcement within the procedural obligations imposed on national courts under international instruments. He argues that enforcement proceedings are not appeals but specialized judicial procedures govern by statute and convention, requiring courts to limit their inquiry strictly to recognized grounds for refusal.[9] This view is grounded not only in theory but also in a comparative assessment of judicial practice showing how courts operationalize enforcement through summary procedures rather than full trials.

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[8] Gary B. Born (n 2) 3311-3315

[9] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015) 611-613

However, Paulsson introduces a more cautious perspective, noting that enforcement procedures inevitably involve the coercive powers of the state, thereby justifying a limited but necessary level of judicial scrutiny.[10] His analysis is important procedurally because it explains why enforcement applications cannot be entirely automatic even in pro-arbitration jurisdictions. This theoretical tension between finality and judicial supervision underpins much of the procedural debate in enforcement literature.

These perspectives collectively highlight enforcement as a procedural stage where theory [11](finality vs. supervision) meets practice (judicial application). While Redfern and Hunter, and Born emphasize efficiency and restraint, Paulsson reminds us of the unavoidable role of state power. Van den Berg's work establishes a uniform procedural standard, restricting courts to specific refusal grounds and preventing re-litigation of the merits.[12] His work is doctrinal and foundational, shaping how enforcement is understood globally.

Later scholars, particularly Born, move beyond textual analysis to examine judicial application of the convention. He observes that while the convention prescribes a streamlined procedure, national courts differ significantly in adherence.[13] Some treat enforcement as near-automatic while others expand hearings through extensive evidentiary review, especially under the public policy exception.

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[10] Gary B. Born (n2) vol3, 3609-3616
[11] Jan Paulsson, *The Idea of Arbitration* (Oxford University Press 2013) 151-154
[12] Albert Jan van den Berg, *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation* (Kluwer Law International 1981) 1-5, 265-269
[13] Gary B. Born (n2) 3595-3610

Recent works further demonstrate that effectiveness lies not merely in ratification but in procedural discipline exercised by courts. The authors note that delays, expansive hearings, and liberal admission of challenges undermine the Convention's pro-enforcement objective. This is a critical observation because it shows how procedural inefficiency not substantive law often determines enforcement outcomes.

4.1 Literature Review on Enforcement Practice and Procedure

Nigerian scholarly writing on the enforcement of arbitral awards has traditionally focused on procedural obstacles within the court system. Early commentators such as Ezejiofor identified rigid procedural rules, frequent interlocutory applications, and excessive judicial intervention as key barriers to effective enforcement.[14] These conclusions were derived from observed court practice rather than abstract theory, making them particularly relevant to procedural analysis.

More recent Nigerian authors acknowledge gradual improvements in enforcement practice especially in commercial centres. Okeke notes that Nigerian courts increasingly recognize enforcement applications as limited proceedings rather than opportunities for substantive review.[15] However, this assessment is based on selected appellate decisions and does not establish a consistent procedural pattern across all courts.

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[14] T O Elias Ezejiofor, *The Law of Arbitration in Nigeria* (Longman Nigeria 1997) 212-218

[15] Chukwuma Okeke, 'Judicial Attitude to the Enforcement of Arbitral Awards in Nigeria' (2018)6 *Nigerian Journal of Commercial Law* 45, 52-55

Following the enactment of the Arbitration and Mediation Act 2023**,** more recent literature has been put in place which focuses on how enforcement applications are initiated, processed and determined by Nigerian courts as well as the extent to which the new legislative framework aligns domestic enforcement practice with international standards.

Olawoyin provides one of the earliest systematic academic examinations of the Arbitration and Mediation Act 2023, analyzing its enforcement provisions against the backdrop of international arbitral enforcement norms. He argues that the Act represents a deliberate attempt to reposition Nigerian Courts as facilitators rather than obstacles to enforcement by narrowing the scope of judicial intervention and aligning refusal grounds with those recognized under the New York Convention.[16] From the procedural standpoint, Olawoyin highlights the simplification of enforcement applications, particularly the removal of unnecessary procedural hurdles that previously allowed losing parties to frustrate enforcement through technical objections. His analysis is largely doctrinal relying on statutory interpretation but it is procedurally significant because it clarifies how courts are expected to approach enforcement proceedings under the new regime.

Adewumi's contribution though focused primarily on mediation is relevant to enforcement practice because it examines the enforceability mechanisms introduced by the Arbitration and Mediation Act 2023 and their procedural implications. He observes that the Act strengthens court-assisted enforcement by providing clear pathways for converting ADR

[16] Olawoyin Oladapo, 'Enforcement of Arbitral Awards under the Arbitration and Mediation Act 2023' (2023) 4 *Nigerian Arbitration Law Review 1,* 9-14

outcomes into enforceable court orders.[17] Adewumi's work is largely normative, arguing that enforceability provisions reflect Nigeria's intention to align with global ADR and arbitration standards. While this analysis does not yet rely on extensive judicial data, it contributes to enforcement literature by highlighting how procedural certainty enhances confidence in ADR mechanisms more broadly.

From a practice-oriented standpoint Gadzama **examines** the enforcement of arbitral awards under the Arbitration and Mediation Act 2023 with particular emphasis on how Nigerian courts are expected to handle enforcement applications in practice. He argues that the Act modernizes enforcement practice by reducing opportunities for delay tactics during court proceedings and by reinforcing the finality of arbitral awards.[18] Gadzama's analysis is partly opinion-based but grounded in practical experience and comparative observation, particularly in his discussion of how Nigerian enforcement procedures compare with those in established arbitration jurisdictions. He notes, however that legislative reform alone cannot guarantee efficient enforcement without consistent judicial application, a point that underscores the persistent gap between procedural law and procedural practice.

Ojo adopts a practitioner-oriented approach in examining the enforcement of arbitral awards under the Arbitration and Mediation Act 2023, focusing on the procedural steps involved in initiating and prosecuting enforcement applications before Nigerian courts. He outlines the documentation

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[17] Abdulrazaq Adewumi, 'Enforceability of ADR Outcomes under the Arbitration and Mediation Act 2023' (2023) 2 *Nigerian Journal of Dispute Resolution* 67, 74-77

[18] J O Gadzama, 'Practical Issues in the Enforcement of Arbitral Awards in Nigeria' (2023) 1 *African Arbitration Practice Review 101, 109-113*

required, the role of the enforcing court and the limited grounds upon which enforcement may be restricted[19]. **Ojo's** analysis is significant because it moves beyond abstract statutory interpretation to consider how enforcement proceedings are likely to unfold in practice. However, his conclusions remain largely anticipatory reflecting the early stage of post-Arbitration and Mediation Act judicial interpretation.

Despite the generally optimistic tone of recent Nigerian literature, scholars consistently acknowledge unresolved procedural challenges. Olawoyin and Gadzama both caution that Nigerian courts have historically exhibited inconsistent attitudes towards arbitral enforcement, particularly in the interpretation of public policy and procedural fairness. These concerns are not purely theoretical; they reflect observed judicial tendencies under the previous arbitration regime and raise questions about whether the Arbitration and Mediation Act 2023 will achieve uniform enforcement practice across jurisdictions.

A critical gap in the Nigerian literature is the absence of empirical studies examining post-2023 enforcement outcomes such as times for enforcement applications, rates of refusal and consistency of judicial reasoning. Much of the existing commentary is predictive relying on statutory intent rather than observed court behaviour. This limitation underscores the need for continued scholarly engagement with enforcement practice as Nigerian courts begin to apply the Arbitration and Mediation 2023 in concrete cases.

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[19] Babatunde Ojo, 'Procedure for the Enforcement of Arbitral Awards under Nigerian Law' (2024) 5 *Nigerian Law and Practice Journal* 88, 95-98

Overall, recent Nigerian literature demonstrates a clear awareness of the centrality of procedure in arbitral enforcement. While the AMA 2023 is widely praised for aligning Nigeria's enforcement framework with international standards, scholars agree that the true measure of success lies in judicial practice rather than legislative design. This literature therefore provides a critical foundation for analyzing whether Nigerian enforcement procedures in practice meet the expectations set by international arbitration norms.

5.0 COMPARATIVE PERSPECTIVES IN THE PRACTICE AND PROCEDURE ON ENFORCEMENT OF ARBITRATION IN SELECTED JURISDICTIONS

5.1 United Kingdom

Academic writing on the enforcement of arbitral awards in the United Kingdom is largely centred on the Arbitration Act 1996. This is unsurprising given that the Act is often described as one of the most arbitration-friendly statutes globally. However, much of the literature does not stop at explaining the provisions of the Act. Rather, scholars have been concerned with how English courts have applied these provisions in actual enforcement proceedings.

Born's work is frequently relied upon in discussions of enforcement practice in England. He observes that English courts generally approach enforcement with a strong presumption in favour of upholding arbitral awards, particularly foreign awards governed by the New York Convention[20]. Importantly, his analysis distinguishes between the formal principles of non-intervention embedded in the Act and the way those

[20] Gary B. Born (n2)

principles play out in court. From the cases examined, refusals of enforcement appear to be rare and are usually limited to clear procedural defects or well-established public policy grounds. This suggests that in practice, English Courts are reluctant to reopen matters already determined by arbitral tribunals.

A more procedure-focused contribution is offered by Merkin and Flannery, who examine enforcement under sections 66 and 101-103 of the Arbitration Act 1996[21]. Their analysis is particularly useful for this study because it treats enforcement primarily as a court process rather than an abstract principle. They discuss applications for leave, documentary requirements and the narrow scope of judicial review. While their work is largely doctrinal, the frequent reliance on decided cases gives insight into how enforcement applications are actually handled by English courts.

Recent literature has begun to interrogate the limits of this pro-enforcement approach, especially in cases involving allegations of fraud or jurisdictional defects. Moses for instance, notes that although the English Court remains supportive of enforcement, they have shown a willingness to scrutinize awards more closely where serious procedural concerns are raised[22]. This does not necessarily undermine the pro-arbitration stances of English law, but it indicates that enforcement practice is not entirely mechanical. Taken together, the UK literature suggests that there is a relatively close relationship between enforcement theory and enforcement practice. While challenges do arise, English

[21] Robert Merkin and Louis Flannery, *Arbitration Act 1996* (6th edn, Informa Law 2019)
[22] Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (4th edn, CUP 2022)

courts appear largely consistent in applying a restrained and predictable approach to enforcement proceedings.

5.2 Canada

The literature on arbitral enforcement in Canada reflects the country's Federal structure and the widespread adoption of the UNCITRAL Model Law at the provincial level. A recurring theme in Canadian scholarship is judicial restraint, particularly in the context of enforcing arbitral awards.

Binnie and McLachlin, writing from both judicial and academic perspectives, emphasize that Canadian courts generally avoid interfering with arbitral outcomes at the enforcement stage[23]. Their analysis draws on decided cases to demonstrate that enforcement applications are rarely defeated on technical grounds. This approach, they argue, reflects a conscious effort by the courts to respect party autonomy and the finality of arbitral awards. The strength of their work lies in its reliance on judicial practice rather than abstract endorsement of arbitration.

McEwan and Herbst examine the procedural steps involved in enforcing both domestic and foreign arbitral awards. Their discussion of evidentiary requirements, timelines, and court procedure is particularly relevant to this paper. Unlike more theoretical works, their analysis highlights the practical realities faced by parties seeking enforcement, including procedural delays and strategic resistance by losing parties[24].

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[23] Ian Binnie and Beverley McLachlin, 'Judicial Independence and Arbitration' (2019) 58 *Canadian Bar Review* 1

[24] John McEwan and Ludmila Herbst, *Commercial Arbitration in Canada* (3rd edn, JurisNet 2019)

Some recent studies suggest that Canadian Courts have become increasingly efficient in enforcement proceedings, especially in international commercial disputes. However, the literature also notes that while the legal framework is supportive, procedural complexity can still affect enforcement outcomes. In all, Canadian Scholars presents enforcement practice as broadly supportive of arbitration, though not entirely immune from procedural challenges.

5.3 South Africa

The literature on the enforcement of arbitral awards in South Africa shows that the country has experienced major legislative changes, especially with the introduction of the International Arbitration Act 15 of 2017**.** Much of the academic discussion focuses on whether this legislative reform has actually improved the way courts handle the enforcement of arbitral awards in practice rather than merely aligning the law with international standards on paper.

Butler argues that the 2017 Act represents a clear departure from the earlier judicial approach which was something skeptical and interventionist towards arbitration[25]. Based on an analysis of post-reform cases, Butler suggests that South African Courts have become more supportive of arbitration by limiting their involvement during enforcement proceedings and by adhering more closely to the principles of the New York Convention. His work is important because it highlights the distinction between having a modern statutory framework and the willingness of courts to apply it in a manner that promotes finality of arbitral awards.

[25] Michael J Butler, *Arbitration in South Africa: Law and Practice* (2nd edn, Juta 2020)

However, not all scholars share this optimistic view. Ndanga adopts a more cautious position, questioning whether legislative reform alone can guarantee effective enforcement in practice[26]. While he acknowledges that the 2017 Act brings South Africa in line with international best practices, he points out that enforcement proceedings may still suffer from procedural delays and inconsistent judicial approaches, particularly at the lower court level. Ndanga's analysis is grounded in observed judicial practice and suggests that the practical realities of enforcement may not always reflect the progressive intent of the statute.

Recent scholarly writing has also examined how South Africa can treat public policy as a ground for refusing enforcement. The literature indicates that courts are increasingly reluctant to interpret public policy broadly, thereby reducing the risk of excessive judicial interference with arbitral awards. Nevertheless, some scholars observe that the application of the public policy exception is developing and that judicial approaches are not yet entirely uniform.

In essence, the literature suggests that South Africa is moving towards a more arbitration-friendly enforcement regime, but the system is still evolving. While the statutory framework now reflects international standards, practical challenges such as delays and inconsistencies in judicial reasoning mean that enforcement practice has not fully matured. This makes South Africa an important comparative jurisdiction for assessing how legislative reform translates into actual enforcement practice.

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[26] Thando Ndanga, 'Enforcement of Foreign Arbitral Awards in South Africa' (2021) 38 *South African Mercantile Law Journal* 245

5.4 Uganda

Uganda's scholarly writing on the enforcement of arbitral awards is relatively modest but conceptually grounded in broader discussions on judicial power, party autonomy, and statutory interpretation. Much of the literature does not address enforcement in isolation. Rather, it situates arbitral enforcement within the courts' general role in supervising alternative dispute resolution mechanisms under the Arbitration and Conciliation Act.

Kanyeihamba provides an important theoretical foundation for understanding judicial restraint in Uganda. In his broader writings on adjudication and constitutionalism, he consistently argues that courts must respect the outcomes of consensual dispute resolution processes freely entered into by parties.[27] Although his work does not focus exclusively on arbitration, scholars frequently draw from his reasoning to support the view that enforcement proceedings should not be converted into an avenue for rehearing the merits of arbitral disputes. His position reinforces the principle that judicial intervention at the enforcement stage ought to be an exception rather than a routine.

A related judicial perspective is found in the extra-judicial writings of Ogoola**,** who examines the limits of judicial discretion in modern adjudication.[28] Ogoola cautions against expansive interpretations of judicial supervisory powers that undermine finality in dispute resolution.

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[27] George W Kanyeihamba, *Constitutional and Political History of Uganda: From 1894 to the Present* (Centenary Publishing House 2002) 287-292.

[28] James Ogoola, *The Role of the Judge in a Modern Society* (Fountain Publishers 2006) 113-118

In the context of arbitral enforcement, scholars rely on his analysis to explain why courts should confine themselves to the statutory grounds for refusal provided under the Arbitration and Conciliation Act particularly where the parties have clearly elected arbitration as their preferred dispute resolution mechanism.

Kabumba contributes a critical lens through his analysis of statutory interpretation and judicial behaviour in Uganda.[29] Kabumba observes that Ugandan courts occasionally prioritizes procedural formalism, sometimes at the expense of efficiency and commercial certainty. Scholars applying his analysis to arbitration enforcement argue that his tendency may explain delay and technical objections raised during enforcement proceedings even where the statutory framework itself is arbitration-friendly. His work therefore bridges the gap between legislative intent and judicial practice.

In addition to the above scholarly writings, postgraduate research conducted within Uganda Universities forms an important part of the literature. These studies generally affirm that Uganda's enforcement regime substantially aligns with international arbitration standards particularly in its recognition of limited grounds for reusing enforcement. However, they also identify practical challenges such as procedural delays, uneven application of public policy objections and variation in judicial familiarity with arbitral principles. These studies are empirical in nature and distinguish clearly between normative statutory provisions and observed enforcement outcomes.

[29] Ben Turyamusiima Kabumba, *Judicial Review and Administrative Law in Uganda* (Fountain Publishers 2008) 201-207

Judicial decisions themselves have also attracted scholarly attention. Courts have repeatedly affirmed the binding nature of arbitral awards and have emphasized that enforcement proceedings are not an opportunity to revisit substantive issues already determined by arbitral tribunals. Scholars analyzing these cases note a gradual but cautious shift towards an enforcement-supportive posture while acknowledging inconsistencies at lower court levels.

Overall, the Ugandan literature portrays enforcement practice as legally structured but institutionally cautious. While scholars generally agree that the statutory framework supports enforcement, they also highlight the decisive role of judicial attitude and procedural discipline in determining whether arbitral awards achieve effective finality in practice. Uganda therefore emerges in the literature as a jurisdiction with a sound enforcement regime in principle but one whose practical application continues to evolve.

6.0 PRACTICE AND PROCEDURE FOR ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA

The enforcement of arbitral awards in Nigeria represents the culmination of the arbitration process, translating the tribunal's decision into a judgment that can be executed by the courts. While an arbitral award is final and binding on the parties, an arbitral tribunal lacks coercive power; it is the courts that provide the mechanism for enforcement and execution. The modern framework for this process is primarily contained in the Arbitration and Mediation Act 2023**,** which repealed earlier legislation

and harmonizes Nigeria's enforcement regime with international norms such as the New York Convention.[30]

6.1 Recognition and Enforcement Under Nigerian Law

Under Section 57(1) of the AMA 2023, an arbitral award "shall, irrespective of the country or state in which it is made, be recognized as binding and on application in writing to the court be enforced by the court" subject to conditions in sections 57 and 58 of the Act.[31] This provision highlights two distinct but related concepts; recognition and enforcement. Recognition involves the court acknowledging the award as valid and final, creating a protective shield against rehearing of the dispute. Enforcement transforms that recognition into a court judgment, enabling court execution against the losing a party.[32]

Section 91(1) of AMA 2023 defines "Court" for this purpose to include the High Court of a State, the High Court of the Federal Capital Territory, Abuja and the Federal High Court**,** giving the award creditor flexibility in choosing the appropriate venue for enforcement.[33] In practice, enforcement applications are brought by Motion on Notice supported by an affidavit and requisite exhibits including the original award, arbitration agreement and certified translations where necessary.[34]

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[30] Arbitration and Mediation Act (n4) ss 57-58

[31] Ibid

[32] Ibid

[33] *Emerald Energy Resources Ltd v Signet Advisors Ltd* (2021) 8 NWLR (Pt 1779) 1 (CA)

[34] Mondaq (Nigeria), 'Arbitration Proceedings Rules 2020; Enforcement of Arbitral awards under the Provisions of the Arbitration and Mediation Act' (2023) https://www.mondaq.com accessed 6 May 2026.

The Arbitration Proceedings Rule 2020 reinforce this procedure, specifying the contents of the supporting affidavit and requiring clear evidence that the award has not been complied with.[35] Additionally, civil procedure rules as the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 require the motion to state the grounds and attach the authenticated original award or certified copies thereof.[36] These procedural layers reflect a deliberate effort to ensure that enforcement applications are transparent, notice-based and procedurally fair, rather than ex parte or sudden.

The courts have emphasized this requirement through judicial decisions. For example, in *CITEC International Estates Ltd v Federal Housing Authority (FHA)***,** the Appellate Court held that a motion ex parte is inappropriate for enforcement applications because it denies the respondent an opportunity to be heard.[37] This upholds the procedural fairness that underpins enforcement proceedings and guards against surprise enforcement judgments.

6.2 Enforcement of Domestic Arbitral Awards

For domestic arbitral awards, the procedure under the AMA 2023 reflects the philosophy that party autonomy and contractual certainty should be respected, with minimal judicial interference. For the enforcement of a domestic award, by virtue of sections 57-60 of the Arbitration and Mediation Act**,** a party that wants to enforce a domestic award will file a motion on notice annexed with the original award and the arbitration

[35] Chambers and Partners, 'Enforcement of Judgements 2025- *Nigeria's Global Practice Guides (2025)* https://practice guides.chambers.com accessed 6 May 2026
[36] Ibid
[37] Ibid

agreement in the High Court, seeking recognition and enforcement. Once recognized by the court, the award is enforced like a judgment of the court unless the other party can prove any of the grounds provided under 58 of the Arbitration and Mediation Act**.** These grounds are;

a) Incapacity of a party: Under section 58 (2)(a)(i)**,** enforcement may be refused where a party to the arbitration agreement was under some incapacity at the time the agreement was made. Incapacity refers to a legal inability to enter into a binding agreement, such a minor, mental incapacity lack of authority in the case of corporate entities. This ground is narrowly construed. Nigerian courts have made it clear that mere unwillingness or refusal to participate in arbitration does not amount to incapacity. The burden lies on the party resisting enforcement to establish that the incapacity existed at the time of entering the arbitration agreement and that it materially affected consent. In Statoil (Nig) Ltd v. Nigerian National Petroleum Corporation**,** the Court of Appeal rejected the argument that a party's refusal to participate in arbitration amounted to incapacity.[38] The court held that incapacity must relate to a legal inability not strategic or commercial unwillingness. This decision reinforces the narrow scope of this ground and discourages abuse by award debtors.

b) Invalid arbitration agreement: Section 58 (2)(a)(ii), allows refusal where the arbitration agreement is not valid under the law to which the parties subjected it or failing such indication under Nigerian law. This ground focuses on the legal validity of the arbitration clause rather than the substantive dispute. An arbitration agreement may be invalid due to illegality, lack of consent, uncertainty or failure to comply with statutory requirements. However, Nigerian courts generally adopt a pro-severability approach**,** recognizing arbitration clauses as autonomous from the main

[38] *Statoil (Nig) Ltd v NNPC* (2023) 14 NWLR (2013) 14 NWLR (Pt 1373) 1

contract. Consequently, invalidity of the underlying contract does not automatically invalidate the arbitration agreement. In Nigeria Agip Exploration Ltd v. Nigerian National Petroleum Corporation, the Supreme Court affirmed the doctrine of separability, holding that an arbitration clause survives even where the main contract is alleged to be invalid.[39] The main implication for enforcement is that an award will not be set aside merely because the underlying contract is disputed unless the arbitration agreement itself is shown to be invalid.

c) **Lack of Proper Notice or inability to present case:** Section 58(2)(a)(iii) addresses procedural fairness. Enforcement may be refused if the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or the arbitral proceedings or was otherwise unable to present their case. This ground embodies the principle audi alteram partem. However, courts require proof of actual prejudice. Where a party deliberately ignores notices or chooses not to participate, courts are unlikely to regard this as a denial of fair hearing. In *Baker Marine (Nig) Ltd v Chevron (Nig) Ltd*, the Supreme Court held that a party who was given adequate notice but chose not to participate in the arbitral proceedings cannot later rely on denial of fair hearing to resist enforcement.[40] The court emphasized that fair hearing does not protect parties who deliberately stay away from proceedings.

d) **Award is outside the submission or excess of authority:** Under Section 58(2)(a)(iv), an award may be refused enforcement if it deals with matters not contemplated by or falling outside the scope of submission to arbitration. This ground protects party autonomy by ensuring that arbitrators do not exceed their mandate. Where only part of the award exceeds jurisdiction, the Act allows for partial enforcement provided the

[39] *Nigeria Agip Exploration Ltd v NNPC* (2016) 6 NWLR (Pt 1500) 150
[40] Baker Marine (Nig.) Ltd v Chevron (Nig) Ltd (2000) 12 NWLR (Pt 681) 393 (SC)

offending portion can be severed without affecting the rest of the award. In *Ras Pal Gazi Construction Co. Ltd v. Federal Capital Development Authority***,** the Supreme Court held that an arbitral tribunal derives its authority strictly from the submission agreement and that any award made beyond that authority is liable to be set aside.[41] This case remains a leading authority on jurisdictional limits and continues to guide courts under the AMA 2023.

e) **Improper Composition of the Arbitral tribunal:** Section 58(2)(a)(v) permits refusal where the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement. This ground recognizes the contractual foundation of arbitration. However, not every procedural irregularity will suffice. Courts require that the irregularity must be substantial and capable of affecting the outcome of the arbitration. In *City Engineering (Nig) Ltd v Federal Housing Authority,* the Court of Appeal held that minor procedural deviations do not justify setting aside an award unless they occasion a miscarriage of justice.[42] This decision underscores the principle that enforcement should not be frustrated by technical objections that do not affect the fairness of proceedings.

f) **Award not yet binding or has been set aside at the seat:** Pursuant to Section 58(2)(a)(vi), enforcement may be refused where the award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the country where it was made. This ground is particularly relevant to foreign awards. Nigerian courts generally defer to decisions of the supervisory court at the seat of arbitration, but may still exercise discretion where the setting aside decision is manifestly inconsistent with international arbitration norms.

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[41] *Ras Pal Gazi Construction Co. Ltd v FCDA* (2001) 10 NWLR (Pt 722) 559

[42] *City Engineering (Nig.) Ltd v FHA* (1997) 9 NWLR (Pt 520) 224

g) **Subject Matter is not arbitrable:** Section 58(2)(b)(i), empowers the court to refuse enforcement where the subject matter of the dispute is not capable of settlement by arbitration under Nigerian law. Matters involving criminal liability, matrimonial causes and certain statutory rights are typically regarded as non-arbitrable. This ground is invoked by the court on its own motion and reflects public interest considerations rather than party conduct. In *Ebokam v Ekwenibe & Sons Trading Co Ltd,* the Supreme Court affirmed that disputes involving criminal allegations are not arbitrable and that any award purporting to resolve such matters would be unenforceable.[43]

h) **Award violate public policy;** Finally, Section 58(2)(b)(ii) allows refusal where enforcement of the award would be contrary to public policy of Nigeria. Courts have consistently held that public policy should be interpreted restrictively to avoid undermining arbitration. Public policy objections are usually upheld only in cases involving fraud, corruption, illegality or serious violations of fundamental principles of justice. Mere errors of law or fact do not constitute public policy violation. In *Statoil (Nig) Ltd v NNPC,* the Court of Appeal stressed that public policy does not include mere errors of law or fact.[44] The court held that enforcement will only be refused where the award is fundamentally offensive to Nigeria's legal or moral standards such as cases involving fraud or illegality.

From the analysis, it is clear that the grounds under section 58 of the AMA 2023 demonstrate a deliberate legislative effort to balance judicial supervision with arbitral finality. By confirming judicial review to specific and narrow grounds, the Act aligns Nigeria with International

[43] IPCO (Nig) Ltd v NNPC (2015) 15 NWLR (Pt. 1481) 513
[44] Ebokam v Ekwenibe & Sons Trading Co Ltd (1999) 10 NWLR (Pt. 622) 242

best practices and reinforces its pro-enforcement stance. In practice, the success of this framework depends largely on judicial discipline in resisting invitations to review the merits of arbitral awards under procedural disguises.

Enforcement of a domestic award is made via an application to a court by way of motion on notice supported by an affidavit, the original copy of the award or certify true copy, the arbitration agreement, and translations where applicable. The court will grant leave to enforce the award in the same manner as a judgment or order where the statutory criteria are satisfied.[45]

In practical terms, once recognition is confirmed and award is enforced, the successful party may seek various mechanisms such as;

a) Garnishee orders or
b) Writs of fieri facia

To give effect to the award's monetary or non-monetary reliefs.[46] These mechanisms are the same as those used for ordinary court judgements, reinforcing the notion that once enforced, arbitral awards enjoy the same effect and enforceability as court judgements.

Enforcement applications must be made within applicable limitations periods; while the AMA 2023 does not contain its own limitation provision, local limitation laws such as the limitation law of Lagos State generally impose a six years period within which enforcement must be

[45] *Statoil (Nig) Ltd v NNPC* (n56)
[46] Mondaq (n52)

sought.[47] This limitation ensures that enforcement actions are pursued with reasonable expedition, preserving commercial certainty.

5.1.3 Enforcement of Foreign Arbitral Awards in Nigeria

Foreign arbitral awards are enforceable under the AMA 2023 in line with Nigeria's obligations under the New York Convention 1958, to which Nigeria is a signatory.[48] The AMA 2023 codifies the Convention's principles, ensuring that foreign awards are recognized and enforced in the same manner as domestic awards, provided statutory requirements are met. Enforcement of foreign awards in Nigeria is procedural, requiring motion on notice, affidavits, exhibits of the award, the arbitration agreement, and translations where applicable just like the enforcement of a domestic award[49] Nigerian courts are pro-enforcement but retain the authority to refuse recognition in limited circumstances as provided under Section 58 of the AMA 2023 which has been listed above.

Courts interpret these grounds narrowly to uphold the finality of awards. In *Emerald Energy Resources Ltd v Signet Advisors Ltd,* the Court of Appeal enforced a foreign award from the London Centre for International Arbitration, emphasizing that the merits of the underlying dispute could not be revisited.[50] Enforcement grants the award the same force as a judgment of the court allowing execution through standard judicial processes. Nigerian courts have enforced substantial foreign awards

[47] Chambers and Partners (n53)
[48] Ibid
[49] Ibid
[50] *Emerald Energy Resources Ltd v Signet Advisors Ltd* (n51)

including multimillion-dollar commercial claims, demonstrating confidence in arbitration as a mechanism for dispute resolution.[51]

In certain specialized cases, such as the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, enforcement procedures can vary. The Act provides that ICSID awards once filed at the Supreme Court are treated as final judgments of that court enabling direct enforcement of investment treaty awards. This reflects Nigeria's broader commitment to facilitating enforcement of international arbitration outcomes. [52]

6.4 Judicial Attitude Towards the Enforcement of Arbitral Awards in Nigeria

The attitude of Nigerian courts towards the enforcement of arbitral awards has evolved from an earlier phase of cautious judicial intervention to a more supportive and enforcement-oriented approach. Contemporary Nigerian jurisprudence increasingly recognizes arbitration as a binding dispute resolution mechanism whose outcomes ought to be respected by the courts, subject only to limited statutory exceptions as analyzed above. This shift is particularly evident in appellate decisions where courts have consistently emphasized that enforcement proceedings are not opportunity to re-litigate the merits of disputes already resolved by arbitral tribunals. [53]

The Court of Appeal's decision in *Emerald Energy Resources Ltd v Signet Advisors Ltd* illustrates this modern judicial approach. In that case, the

[51] Chambers and Partners (n53)
[52] Ibid
[53] Baker Marine (Nig.) Ltd v Chevron (Nig) Ltd (n58)

court affirmed that once an arbitral award satisfies the requirements of arbitration statute, it is enforceable in Nigeria and should not be subjected to substantive judicial review under the guise of enforcement proceedings.[54] The decision reinforces the principle of arbitral finality and clarifies the limited supervisory role of the courts at the enforcement stage.

Nigerian courts have also demonstrated restraint in interpreting the statutory grounds for refusing enforcement, particularly in relation to allegations of denial of fair hearing or procedural irregularity. In *Baker Marine (Nig.) Ltd v Chevron (Nig.) Ltd,* the Supreme Court held that a party that was allowed to participate in arbitral proceedings but deliberately chose not to do so could not subsequently rely on fair hearing arguments to resist enforcement.[55] This decision reflects the judiciary's unwillingness to permit parties to frustrate enforcement through tactical non-participation.

Similarly, Nigerian courts have adopted a narrow approach to public policy objections. In *Statoil (Nig.) Ltd v. Nigerian National Petroleum Corporation***,** the Court of Appeal cautioned that public policy should not be interpreted expansively to undermine the finality of arbitral awards. The court emphasized that mere errors of law or dissatisfaction with the tribunal's reasoning do not constitute a violation of public policy sufficient to defeat enforcement.[56]

[54] *Emerald Energy Resources Ltd v Signet Advisors Ltd* (n51)
[55] Baker Marine (Nig.) Ltd v Chevron (Nig) Ltd (n58)
[56] *Statoil (Nig) Ltd v NNPC* (n56)

Notwithstanding this generally supportive posture, Nigerian courts have shown that they will intervene where enforcement would clearly offend jurisdictional boundaries or statutory limitations. In *Ras Pal Gazi Construction Co Ltd v Federal Capital Development Authority*, the Supreme Court set aside an arbitral award on the ground that the arbitral tribunal exceeded the scope of its authority.[57] This decision demonstrates that judicial support for enforcement is conditional upon tribunals acting strictly within the mandate conferred by the parties.

Despite the pro-enforcement stance evident in appellate jurisprudence, practical challenges persist at the trial court level. Enforcement proceedings are sometimes delayed by interlocutory applications, jurisdictional objections, and technical challenges, particularly in disputes involving public institutions. These issues were evident in *Nigerian National Petroleum Corporation v. Fung Tai Engineering Co. Ltd,* where questions relating to statutory pre-action notice and procedural compliance complicated the enforcement process[58]. Although the Supreme Court clarified the applicable principles, the case highlights how procedural complexities can affect enforcement outcomes in practice.

The enactment of the Arbitration and Mediation Act 2023 represents a legislative effort to consolidate this evolving judicial attitude by codifying limited grounds for refusing enforcement and aligning Nigerian arbitration law with international standards particularly the New York Convention. While judicial interpretation of the Act is still developing, existing case law suggests that Nigerian courts are increasingly inclined to

[57] *Ras Pal Gazi Construction Co. Ltd v FCDA* (n59)
[58] *Nigerian National Petroleum Corporation v. Fung Tai Engineering Co. Ltd* (2023) 15 NWLR (Pt. 1906) 117 (SC)

enforce arbitral awards in accordance with statutory provisions subject to clearly defined exceptions.[59]

Overall, Nigerian judicial attitude towards the enforcement of arbitral awards may be described as cautiously pro-enforcement.

7.0 PRACTICE AND PROCEDURE FOR ENFORCEMENT OF ARBITRAL AWARDS IN THE UNITED KINGDOM

The enforcement of arbitral awards in the United Kingdom is governed primarily by the Arbitration Act 1996, which provides a unified framework for domestic and foreign arbitral awards. The Act incorporates the United Kingdom's obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and reflects a long-standing judicial policy of supporting arbitration as a final and binding method of dispute resolution. English courts approach enforcement as a supervisory process concerned with procedural regularity and jurisdiction rather than the substantive merits of the arbitral decision.[60]

In practice, enforcement proceedings are commenced by an application to the High Court of England and Wales**,** usually within the Commercial Court or Business and property Courts. The award creditor applies for leave to enforce the award under section 66 of the Arbitration Act 1996, together with the arbitral award, the arbitration agreement, and a witness statement confirming non-compliance.[61] At this initial stage, the court may grant leave without notice to the debtor. This procedural feature is

[59] Arbitration and Mediation Act (n4)
[60] Arbitration Act UK (21);
[61] New York Convention (n3)

designed to prevent delay, but it does not prejudice the debtor, as enforcement cannot proceed until the order is served and an opportunity to challenge is provided.

Once leave is granted, the enforcement order must be served on the award debtor. Service activates the debtor's right to apply to set aside the order typically within a short statutory period. Any resistance to enforcement must fall within the narrow grounds recognized by English law such as lack of jurisdiction, serious procedural irregularity or refusal grounds under the New York Convention in the case of foreign awards. The burden rests firmly on the resisting party and the English courts consistently emphasize that enforcement proceedings are not an appeal in disguise.[62]

Judicial treatment of jurisdictional objections at the enforcement stage is illustrated by the decision of the UK Supreme Court in *Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs, Government of Pakistan.* In that case, enforcement was refused because the Court found that the respondent was not a party to the arbitration agreement and therefore not bound by the award.[63] The decision demonstrates that English courts will closely examine jurisdiction where it is properly challenged even at the enforcement stage. However, the scrutiny is directed at the existence of consent to arbitrate not the correctness of the tribunal's reasoning.

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[62] Ibid

[63] *Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs, Government of Pakistan* (2010) UKSC 46

By contrast, English courts adopt a highly restrictive approach to public policy objections. In *Westacre Investments Inc v Jugoimport-SDPR Holding Co. Ltd,* the Court of Appeal rejected an attempt to resist enforcement based on alleged illegality, holding that public policy should not be used as a means of reopening issues already determined by the arbitral tribunal.[64] This approach reinforces the finality of arbitral awards and limits the scope for judicial interference. Similarly, the House of Lords in *Fiona Trust & Holding Corporation v Privalov* affirmed a strong presumption in favour of arbitration, holding that arbitration clauses should be interpreted broadly to cover disputes arising from the parties' relationship.[65] This presumption directly supports enforcement by reducing jurisdictional uncertainty.

Where enforcement is not successfully resisted, the arbitral award becomes enforceable in the same manner as a judgment of the High Court. The award creditor may then proceed to execution through established mechanisms such as writs of control, charging orders or third-party debt orders. This equivalence between arbitral awards and court judgments reflects the English courts' view that arbitration is not an inferior form of adjudication but a parallel system deserving of judicial support.

English enforcement practice is regarded as efficient and predictable. Delays are uncommon where the enforcement application is properly documented and the jurisdiction is clear. Nevertheless, enforcement may be slowed by parallel proceedings at the seat of arbitration or by poorly articulated challenges raised by award debtors. English courts manage these risks by insisting on procedural discipline and by confining judicial

[64] *Westacre Investments Inc v Jugoimport-SDPR Holding Co. Ltd*
[65] *Fiona Trust & Holding Corporation v Privalov* (2007) UKHL 40

intervention to clearly defined statutory grounds. The UK model illustrates how a clear statutory framework combined with consistent judicial interpretation can promote effective enforcement while safeguarding basic procedural fairness.

8.0 PRACTICE AND PROCEDURE FOR ENFORCEMENT OF ARBITRAL AWARDS IN CANADA

The enforcement of arbitral awards in Canada is generally regarded as supportive of arbitration and relatively predictable in practice. Although Canada does not operate a single federal arbitration statute applicable to all provinces, there is a high level of uniformity in the enforcement practice. This is because most provinces have adopted legislation based on the UNCITRAL Model Law for international arbitration have implemented the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Domestic arbitration is governed by provincial arbitration statutes, which also encourage limited judicial intervention.

In practice, enforcement proceedings are commenced before the superior courts of the provinces such as the Ontario Superior Court of Justice or the Supreme Court of British Columbia. The award creditor applies to the court for recognition and enforcement by filing the arbitral award attached with the arbitration agreement and affidavit confirming that the award has not been complied with. These applications are usually treated as summary proceedings, and Canadian courts generally do not permit a rehearing of the substantive issues already determined by the arbitral tribunal.

A notable feature of Canadian enforcement practice is the strong emphasis placed on judicial restraint. The Supreme Court of Canada has repeatedly stressed that arbitration is intended to provide a final resolution of disputes chosen by the parties. In *Sattva Capital Corp v Creston Moly Corp,* the court emphasized that excessive judicial interference undermines the efficiency and finality that arbitration is meant to achieve.[66] Although the case did not arise directly from the enforcement application, its reasoning has significantly influenced how lower courts approach arbitration-related matters, including enforcement by encouraging deference to arbitral tribunals once procedural requirements are satisfied.

The Supreme Court further developed this approach in Teal Cedar Products Ltd v British Columbia**,** where it clarified the standard of review applicable to arbitration-related decisions.[67] The Court reaffirmed that courts should generally defer to arbitral tribunals except where the legislature has clearly provided otherwise. This reasoning reinforces a broader judicial attitude that limits court involvement at both the review and enforcement stages thereby strengthening the enforceability of arbitral awards.

Canadian courts also addressed practical procedural issues that arise during enforcement, particularly in relation to limitation periods. In *Yugraneft Corp v. Rexx Management Corp***,** the Supreme Court held that provincial limitation laws may apply to the enforcement of foreign arbitral awards.[68] the decision highlights that while Canada is committed to

[66] *Sattva Capital Corp v Creston Moly Corp* 2014 SCC 53 (2014) 2 S.C.R. 633
[67] *Teal Cedar Products Ltd v British Columbia,* 2017 SCC 32 (2017) 1 S.C.R. 688.
[68] *Yugraneft Corp v Rexx Management Corp,* 2010 SCC 19 (2010) 1 S.C.R. 649

enforcing foreign awards under the New York Convention, award creditors must still comply with local procedural requirements. As a result, enforcement practice in Canada requires careful attention to provincial limitation rules and procedural timelines.

Public policy objections are treated narrowly by Canadian Courts. Enforcement will only be refused where the award clearly violates fundamental principles of justice or illegality. In *United Mexican States v. Metalclad Corporation,* the British Columbia Supreme Court rejected broad public policy arguments aimed at resisting enforcement holding that dissatisfaction with the Tribunal's reasoning or conclusions does not justify refusal of enforcement.[69] This restrictive approach has contributed to Canada's reputation as an arbitration-friendly jurisdiction.

Despite this generally favourable environment, enforcement proceedings in Canada are not entirely free from difficulty. Challenges may arise where there are parallel proceedings at the seat of arbitration or where respondents raise multiple procedural objections to delay enforcement. In such circumstances, Canadian courts retain discretion to adjourn enforcement proceedings but they do not automatically refuse enforcement. This balanced approach reflects an attempt to prevent abuse of process while respecting the supervisory role of courts at the arbitration.

Finally, Canadian practice demonstrates a consistent judicial commitment to the enforcement of arbitral awards, supported by clear statutory frameworks and strong appellate guidance. While procedural issues such

[69] *United Mexican States v Metalclad Corporation* (2001) 89 BCLR

as limitation periods and parallel proceedings can affect enforcement in individual cases, the general judicial attitude remains one of restraint and support for arbitral finality.

5.4 PRACTICE AND PROCEDURE FOR ENFORCEMENT OF ARBITRAL AWARDS IN SOUTH AFRICA

The enforcement of arbitral awards in South Africa has been significantly influenced by recent legislative reform and a gradual shift in judicial attitude. Historically, arbitration in South Africa was governed by the Arbitration Act 42 of 1965, which applied mainly to domestic arbitration and was often criticized for allowing excess judicial intervention. The enactment of the International Arbitration Act 15 of 2017 marked a turning point, particularly in relation to the enforcement of foreign arbitral awards. The 2017 Act incorporates the UNCITRAL Model Law and gives effect to the New York Convention, thereby aligning South Africa's enforcement practice with international standards.[70]

In practice, enforcement applications (motion on notice) are brought before the High Court. The award creditor is required to submit;

a) the arbitral award
b) the arbitration agreement and
c) supporting affidavits demonstrating non-compliance.

Once the enforcement application is recognized by the court, the arbitral award will be enforced in the same manner as a judgment of the court.

The grounds upon which a court may refuse recognition or enforcement of an arbitral award in South African law are set out in Article 36 of the

[70] International Arbitration Act 15 of 2017 (South Africa)

UNCITRAL Model Law as incorporated into domestic law by Schedule 1 to the International Arbitration Act 15 of 2017**.** These grounds are materially identical to those provided under section 58 of Nigeria**'s** Arbitration and Mediation Act 2023; both regimes being derived from the New York Convention.

South African courts generally approach enforcement proceedings as procedural rather than substantive, focusing on compliance with statutory requirements instead of revisiting the merits of the dispute. An academic scholar supports this approach, noting that the 2017 Act was intended to limit judicial intervention at the enforcement stage and promote certainty for award creditors.[71]

Judicial attitude towards enforcement has evolved alongside this legislative reform. In *Telcordia Technologies Inc. v. Telkom SA Ltd,* the Supreme Court of Appeal emphasized that arbitration is founded on party autonomy and that courts should not interfere merely because they would have reached a different conclusion.[72] Although the case pre-dates the 2017 Act, it remains influential in shaping the courts' restrained approach to arbitration-related matters, including enforcement. The court further reinforced this approach in *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews***,** when the Court recognized arbitration as a legitimate alternative to litigation and cautioned against excessive judicial intervention that would undermine its effectiveness.[73] Scholars have interpreted this decision as affirming the constitutional compatibility of arbitration and as

[71] D Butler, *Arbitration in South Africa: Law and Practice* (2nd edn, Juta 2019)
[72] *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA)
[73] D Butler, 'The Evolution of Arbitration Law in South Africa' (2018) *South African Mercantile Journal* (35)(1)

encouraging courts to respect the finality of arbitral awards particularly at the enforcement stage.[74]

South African courts have demonstrated openness to enforcing international adjudicatory decisions. In *Government of the Republic of Zimbabwe v Fick,* the Constitutional Court upheld the enforcement of an SADC Tribunal decision against a foreign state.[75] Although not a private commercial arbitration, the case is frequently discussed in the literature as evidence of South Africa's willingness to give effect to international dispute-resolution outcomes within its domestic legal system. This judicial openness has been viewed as supportive of the broader enforcement environment for arbitral awards.[76]

With respect to grounds for refusing enforcement, South African courts have interpreted the public narrowly. Courts have consistently held that public policy does not extend to mere errors of law or fact by an arbitral tribunal. Academic writers note that this restrictive approach reflects the influence of the New York Convention and reduces the risk of enforcement proceedings being used as disguised appeals.[77]

Overall, South African enforcement practice reflects a jurisdiction in transition. Legislative reform has provided a modern and internationally aligned framework while judicial decisions increasingly support arbitral finality and enforcement.

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[74] *Lufuno Mphapuli & Associates (Pty) v Andrews 2009* (4) SA 529 (CC)
[75] S Woolman and M Bishop, *Constitutional Law of South Africa (2nd edn, Juta 2014) 28*
[76] *Government of the Republic of Zimbabwe v Fick* 2013 (5) SA 325 (CC)
[77] A van den Berg, 'The New York Convention of 1958: An Overview' (2008) 25 ASA Bulletin 7

5.5 PRACTICE AND PROCEDURE FOR THE ENFORCEMENT OF ARBITRAL AWARDS IN UGANDA

The enforcement of arbitral awards in Uganda is governed primarily by the Arbitration and Conciliation Act, Cap 4, Laws Uganda 2000[78] which applies to both domestic and foreign arbitral awards. The Act is largely based on the UNCITRAL Model Law and incorporates Uganda's obligations under the New York Convention. As a result, the statutory framework for enforcement is generally aligned with international arbitration standards. However, as with many developing arbitration jurisdictions, the effectiveness of enforcement in Uganda depends not only on the statutory provisions but also on judicial practice and procedural realities.

In practice, enforcement proceedings are commenced before the High Court of Uganda, which has jurisdiction to recognize and enforce arbitral awards. An award creditor is required to apply to the court by motion on notice, supported by an affidavit exhibiting the arbitral award, the arbitration agreement and evidence that the award has not been complied with. Once recognized by the court, an arbitral award may be enforced in the same manner as a judgment of the High Court. Ugandan courts generally treat enforcement as a procedural step and do not undertake a review of the merits of the arbitral decision.

Under Ugandan law, the grounds upon which a court may refuse recognition or enforcement of an arbitral award are provided for under section 40(2) of the Arbitration and Conciliation Act, which incorporates

[78] Arbitration and Conciliation Act, Cap 4, Laws of Uganda

by reference the grounds for setting aside an award contained in section 34 of the Act. These grounds include incapacity of a party, invalidity of the arbitration agreement, lack of proper notice or inability to present a case, excess of jurisdiction, improper composition of the arbitral tribunal or procedure, the award not yet being binding or having been set aside at the seat, non-arbitrability of the subject matter and conflict with public policy.[79] Significantly, these grounds are materially identical to those contained in section 58 of the Nigerian Arbitration and Mediation Act 2023, which also derives its refusal framework from the UNCITRAL Model Law and the New York Convention. The similarity between the two regimes lies not merely in substance but in policy orientation, as both statutes adopt a restrictive approach to refusal of enforcement in order to preserve arbitral finality and limit judicial intervention. While the Nigerian Act consolidates refusal grounds in a single provision, Ugandan law separates setting aside and enforcement into sections 34 and 40, respectively, without altering the content of the grounds themselves.

Ugandan courts have also addressed the issue of procedural fairness at the enforcement stage. In Kajjansi Developers Ltd v Kampala District Land Board, the court held that a party who was allowed to participate in arbitral proceedings but failed to do so could not subsequently rely on allegations of denial of fair hearing to resist enforcement.[80] This approach mirrors international practice and discourages parties from using enforcement proceedings as a tactical tool to reopen disputes already resolved through arbitration.

[79] D Butler (n89)
[80] *Kajjansi Developers Ltd v Kampala District Land Board* (2007) HCB 99 (HC)

With respect to grounds for refusing enforcement, Ugandan courts interpret these grounds narrowly in line with the Arbitration and Conciliation Act. Public policy objections in particular, are treated with caution. The courts have indicated that public policy does not extend to mere errors of law or fact by the arbitral tribunal but is confined to situations where enforcement would offend a fundamental principle of justice or illegality.

In summary, Uganda's approach to the enforcement of arbitral awards reflects a jurisdiction with a modern statutory framework and a cautiously supportive judiciary. While the Arbitration and Conciliation Act provide a clear basis for enforcement, the effectiveness of enforcement in practice depends on consistent judicial application and procedural discipline.

6.0 SUMMARY OF FINDINGS

After the comparative analysis of the practice and procedure for the enforcement of arbitral awards in Nigeria & other selected jurisdictions, the research found that;

The study finds that Nigeria's legal framework under the Arbitration and Mediation Act 2023 substantially aligns with international arbitration standards particularly the New York Convention. The Act adopts limited and clearly defined grounds for refusing recognition and enforcement reflecting the principles of party autonomy, minimal judicial intervention and arbitral finality.

Appellate court decisions in Nigeria demonstrate an increasingly pro-enforcement posture. Higher courts consistently emphasize that enforcement proceedings are not an avenue for reviewing the merits of

arbitral awards and that statutory refusal grounds must be interpreted narrowly. This reflects judicial recognition of arbitration as a binding and final dispute resolution mechanism.

Despite the strong statutory framework and supportive appellate guidance, enforcement practice at the trial court level remains affected by procedural delays, interlocutory applications, technical objections and inconsistent interpretation of public policy and procedural fairness. These challenges create a gap between legislative intention and practical enforcement outcomes.

Comparative analysis reveals that jurisdictions such as the United Kingdom and Canada exhibit greater procedural discipline and predictability in enforcement proceedings. Courts in these jurisdictions treat enforcement as a summary process and maintain strict adherence to limited refusal grounds. South Africa and Uganda, while also operating under Model Law-based frameworks, face transitional or institutional challenges similar to Nigeria, though with increasing judicial support for arbitral finality.

Finally, the study finds that the effectiveness of arbitral enforcement depends less on the existence of modern legislation and more on consistent judicial application, procedural efficiency, and disciplined interpretation of statutory refusal grounds. The principal weakness in Nigeria's enforcement regime lies not in the law itself but in uneven procedural practice and institutional execution.

7.0 RECOMMENDATIONS

Based on the above challenges, this paper hereby makes the following recommendations;

1. **Streamlining Enforcement Proceedings:** To address persistent delays, enforcement of arbitral awards should be treated strictly as a summary process. The trial court should discourage interlocutory applications that fall outside the limited grounds for refusal and ensure that enforcement applications are determined expeditiously. This approach would align enforcement practice with the pro-enforcement stance already evident at the appellate court.
2. **Restricting Technical and Jurisdictional Objections;** Courts should adopt a more robust approach in filtering technical and jurisdictional objections raised at the enforcement stage. Where such objections do not raise genuine issues within the statutory refusal ground, they should be dismissed summarily. This would prevent the use of procedural objections as a tool for delaying enforcement, particularly in disputes involving public institutions.
3. **Promoting Consistent Interpretation of Enforcement Standards;** Judicial consistency should be strengthened through clearer appellate guidance on the interpretation of enforcement standards, especially in relation to public policy and procedural fairness. Lower courts should be guided to apply these concepts narrowly in line with the Arbitration and Mediation Act 2023 and Nigeria's obligations under the New York Convention.
4. **Reinforcing the Principle of Minimal Judicial Intervention;** Courts must confine their role at the enforcement stage to the limited supervisory function prescribed by law. Judicial officers should refrain from indirect review of the merits of arbitral awards under procedural disguises thereby upholding party autonomy and the finality of arbitration.

5. **Enhancement of Uniformity and Predictability in Enforcement Practice;** Institutional measures such as continuous judicial training on arbitration enforcement and the development of practice directions should be encouraged to promote uniform enforcement practice. Greater consistency in judicial approach would enhance predictability and strengthen confidence.

8.0 CONCLUSION

The enforcement of arbitral awards is central to the credibility and effectiveness of arbitration as a dispute resolution mechanism. This study has shown that Nigeria's enforcement framework under the Arbitration and Mediation Act 2023 largely aligns with international standards, particularly the New York Convention by limiting judicial intervention and promoting arbitral finality. However, practical challenges such as procedural delays and inconsistent trial-court approaches continue to undermine effective enforcement. Comparative analysis with jurisdictions such as the United Kingdom, Canada, South Africa, and Uganda demonstrates that consistent judicial restraint and procedural discipline are critical to successful enforcement. Strengthening judicial practice is therefore essential to realizing the full benefits of arbitration in Nigeria.